

# PROPOSED RULES

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

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

## TITLE 10. COMMUNITY DEVELOPMENT

### PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

#### CHAPTER 1. ADMINISTRATION

#### SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

##### 10 TAC §1.23

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 1, Subchapter A, General Policies and Procedures, §1.23, State of Texas Low Income Housing Plan and Annual Report (SLIHP). The purpose of the proposed repeal is to eliminate an outdated rule while adopting a new updated rule under separate action, in order to adopt by reference the 2024 SLIHP.

The Department has analyzed this proposed rulemaking and the analysis is described below for each category of analysis performed.

##### a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed repeal would be in effect:

1. The proposed repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous adoption by reference the 2024 SLIHP, as required by Tex. Gov't Code 2306.0723.
2. The proposed repeal does not require a change in work that would require the creation of new employee positions, nor is the proposed repeal significant enough to reduce work load to a degree that any existing employee positions are eliminated.
3. The proposed repeal does not require additional future legislative appropriations.
4. The proposed repeal does not result in an increase in fees paid to the Department or in a decrease in fees paid to the Department.
5. The proposed repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.
6. The proposed action will repeal an existing regulation, but is associated with a simultaneous readoption in order to adopt by reference the 2024 SLIHP.
7. The proposed repeal will not increase or decrease the number of individuals subject to the rule's applicability.

8. The proposed repeal will not negatively or positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated this proposed repeal and determined that the proposed repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The proposed repeal does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the proposed repeal as to its possible effects on local economies and has determined that for the first five years the proposed repeal would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson, has determined that, for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of the repealed section would be an updated more germane rule that will adopt by reference the 2024 SLIHP. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the proposed repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

**REQUEST FOR PUBLIC COMMENT.** The 32 day public comment period for the rule will be held Friday, December 22, 2023, to Monday, January 22, 2024, to receive input on the proposed repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Housing Resource Center, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or email [info@tdhca.state.tx.us](mailto:info@tdhca.state.tx.us). ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local (Central) time, MONDAY, JANUARY 22, 2024.

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

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

§1.23. *State of Texas Low Income Housing Plan and Annual Report (SLIHP).*

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 December 8, 2023.

TRD-202304613

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: January 21, 2024

For further information, please call: (512) 475-3959



## 10 TAC §1.23

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 1, Subchapter A, General Policies and Procedures, §1.23 State of Texas Low Income Housing Plan and Annual Report (SLIHP). The purpose of the proposed new section is to provide compliance with Tex. Gov't Code §2306.0723 and to adopt by reference the 2024 SLIHP, which offers a comprehensive reference on statewide housing needs, housing resources, and strategies for funding allocations. The 2024 SLIHP reviews TDHCA's housing programs, current and future policies, resource allocation plans to meet state housing needs, and reports on performance during the preceding state fiscal year (September 1, 2022, through August 31, 2023).

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action because it is exempt under item (c)(9) because it is necessary to implement legislation. Tex. Gov't Code §2306.0721 requires that the Department produce a state low income housing plan, and Tex. Gov't Code §2306.0722 requires that the Department produce an annual low income housing report. Tex. Gov't Code §2306.0723 requires that the Department consider the annual low income housing report to be a rule. This rule provides for adherence to that statutory requirement. Further no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this proposed rulemaking and the analysis is described below for each category of analysis performed.

### a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed new rule would be in effect:

1. The proposed new rule does not create or eliminate a government program, but relates to the adoption, by reference, of the 2024 SLIHP, as required by Tex. Gov't Code 2306.0723.
2. The proposed new rule does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.

3. The proposed new rule changes do not require additional future legislative appropriations.

4. The proposed new rule changes will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The proposed new rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.

6. The proposed new rule will not expand, limit, or repeal an existing regulation.

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

8. The proposed new rule will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this proposed rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code §2306.0723.

1. The Department has evaluated this rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. There are no small or micro-businesses subject to the proposed rule for which the economic impact of the rule is projected to be null. There are no rural communities subject to the proposed rule for which the economic impact of the rule is projected to be null.

3. The Department has determined that because the proposed rule will adopt by reference the 2024 SLIHP, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The proposed rule does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the proposed rule has no economic effect on local employment because the proposed rule will adopt by reference the 2024 SLIHP; therefore, no local employment impact statement is required to be prepared for the rule.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that the proposed rule will adopt by reference the 2024 SLIHP there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be an updated and more germane rule that will adopt by reference the 2024 SLIHP, as required by Tex. Gov't Code §2306.0723. There will not be any economic cost to any individuals required

to comply with the new section because the adoption by reference of prior year SLIHP documents has already been in place through the rule found at this section being repealed.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments because the new rule will adopt by reference the 2024 SLIHP.

REQUEST FOR PUBLIC COMMENT. The 32 day public comment period for the rule will be held Friday December, 22, 2023, to Monday, January 22, 2024, to receive input on the new proposed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Housing Resource Center, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email [info@tdhca.state.tx.us](mailto:info@tdhca.state.tx.us). ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local (Central) time, MONDAY, JANUARY 22, 2024.

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

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

§1.23. State of Texas Low Income Housing Plan and Annual Report (SLIHP).

The Texas Department of Housing and Community Affairs (TDHCA or the Department) adopts by reference the 2024 State of Texas Low Income Housing Plan and Annual Report (SLIHP). The full text of the 2024 SLIHP may be viewed at the Department's website: [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us). The public may also receive a copy of the 2024 SLIHP by contacting the Department's Housing Resource Center at (512) 475-3976.

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 December 8, 2023.

TRD-202304614

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

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For further information, please call: (512) 475-3959



## CHAPTER 8. PROJECT RENTAL ASSISTANCE PROGRAM RULE

### 10 TAC §8.4

The Texas Department of Housing and Community Affairs (the Department) proposes amending 10 TAC Chapter 8, Project Rental Assistance Program Rule, §8.4, Qualification Requirements for Existing Developments. The amendments will add reference to a new inspection protocol, NSPIRE, and specify what the minimum NSPIRE score must be to qualify for the 811 PRA Program as an existing development.

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

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed rule action would be in effect, the proposed actions do not create or eliminate a government program, but relate to changes to an existing activity, existing properties qualifying for the 811 PRA Program.

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

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

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

5. The proposed amendment to the rule will not create a new regulation, but merely revises a regulation to reference a new inspection protocol;

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

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

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

PUBLIC BENEFIT/COST NOTE. Mr. Wilkinson also has determined that, for each year of the first five years the amendment to the rule is in effect, the public benefit anticipated as a result of the action will be the clarification of what inspection method may be used and what the cut-off score would be for the NSPIRE inspection. There will not be any economic cost to any individual required to comply with the amendment.

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

REQUEST FOR PUBLIC COMMENT. All comments or questions in response to this action may be submitted in writing from December 22, 2023, through January 22, 2024. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, P.O. Box 13941, Austin, Texas 78711-3941, or by email to [brooke.boston@tdhca.state.tx.us](mailto:brooke.boston@tdhca.state.tx.us). ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m. Austin local (Central) time, January 22, 2024.

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

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

*§8.4. Qualification Requirements for Existing Developments.*

Eligible Existing Developments must meet all of the requirements in §8.3 of this chapter (relating to Participation as a Proposed Development). In addition, the Existing Development must meet the following requirements:

(1) The Development received an award (tax credit, direct loan, etc.) under a Department administered program in or after 2002, or has been otherwise approved by the Department in writing;

(2) The Development has at least 5 housing units;

(3) For Developments that were placed in service on or before January 1, 2020 [2017], the most current vacancy report as reflected in CMTS evidences that the Development maintained at least 85% physical occupancy for a period of at least 3 consecutive months;

(4) For Developments that have received a UPCS inspection, the Development received a UPCS score of at least 80 on its most recent Department REAC inspection and all compliance issues associated with that inspection have been resolved; or for Developments whose most recent Department inspection is an NSPIRE inspection, the Development must have received a NSPIRE score of at least 75 and all compliance issues associated with that inspection must have been resolved;

(5) The Development is operating in accordance with the accessibility requirements of Section 504, the Rehabilitation Act of 1973 (29 U.S.C. Section 794), as specified under 24 C.F.R. Part 8, Subpart C, or operating under the 2010 ADA standards with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities" *Federal Register* 79 FR 29671; and

(6) The Development is not Transitional Housing as defined in Chapter 11 of this title [~~the 2018 Uniform Multifamily 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.

Filed with the Office of the Secretary of State on December 8, 2023.

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Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

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For further information, please call: (512) 475-3959



## CHAPTER 20. SINGLE FAMILY PROGRAMS UMBRELLA RULE

### 10 TAC §§20.1 - 20.15

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 20, Single Family Programs Umbrella Rule, §§20.1 - 20.15. The purpose of the proposed action is to repeal the current rule, while replacing it with a new rule with revisions under separate action.

The Department has analyzed this proposed rulemaking and the analysis is described below for each category of analysis performed.

#### a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed repeal would be in effect, the proposed repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption

making changes to an existing activity, administration of the Department's Single Family Programs.

2. The proposed repeal does not require a change in work that would require the creation of new employee positions, nor is the proposed repeal significant enough to reduce work load to a degree that any existing employee positions are eliminated.

3. The proposed repeal does not require additional future legislative appropriations.

4. The proposed repeal does not result in an increase in fees paid to the Department, nor a decrease in fees paid to the Department.

5. The proposed repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The proposed action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, the administration of the Department's Single Family Programs.

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

8. The proposed repeal will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated this proposed repeal and determined that the proposed repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The proposed repeal does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the proposed repeal as to its possible effects on local economies and has determined that for the first five years the proposed repeal would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of the repealed chapter would be an updated and more germane rule. There will not be economic costs to individuals required to comply with the repealed chapter.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the proposed repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held December 22, 2023, to January 22, 2024, to receive input on the proposed repealed chapter. Written com-

ments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Abigail Versyp, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email HOME@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Central time, January 22, 2024.

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

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

- §20.1. Purpose.
- §20.2. Applicability.
- §20.3. Definitions.
- §20.4. Eligible Single Family Activities.
- §20.5. Funding Notices.
- §20.6. Administrator Applicant Eligibility.
- §20.7. Single Family Housing Unit Eligibility Requirements.
- §20.8. Fair Housing, Waitlist Policy, Affirmative Marketing and Procedures, Housing Counseling, Denials, Notice to Applicants, Reasonable Accommodations, and Limited English Proficiency.
- §20.9. Inspection Requirements for Construction Activities.
- §20.10. Survey Requirements.
- §20.11. Insurance and Title Requirements.
- §20.12. Loan, Lien and Mortgage Requirements for Activities.
- §20.13. Amendments to Written Agreements and Contracts.
- §20.14. Compliance and Monitoring.
- §20.15. Appeals.

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 December 8, 2023.

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Bobby Wilkinson  
Executive Director  
Texas Department of Housing and Community Affairs  
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For further information, please call: (512) 475-3959



### 10 TAC §§20.1 - 20.15

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 20, Single Family Programs Umbrella Rule, §§20.1 - 20.15. The purpose of the proposed new sections is to implement a more germane rule and better align administration to federal and state requirements.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this proposed rulemaking and the analysis is described below for each category of analysis performed.

#### a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed new rule would be in effect:

1. The proposed rule does not create or eliminate a government program, but relates to the re-adoption of this rule which makes changes to administration of the Department's Single Family Programs.
2. The proposed new rule does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The proposed new rule changes do not require additional future legislative appropriations.
4. The proposed new rule changes will not result in an increase in fees paid to the Department nor a decrease in fees paid to the Department.
5. The proposed new rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.
6. The proposed new rule will not expand or repeal an existing regulation.
7. The proposed new rule will not increase or decrease the number of individuals subject to the rule's applicability.
8. The proposed new rule will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this proposed new rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, §2306.111.

1. The Department has evaluated this proposed new rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.
2. There are approximately 60 rural communities currently participating in construction activities under Single Family Programs that are subject to the proposed new rule for which no economic impact of the rule is projected during the first year the rule is in effect.

3. The Department has determined that because the proposed new rule serves to clarify and update existing requirements and does not establish new requirements for which there would be an associated cost, there will be no economic effect on small or micro-businesses or rural communities

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The proposed new rule does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the proposed new rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the proposed new rule has no economic effect on local employment because the rule serves to clarify and update existing requirements and does not establish new requirements or activities that may positively or negatively impact local economies.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule. Considering that participation in the Department's Single Family Programs is at the discretion of the local government or other eligible sub-recipients, there are no "probable" effects of the proposed new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Bobby Wilkinson, Executive Director, has determined that, for each year of the first five years the proposed new rule is in effect, the public benefit anticipated as a result of the rule will be a more germane rule that better aligns administration to federal and state requirements. There will not be any economic cost to any individuals required to comply with the new section because the processes described by the rule have already been in place through the rule found at this section being repealed.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the proposed new rule is in effect, enforcing or administering the rule does not have any foreseeable implications related to costs or revenues of the state or local governments because the rule updates and clarifies existing requirements and does not impose new requirements.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held December 22, 2023, to January 22, 2024, to receive input on the proposed new rule. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Abigail Versyp, Rule Comments, P.O. Box 13941, Austin, Texas 8711-3941, by fax to (512) 475-0220, or email [abigail.versyp@tdhca.state.tx.us](mailto:abigail.versyp@tdhca.state.tx.us). ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Central time, January 22, 2024.

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

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

#### §20.1. Purpose.

This chapter sets forth the common elements of the Texas Department of Housing and Community Affairs' (the Department) single family Programs, which include the Department's HOME Investment Partnerships Program (HOME), Texas Housing Trust Fund (Texas HTF), Texas Neighborhood Stabilization Program (NSP), and Office of Colonia Initiatives (OCI) Programs and other single family Programs as developed by the Department. Single family Programs are designed to improve and provide affordable housing opportunities to low-income individuals and families in Texas and in accordance with Chapter 2306 of the Tex. Gov't Code and any applicable statutes and federal regulations.

#### §20.2. Applicability.

(a) This chapter only applies to single family Programs. Program Rules may impose additional requirements related to any provision of this chapter. Where a Program Rule is less restrictive and federal law does not preempt the item, the provisions of this chapter will govern Program decisions.

(b) Activities performed under Chapter 27 (relating to Texas First Time Homebuyer Program Rule) and Chapter 28 (related to Taxable Mortgage Program) of this title are excluded from this chapter.

#### §20.3. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings unless the context indicates otherwise. Any capitalized terms not specifically defined in this section or any section referenced in this chapter shall have the meaning as defined in Chapter 2306 of the Tex. Gov't Code, the Program Rules, the Texas Administrative Code (TAC), or applicable federal regulations.

(1) Activity--The assistance provided to a specific Household or Administrator by which funds are used for acquisition, new construction, reconstruction, rehabilitation, refinance of an existing Mortgage, tenant-based rental assistance, or other Department approved Expenditure under a single family housing Program.

(2) Administrator--A unit of local government, Nonprofit Organization or other entity acting as a subrecipient, Developer, or similar organization that has an executed written Agreement with the Department.

(3) Affiliate--If, directly or indirectly, either one Controls or has the power to Control the other or a third person Controls or has the power to Control both. The Department may determine Control to include, but not be limited to:

(A) Interlocking management or ownership;

(B) Identity of interests among family members;

(C) Shared facilities and equipment;

(D) Common use of employees; or

(E) A business entity which has been organized following the exclusion of a person which has the same or similar management, ownership, or principal employees as the excluded person.

(4) Affiliated Party--A person or entity with a contractual relationship with the Administrator as it relates to a Program, the form of assistance under a Program, or an Activity.

(5) Affirmative Marketing Plan--HUD Form 935.2B or equivalent plan created in accordance with HUD requirements to direct specific marketing and outreach to potential tenants and homebuyers who are considered "least likely" to know about or apply for housing based on an evaluation of market area data. May be referred to as "Affirmative Fair Housing Marketing Plan" (AFHMP).

(6) Agreement--Same as "Contract." May be referred to as a "Reservation System Agreement" or "Reservation Agreement" when providing access to the Department's Reservation System as defined in this chapter.

(7) Amy Young Barrier Removal Program--A program designed to remove barriers and address immediate health and safety issues for Persons with Disabilities as outlined in the Program Rule.

(8) Annual Income--The definition of Annual Income and the methods utilized to establish eligibility for housing or other types of assistance as defined under the Program Rule.

(9) Applicant--An individual, unit of local government, nonprofit corporation or other entity, as applicable, who has submitted to the Department or to an Administrator an Application for Department funds or other assistance.

(10) Application--A request for a Contract award or a request to participate in a Reservation System submitted by an Applicant to the Department in a form prescribed by the Department, including any exhibits or other supporting material.

(11) Area Median Family Income (AMFI)--The income limits published annually by the U.S. Department of Housing and Urban Development (HUD) for the Housing Choice Voucher Program

that is used by the Department to determine the income eligibility of Households to participate in Single Family Programs.

(12) Borrower--A Household that is borrowing funds from or through the Department for the acquisition, new construction and/or rehabilitation of the Household's Principal Residence.

(13) Certificate of Occupancy--Document issued by a local authority to the owner of premises attesting that the structure has been built in accordance with building ordinances.

(14) CFR--Code of Federal Regulations.

(15) Combined Loan to Value (CLTV)--The aggregate principal balance of all the Mortgage Loans, including Forgivable Loans, divided by the appraised value.

(16) Competitive Application Cycle--A defined period of time that Applications may be submitted according to a published Notice of Funding Availability (NOFA) that will include a submission deadline and selection or scoring criteria.

(17) Concern--A policy, practice or procedure that has not yet resulted in a Finding, but if not changed will or may result in a Finding, or disallowed costs.

(18) Contract--The executed written agreement between the Department and an Administrator performing an Activity related to a single family Program that describes performance requirements and responsibilities. May also be referred to as "Agreement."

(19) Contract Term--The timeframe in which funds may be expended under the Contract or Agreement for certain administrative costs and for all the hard and soft costs of Activities, as further described in the Contract or Agreement.

(20) Control--The possession, directly or indirectly, of the power to direct or cause the direction of the management, operations or policies of any person or entity, whether through the ownership of voting securities, ownership interests, or by contract or otherwise.

(21) Debt--A duty or obligation to pay money to a creditor, lender, or person which can include car payments, credit card bills, loans, child support payments, and student loans.

(22) Debt-to-Income Ratio--The percentage of gross monthly income from Qualifying Income that goes towards paying off Debts and is calculated by dividing total recurring monthly Debt by gross monthly income expressed as a percentage.

(23) Deobligate--The cancellation of or release of funds under a Contract or Agreement as a result of expiration of, termination of, or reduction of funds under a Contract or Agreement.

(24) Developer--Any person, general partner, Affiliate, or Affiliated Party or affiliate of a person who owns or proposes a Development or expects to acquire control of a Development and is the person responsible for performing under the Contract with the Department.

(25) Development--A residential housing project for homeownership that consists of one or more units owned by the Developer during the development period and financed under a common plan which has applied for Department funds. This includes a project consisting of multiple units of housing that are located on scattered sites.

(26) Domestic Farm Laborer--Individuals (and the Household) who receive a substantial portion of their income from the production or handling of agricultural or aquacultural products.

(27) Draw Request--A request submitted to the Department, by an Administrator, seeking reimbursement of Program funds for completing an expenditure relating to the Program.

(28) Enforcement Committee--The Committee as defined in Chapter 2 of this title (relating to Enforcement).

(29) Finding--An Administrator's material failure to comply with rules, regulations, the terms of the Contract, or to provide services under a Program to meet appropriate standards, goals, and other requirements established by the Department or funding source (including performance objectives). A Finding impacts the organization's ability to achieve the goals of the program and may jeopardize continued operations of the Administrator. A Finding includes the identification of an action or failure to act that results or may result in disallowed costs.

(30) Forgivable Loan--Financial assistance in the form of a Mortgage Loan that is not required to be repaid if the terms of the Mortgage Loan are met.

(31) HOME Program--A HUD funded Program authorized under the HOME Investment Partnerships Program at 42 U.S.C. §§12701 - 12839.

(32) Household--One or more persons occupying a rental unit or owner-occupied Single Family Housing Unit as their primary residence. May also be referred to as a "family" or "beneficiary."

(33) Housing Contract System (HCS)--The electronic information system or systems that are part of the "central database" established by the Department to be used for tracking, funding, and reporting single family Contracts and Activities. May also be known as Contract System.

(34) HUD--The United States Department of Housing and Urban Development or its successor.

(35) Improvement Survey--A boundary survey plus land improvements by a Texas surveyor with a surveyor's seal, license number, and signature, meeting the requirements of the Texas Board of Professional Land Surveying under Chapter 663, Part 29, Title 2 of the TAC, showing (at a minimum) the accompanying legal description; all boundaries clearly labeled with calls and distance found on the ground and per the legal description; the location of all improvements, structures, visible utilities, fences, or walls; any boundary or visible encroachments; all adjoinders and recording information; location of all easements, setback lines, and utilities; or other recorded matters affecting the use of the property.

(36) Life-of-Loan Flood Certification--Tracks the flood zone of the Single Family Housing Unit for the life of the Mortgage Loan.

(37) Limited English Proficiency (LEP)--Refers to persons who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English.

(38) Loan Assumption--An agreement between the buyer and seller of Single Family Housing Unit that the buyer will make remaining payments and adhere to terms and conditions of an existing Mortgage Loan on the Single Family Housing Unit and Program requirements. A Mortgage Loan assumption requires written Department approval.

(39) Manufactured Housing Unit (MHU)--A structure that meets the requirements of Texas Manufactured Housing Standards Act, Chapter 1201 of the Texas Occupations Code or Federal Housing Administration (FHA) guidelines as required by the Department.

(40) Mortgage--Has the same meaning as defined in §2306.004 of the Tex. Gov't Code.

(41) Mortgage Loan--Has the same meaning as defined in §2306.004 of the Tex. Gov't Code.

(42) Neighborhood Stabilization Program (NSP)--A HUD-funded program authorized by HR3221, the "Housing and Economic Recovery Act of 2008" (HERA) and Section 1497 of the Wall Street Reform and Consumer Protection Act of 2010, as a supplemental allocation to the CDBG Program.

(43) NOFA--Notice of Funding Availability or announcement of funding published by the Department notifying the public of available funds for a particular Program with certain requirements.

(44) Nonprofit Organization--An organization in which no part of its income is distributable to its members, directors or officers of the organization and has a current tax exemption classification status from the Internal Revenue Service in accordance with the Internal Revenue Code.

(45) Office of Colonia Initiatives--A division of the Department authorized under Chapter 2306 of Tex. Gov't Code, which acts as a liaison to the colonias and manages some Programs in the colonias.

(46) Parity Lien--A lien position whereby two or more lenders share a security interest of equal priority in the collateral.

(47) Persons with Disabilities--Any person who has a physical or mental impairment that substantially limits one or more major life activities; or has a record of such an impairment; or is being regarded as having such impairment. Included in this meaning is the term handicap as defined in the Fair Housing Act, and disability as defined by other applicable federal or state law.

(48) Principal Residence--The primary Single Family Housing Unit that a Household inhabits. May also be referred to as "primary residence."

(49) Program--The specific fund source from which single family funds are applied for and used.

(50) Program Income--Gross income received by the Administrator or Affiliate directly generated from the use of single family funds, including, but not limited to gross income received from matching contributions under the HOME Program.

(51) Program Manual--A set of guidelines designed to be an implementation tool for a single family Program. A Program Manual is developed by the Department and amended or supplemented from time to time.

(52) Program Rule--Chapters of Part 1 of this title which pertain to specific single family Program requirements.

(53) Qualifying Income--The income used to calculate the Borrower's debt-to-income ratio and excludes the total of any income not received consistently for the past 12 months from the date of Application including, but not limited to, income from a full or part time job that lacks a stable job history, potential bonuses, commissions, and child support. Income received for less than 12 months such as retirement annuity or court ordered payments will be considered only if it is expected to continue at least 24 months in the foreseeable future.

(54) Reservation--Funds set-aside for a Household submitted through the Department's Reservation System.

(55) Reservation System--The Department's online tracking system that allows Administrators to reserve funds for a specific Household.

(56) Resolution--Formal action by a corporate board of directors or other corporate body authorizing a particular act, transaction, or appointment. Resolutions must be in writing and state the specific action that was approved and adopted, the date the action was approved and adopted, and the signature of person or persons authorized to sign resolutions. Resolutions must be approved and adopted in accordance with the corporate bylaws of the issuing organization.

(57) Reverse Mortgage--A Home Equity Conversion Mortgage insured by the FHA.

(58) Self-Help--Housing Programs that allow low-income families to build or rehabilitate their Single Family Housing Units through their own labor or volunteers.

(59) Service-Area--The geographical area where an Administrator conducts Activities under a Contract.

(60) Single Family Housing Unit--A residential dwelling designed and built for a Household to occupy as its primary residence where single family Program funds are used for rental, acquisition, construction, reconstruction or rehabilitation Activities of an attached or detached housing unit, including Manufactured Housing Units after installation. May be referred to as a single family "home," "housing," "property," "structure," or "unit."

(61) State Median Family Income (SMI)--The median income for the state adjusted for household size and published annually by the U.S. Department of Housing and Urban Development (HUD).

(62) TAC--Texas Administrative Code.

(63) Texas Housing Trust Fund (Texas HTF)--Funding source for state-funded Programs authorized under Chapter 2306 of Tex. Gov't Code.

(64) TMCS--Texas Minimum Construction Standards.

#### §20.4. Eligible Single Family Activities.

(a) Availability of funding for and specific Program requirements related to the Activities described in subsection (b)(1) - (7) of this section are defined in each Program's Rules.

(b) Activity Types for eligible single family housing Activities include the following, as allowed by the Program Rule or NOFA:

(1) Rehabilitation or new construction of Single Family Housing Units;

(2) Reconstruction of an existing Single Family Housing Unit on the same site;

(3) Replacement of existing owner-occupied housing with a new MHU;

(4) Acquisition of Single Family Housing Units, including acquisition with rehabilitation and accessibility modifications;

(5) Refinance of an existing Mortgage or Contract for Deed mortgage;

(6) Tenant-based rental assistance; and

(7) Any other single family Activity as determined by the Department.

#### §20.5. Funding Notices.

(a) The Department will make funds available for eligible Administrators for single family activities through NOFAs, requests for qualifications (RFQs), request for proposals (RFPs), or other methods describing submission and eligibility guidelines and requirements.

(b) Funds may be allocated through Contract awards by the Department or by Department authority to submit Reservations.



(c) Funds may be subject to regional allocation in accordance with Chapter 2306 of the Tex. Gov't Code.

(d) Eligible Applicants must comply with the provisions of the Application materials and funding notice and are responsible for the accuracy and timely submission of all Applications and timely correction of all deficiencies.

§20.6. Administrator Applicant Eligibility.

(a) Eligible Applicants seeking to administer a single family Program are limited to entities described in the Program Rule and/or NOFA; and

(1) Shall be in good standing with the Department, Texas Secretary of State, Texas Comptroller of Public Accounts and HUD, as applicable.

(2) Shall comply with all applicable state and federal rules, statutes, or regulations including those administrative requirements in Chapters 1 and 2 of this title (relating to Administration and Enforcement).

(3) Must provide Resolutions in accordance with the applicable Program Rule.

(b) The actions described in the following paragraphs (1) - (3) of this subsection may cause an Applicant and any Applications they have submitted to administer a Single Family Program to be ineligible:

(1) Applicant did not satisfy all eligibility and/or threshold requirements described in the applicable Program Rule and NOFA;

(2) Applicant is debarred by HUD or the Department; or

(3) Applicant is currently noncompliant or has a history of noncompliance with any Department Program. Each Applicant will be reviewed by the Executive Award and Review Advisory Committee (EARAC) for its compliance history by the Department, as provided in §1.302 (relating to Previous Participation Reviews for Department Program Awards Not Covered by §1.301 of this Subchapter) and §1.303 (relating to Executive Award and Review Advisory Committee (EARAC)) of this title. An Application submitted by an Applicant found to be in noncompliance or otherwise violating the rules of the Department may be recommended with conditions or not recommended for funding by EARAC.

(c) The Department reserves the right to adjust the amount awarded based on the Application's feasibility, underwriting analysis, the availability of funds, or other similar factors as deemed appropriate by the Department.

(d) The Department may decline to fund any Application to administer a Single Family Program if the proposed Activities do not, in the Department's sole determination, represent a prudent use of the Department's funds. The Department is not obligated to proceed with any action pertaining to any Applications received, and may decide it is in the Department's best interest to refrain from pursuing any selection process. The Department reserves the right to negotiate individual components of any Application.

(e) If an Applicant/Administrator is originating or servicing a Mortgage Loan, the Applicant/Administrator must possess all licenses required under state or federal law for taking the Application of and/or servicing a residential mortgage loan and must be in good standing with respect thereto, unless Applicant/Administrator is specifically exempted from such licensure pursuant to the applicable state and federal laws and regulations regarding residential mortgage loans.

§20.7. Single Family Housing Unit Eligibility Requirements.

(a) A Single Family Housing Unit must be located in the State of Texas.

(b) Real property taxes assessed on an owner-occupied Single Family Housing Unit must be current prior to the date of Mortgage Loan closing or effective date of the grant agreement. Delinquent property taxes will result in disapproval of the Activity unless one or more of the following conditions are satisfied:

(1) Household must be satisfactorily participating in an approved installment agreement in accordance with Texas Tax Code §33.02 with the taxing authority, and must be current for at least three consecutive months prior to the date of Application;

(2) Household must have qualified for an approved tax deferral plan agreement in accordance with Texas Tax Code §§33.06 or 33.065; or

(3) Household must have entered into an installment agreement under Texas Tax Code §§31.031 or 31.032, have made at least one payment under the agreement, and be current on the installment plan.

(c) A Single Family Housing Unit must not be encumbered with any liens which impair the good and marketable title as of the date of the Mortgage Loan closing or effective date of the grant agreement.

(d) Prior to any Department assistance, the owner must be current on any existing Mortgage Loans or home equity loans.

(e) Housing that is built through new construction or reconstruction must meet the requirements of Texas Gov't Code §2306.514 (relating to accessibility), 10 TAC Chapter 21 (relating to Energy Efficiency), and applicable building codes. Plans submitted for housing under new construction or reconstruction must be prepared or certified by an architect or engineer licensed by the state of Texas.

§20.8. Fair Housing, Waitlist Policy, Affirmative Marketing and Procedures, Housing Counseling, Denials, Notice to Applicants, Reasonable Accommodations, and Limited English Proficiency.

(a) Fair Housing. In addition to Chapter 1, Subchapter B of this title (relating to Accessibility and Reasonable Accommodations), an Administrator must comply with all applicable state and federal rules, statutes, or regulations, involving accessibility including the Fair Housing Act, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act, and the Architectural Barriers Act as well as state and local building codes that contain accessibility requirements; where local, state, or federal rules are more stringent, the most stringent rules shall apply. Administrators receiving Federal or state funds must comply with the Age Discrimination Act of 1975.

(b) Preferences. Administrators of the Amy Young Barrier Removal Program may have a preference prioritizing Households to prevent displacement from permanent housing, or to foster returning to permanent housing related to inaccessible features of the unit.

(c) Waitlist Policy. An Administrator receiving Federal funds must have a Waitlist Policy. The Waitlist Policy must be submitted to the Department each time the Administrator applies for a new contract or a new type of activity. The Administrator may submit a previously approved Waitlist Policy if no changes need to be made. The Waitlist Policy must be submitted at a minimum of every three years if the Administrator continues to accept new Applications. An Administrator receiving Federal funds must submit a Waitlist Policy with an Affirmative Fair Housing Marketing Plan as described in subsection (d) of this section, relating to Affirmative Marketing and Procedures.

(1) A Waitlist Policy must include any Department approved preferences used in selecting Applicants from the list. An Administrator that has defined preferences in its written waitlist procedures or tenant selection plans, as applicable, will employ preferences first and select Applicants from the waiting list that meet the defined preference, still using the neutral random selection process.

An Administrator of a federally funded Program may only request to establish preferences that are included in Department planning documents, specifically the One Year Action Plan or Consolidated Plan, or as otherwise allowed for CDBG funded Activities.

(2) An Administrator must accept Applications from possible eligible Applicants for a minimum of a 21 calendar day period. A first-come, first-served basis may not be implemented during initial selection. At the close of the minimum 21 calendar day Application acceptance period, an Administrator must select Applications through a neutral random selection process that the Administrator described in its written policies and procedures. After the Administrator has allowed for the minimum 21 calendar day period to accept Applications and has used a neutral random selection process to assist Households, the Administrator may accept Applications on a first-come, first-served basis if funds remain in the current contract or Activity type. The Director of Programs, or designee, may approve an exemption from the 21 calendar day period and the neutral random selection process for Administrators of HOME disaster set-aside Tenant Based Rental Assistance, as necessary to respond to the disaster.

(d) Affirmative Marketing and Procedures. An Administrator receiving Federal funds must have an Affirmative Fair Housing Marketing Plan (AFHMP) and satisfy the requirements of this subsection. The AFHMP must be submitted to the Department each time the Administrator applies for a new contract or a new type of activity, and reflect marketing activities specific to the activity type. The Administrator may submit a previously approved AFHMP if no changes need to be made. The plan must be submitted at least one time in any three-year period if the Administrator continues to accept new Applications.

(1) Administrators must use the AFHMP form on the Department's website, HUD Form 935.2B, or create an equivalent AFHMP that includes:

(A) Identification of the population "least likely to apply" for the Administrator's Program(s) without special outreach efforts. Administrators may use the Department's single family affirmative marketing tool to determine populations "least likely to apply." If Administrators use another method to determine the populations "least likely to apply" the AFHMP must provide a detailed explanation of the methodology used. Persons with Disabilities must always be included as a population least likely to apply.

(B) Identification of the methods of outreach that will be used to attract persons identified as least likely to apply. Outreach methods must include identification of a minimum of three organizations with whom the Administrator plans to conduct outreach, and whose membership or clientele consists primarily of protected class members in the groups least likely to apply. If the Administrator is unable to locate three such groups, the reason must be documented in the file.

(C) Identification of the methods to be used for collection of data and periodic evaluation to determine the success of the outreach efforts. If efforts have been unsuccessful, the Administrator's AFHMP should be revised to include new or improved outreach efforts.

(D) Description of the fair housing trainings required for Administrator staff, including delivery method, training provider and frequency. For programs involved in homebuyer transactions, training must include requirements of the Fair Housing Act relating to financing and advertising, expected real estate broker conduct, as well as redlining and zoning for all programs, and discriminatory appraisal practices.

(E) A description of applicable housing counseling programs and educational materials that will be offered to Applicants. An Administrator offering any TDHCA Mortgage Loan must require that Households receive housing counseling prior to the date of the Mortgage Loan closing. Housing counseling may take place in-person or by telephone. Counseling may be provided online only if it is customized to the individual Household. Counseling must address pre-and/or post-purchase topics, as applicable to the Borrower's needs. A certificate of completion of counseling must be dated not more than 12 months prior to the date of submission of Mortgage Loan Application. Housing counseling must be provided by HUD-certified counselors working for agencies participating in HUD's Housing Counseling Program.

(2) Applicability.

(A) Affirmative marketing is required as long as an Administrator of federal funds is accepting Applications or until all dwelling units are sold in the case of single family homeownership programs.

(B) An Administrator that currently has an existing list of Applicants and is not accepting new Applications is not required to affirmatively market until preparing to accept new Applications, but must develop a plan as described in this subsection.

(C) An Administrator providing assistance in more than one Service Area must provide a separate plan for each market area in which the housing assistance will be provided.

(D) Administrators must include the Equal Housing Opportunity logo and slogan on any commercial and other media used in marketing outreach.

(E) Copies of all outreach and media ads must be kept and made available to the Department upon request.

(e) Mobility Counseling. An Administrator offering homeownership or rental assistance that allows the Household to relocate from their current residence must provide the Household access to mobility counseling. For homeownership, mobility counseling may be included in housing counseling and education trainings, and must cover the criteria noted in paragraphs (1) - (3) of this subsection.

(1) Mobility counseling must, at a minimum, include easily understandable information that the Household can use in determining areas of opportunity within a Service Area, which must at minimum include the following: which areas have lower poverty rates, average income information of different areas, school ratings, crime statistics, available area services, public transit, and other items the Administrator deems appropriate in helping the Household make informed choices when identifying housing.

(2) Mobility counseling may be offered online or in-person, and must be customized for the Household.

(3) An Administrator must collect signed certifications from Applicants acknowledging they have received mobility counseling.

(f) Denials. In the case of any Applicant's denial from a program, a letter providing the specific reason for the denial must be provided to the Applicant within fourteen calendar days of the denial. Administrators must keep a record of all denied Applicants including the basis for denial. Such records must be retained for the record retention period described by the Agreement or other sources.

(g) Notice to Applicants. Administrator must provide Applicants with eligibility criteria, which shall include the procedures for requesting a reasonable accommodation to the Administrator's rules,

policies, practices, and services, including but not limited to, as it relates to the Application process.

(h) A copy of all Reasonable Accommodation requests and the Administrator's compliant responses to such requests, in accordance with §1.204 of this title (relating to Reasonable Accommodations), must be kept as stated in §1.409 of this title (relating to Records Retention).

(i) Provisions Related to Limited English Proficiency.

(1) Administrator must have a Language Access Plan that ensures persons with Limited English Proficiency (LEP) have meaningful access and an equal opportunity to participate in services, activities, programs, and other benefits.

(2) Materials that are critical for ensuring meaningful access to an Administrator's major activities and programs, including but not limited to Applications, mortgage loan Applications, consent forms and notices of rights, should be translated for any population considered least likely to apply that meets the threshold requirements of Safe Harbor LEP provisions as provided by HUD and published on the Department's website. Materials considered critical for ensuring meaningful access should be outlined in the Administrator's Language Access Plan.

(3) The Administrator is required to translate Vital Documents under Safe Harbor guidelines, they must include in their Language Access Plan how such translation services will be provided (e.g., whether the Administrator will use voluntary or contracted qualified translation services, telephonic services, or will identify bilingual staff that will be available to assist Applicants in completing vital documents and/or accessing vital services). If the Administrator plans to use bilingual staff in its translation services, contact information for bilingual staff members must be provided.

(4) The Language Access Plan must be submitted to the Department upon request and be available for review during monitoring visits. HUD and the Department of Justice have issued requirements to ensure meaningful and appropriate access to programs for LEP individuals.

(5) Administrators must offer reasonable accommodations information and Fair Housing rights information in both English and Spanish, and other languages as required by the inclusion of "least likely to apply" groups to reach populations identified as least likely to apply.

(j) The Waitlist Policy and AFHMP, any documentation supporting the plans, and any changes made to the plans, must be kept in accordance with recordkeeping requirements for the specific Program, and in accordance with 10 TAC §1.409 (relating to Record Retention).

*§20.9. Inspection Requirements for Construction Activities.*

(a) The inspection requirements in this section are applicable to all construction activities, except for the Amy Young Barrier Removal Program, to the extent funded with Texas HTF.

(b) Interim inspections of construction progress are required for a Draw Request.

(c) Final inspections are required for all single family construction Activities. The inspection must document that the Activity is complete; meets all applicable codes, requirements, zoning ordinances; and has no known deficiencies related to health and safety standards. A copy of the final inspection report must be provided to the Department and to the Household.

(d) New construction requirements.

(1) A Certificate of Occupancy shall be issued prior to final payment for construction, as applicable. In instances where the local jurisdiction does not issue a Certificate of Occupancy for the Activity undertaken, the Administrator must provide to the Department documentation evidencing that the Single Family Housing Unit complies with subsection (c) of this section.

(2) Applicant must demonstrate compliance with Tex. Gov't Code §2306.514, "Construction Requirements for Single Family Affordable Housing," and applicable Program Rules.

(e) Reconstruction requirements.

(1) The initial inspection must identify substandard conditions listed in TMCS along with any other health or safety concerns, unless the unit has been condemned or in the case of a HOME and CSHC Activity, the unit to be reconstructed is an MHU.

(A) A copy of the initial inspection report must be provided to the Department and to the Household as applicable. The initial inspection may be waived if the local building official certifies that the extent of the subject property's substandard conditions is beyond repair, or the property has been condemned.

(B) Substandard conditions identified in the initial inspection report must provide adequate detail to evidence the need for reconstruction.

(2) A Certificate of Occupancy shall be issued prior to final payment for construction, as applicable. In instances where the local jurisdiction does not issue a Certificate of Occupancy for the Activity undertaken, the Administrator must provide to the Department documentation evidencing that the Single Family Housing Unit complies with subsection (c) of this section.

(3) Applicant must demonstrate compliance with Tex. Gov't Code §2306.514, "Construction Requirements for Single Family Affordable Housing," and applicable Program Rules.

(f) Rehabilitation requirements.

(1) Single Family Housing Units that have been condemned by the Municipality, County, or the State are not eligible for rehabilitation.

(2) The initial inspection must identify all substandard conditions listed in TMCS, along with any other health and safety concerns.

(A) A copy of the initial inspection report must be provided to the Department and to the Household.

(B) All substandard conditions identified in the initial inspection report shall be addressed in the work write-up and cost-estimate.

(3) Final inspections must document that all substandard and health and safety issues identified in the initial inspection have been corrected. All deficient items noted on the final inspection report must be corrected prior to approval of the final Draw Request.

(4) Administrator shall meet the applicable requirements of the TMCS. Exceptions to specific provisions of TMCS may be granted in accordance with the TMCS exception request process.

(5) Correction of cosmetic issues, such as paint, wall texture, etc., will not be required if acceptable to the Program as outlined in the Program Rule, or if utilizing a Self-Help Construction Program.

(g) Inspector Requirements.

(1) Inspectors selected by the Administrator to verify compliance with this chapter must be certified by the Administrator to have

sufficient professional certifications, relevant education or experience in a field directly related to home inspection, which may include but is not limited to installing, servicing, repairing or maintaining the structural, mechanical, plumbing and electrical systems found in Single Family Housing Units.

(2) Inspectors shall utilize Department-approved inspection forms, checklists, and standards when conducting inspections.

(h) The Department reserves the right to reject any inspection report if, in its sole and reasonable determination, the report does not accurately represent the property conditions or if the inspector does not meet Program requirements. All related construction costs in a rejected inspection report may be disallowed until the deficiencies are adequately cured.

#### §20.10. Survey Requirements.

(a) The Amy Young Barrier Removal Program is excluded from the survey requirements, to the extent funded with the Texas HTF.

(b) When Program funds are used for acquisition or construction, an Improvement Survey showing the existing improvements on the site at the time of Activity submission is required. An updated improvement survey may be required at construction completion at the discretion of the Department.

(c) If allowed by the Program Rules or NOFA, existing surveys for acquisition only activities may be used if the owner certifies that no changes were made to the footprint of any building or structure, or to any improvement on the Single Family Housing Unit, and the title company accepts the certification and survey.

(d) The Department reserves the right to determine the survey requirements on a per Activity basis if additional survey requirements would, at the sole discretion of the Department, benefit the Activity.

#### §20.11. Insurance and Title Requirements.

(a) The Amy Young Barrier Removal Program is excluded from this section, to the extent funded with the Texas HTF.

(b) Title Insurance Requirements. A "Mortgagee's Title Insurance Policy" is required for all Department Mortgage Loans, exclusive of subordinate lien Mortgage Loans for down payment assistance and closing costs.

(1) The title insurance policy shall be issued by an entity that is licensed and in good standing with the Texas Department of Insurance.

(2) The policy must be in the amount of the Mortgage Loan. The mortgagee named shall be: "Texas Department of Housing and Community Affairs."

(3) The policy must include survey deletion coverage.

(c) Title Reports.

(1) Title reports are acceptable only for grants.

(2) Title reports must disclose the current ownership, easements, restrictions, and liens relating to the property, and include a search for judgements, mortgages or liens, affidavits, deed restrictions, building setback and easements, and any other factors which may impair the good and marketable title to the property.

(3) The preliminary title report may not be older than six months from the date of submission of the Activity to the Department.

(d) Builder's Risk. Builder's Risk (non-reporting form only) is required when the Department provides construction funds for a Single Family Housing Unit. At the end of the construction period, the binder must be endorsed to remove the "pending disbursements" clause.

(e) Hazard Insurance. If Department funds are provided in an amount that exceeds \$20,000, then:

(1) The Department requires property insurance for fire and extended coverage;

(2) Homeowner's policies or package policies that provide property and liability coverage are acceptable. All risk policies are acceptable;

(3) The amount of hazard insurance coverage should be no less than 100% of the current insurable value of improvements as of the date of Mortgage Loan closing or effective date of the grant agreement; and

(4) The Department must be named as a loss payee and mortgagee on the hazard insurance policy for any Activity receiving a Mortgage Loan from the Department.

(f) Flood Insurance. Flood insurance must be maintained for all structures located in special flood hazard areas as determined by the U.S. Federal Emergency Management Agency (FEMA).

(1) A Household may elect to obtain flood insurance even though flood insurance is not required. However, the Household may not be coerced or required to obtain flood insurance unless it is required in accordance with this section.

(2) Evidence of insurance, as required in this chapter, must be obtained prior to Mortgage Loan funding for acquisition only projects. For activities involving construction, evidence of hazard insurance must be submitted prior to Mortgage Loan funding, and evidence of flood insurance, if required, must be provided prior to payment of retainage. A one year insurance policy must be paid. For Amortizing Mortgage Loans, a minimum of two months of reserves must be collected at the closing of the Mortgage Loan. The Department must be named as the loss payee on the policy.

#### §20.12. Loan, Lien, and Mortgage Requirements for Activities.

(a) The fees to be paid by the Department or Borrower upfront or through the closing must be reasonable for the service rendered, in accordance with the typical fees paid in the market place for such activities and:

(1) Fees charged by third party Mortgage lenders are limited to the greater of 2% of the Mortgage Loan amount or \$3,500, including but not limited to origination, loan application, and/or underwriting fees, and

(2) Fees paid to other parties that are supported by an invoice and/or reflected on the Closing Disclosure will not be included in the limit in paragraph (1) of this subsection.

(b) A Loan made by a third-party lender in conjunction with a Mortgage Loan from a federal source must be fixed-rate and may not include pre-payment penalties, balloon payments, negative amortization, or interest-only periods.

(c) Mortgage Loan Underwriting Requirements. The requirements in this subsection shall apply to all non-forgivable amortizing Mortgage Loans.

(1) Debt-to-Income Ratio. The Household's total Debt-to-Income Ratio shall not exceed 45% of Qualifying Income (unless otherwise allowed or dictated by a participating lender providing a fixed rate Mortgage Loan that is insured or guaranteed by the federal government or a conventional Mortgage Loan that adheres to the guidelines set by Fannie Mae and Freddie Mac.) A potential Borrower's spouse who does not apply for the Mortgage Loan will be required to execute the information disclosure form(s) and the deed of trust as a non-purchasing spouse. The non-purchasing spouse will not be required to execute

the note. For credit underwriting purposes all debts and obligations of the primary potential Borrower(s) and the non-purchasing spouse will be considered in the potential Borrower's total Debt-to-Income Ratio.

(2) Credit Qualifications.

(A) The Department may utilize credit reports submitted by the Administrator that are not more than 90 days old as part of the Mortgage Loan Application or may obtain tri-merge credit reports on all potential Borrowers submitted to the Department for approval at the time of Mortgage Loan Application. In addition to the initial credit report, the Department may, at its discretion, obtain one or more additional credit reports before Mortgage Loan closing to ensure the potential Borrower still meets Program requirements. Acceptable outstanding debt means that all accounts are paid as agreed and are current.

(B) Unacceptable Credit. Applicants meeting one or more of the following criteria will not be qualified to receive a single family Mortgage Program Loan from the Department:

(i) A credit history reflecting payments on any open consumer, retail and/or installment account (e.g., auto loans, signature loans, payday loans, credit cards or any other type of retail and/or installment loan, with the exception of a medical account) which have been delinquent for more than 30 days on two or more occasions within the last 12 months and must be current for the six months immediately preceding the date of the Mortgage Loan Application;

(ii) A foreclosure or deed-in-lieu of foreclosure or a potential Borrower in default on a mortgage at the time of the short sale any of which had occurred or been completed within the last 24 months prior to the date of Mortgage Loan Application;

(iii) An outstanding Internal Revenue Service tax lien or any other outstanding tax liens where the potential Borrower has not entered into a satisfactory repayment arrangement and been current for at least 12 months prior to the date of Mortgage Loan Application;

(iv) A court-created or court-affirmed obligation or judgment caused by nonpayment that is outstanding at the date of Mortgage Loan Application or any time prior to closing of the Mortgage Loan;

(v) Any account (with the exception of a medical account that is delinquent or has been placed for collection) that has been placed for collection, profit and loss, charged off, or repossession within the last 24 months prior to the date of Mortgage Loan Application;

(vi) Any reported delinquency on any government debt at the date of Mortgage Loan Application;

(vii) A bankruptcy that has been filed within the past 24 months prior to the date of the Mortgage Loan; or

(viii) Any reported child support payments in arrears unless the potential Borrower has evidence of having met satisfactory payment arrangements for at least 12 months prior to the date of the Mortgage Loan.

(C) Mitigation for Unacceptable Credit. The following exceptions will be considered as mitigation to the unacceptable credit criteria in subparagraph (B) of this paragraph.

(i) The potential Borrower is a Domestic Farm Laborer and receives a substantial portion of his/her income from the production or handling of agriculture or aquacultural products, and has demonstrated the ability and willingness to meet debt obligations as determined by the Department.

(ii) The potential Borrower provides documentation to evidence that the outstanding delinquency or unpaid account has been paid or settled or the potential Borrower has entered into a satisfactory repayment arrangement or debt management plan and been current for at least 12 consecutive months prior to the date of Mortgage Loan.

(iii) The potential Borrower submits to the Department a written explanation of the cause for the previous delinquency, which has since been brought current and is acceptable to the Executive Director or his or her designee.

(iv) Any and all outstanding judgments must be released prior to closing of Mortgaged Loan.

(v) If a potential Borrower is currently participating in a debt management plan, and the trustee or assignee provides a letter to the Department stating they are aware and agree with the potential borrower applying for a Mortgage Loan. If a potential Borrower filed a bankruptcy, the bankruptcy must have been discharged or dismissed more than 12 months prior to the date of Mortgage Loan Application and the potential Borrower has re-established good credit with at least one existing or new active consumer account or credit account that is in good standing with no delinquencies for at least 12 months prior to the date of Mortgage Loan Application.

(vi) If a Chapter 13 Bankruptcy was filed, a potential Borrower must have satisfactorily made 12 consecutive payments and obtain court trustee's written approval to enter into Mortgage Loan.

(D) Liabilities.

(i) The potential Borrower's liabilities include all revolving charge accounts, real estate loans, alimony, child support, installment loans, and all other debts of a continuing nature with more than 10 monthly payments remaining. Debts for which the potential borrower is a co-signer will be included in the total monthly obligations. For payments with 10 or fewer monthly payments remaining, there shall be no late payments within the past 12 months or the debt will be included into the Debt-to-Income Ratio calculation. Payments on installment debts which are paid in full prior to the date of closing are not included for qualification purposes. Payments on all revolving debts, including credit cards, payday loans, lines of credit, unsecured loans, and installment loans that have been opened within three months of closing a prior account with the same lender will be included in the Debt-to-Income Ratio calculation, even if the potential Borrower intends to pay off the accounts, unless the account is paid in full and closed. Any revolving account with an outstanding balance but no specific minimum payment reflected on the credit report and no monthly statement showing the required monthly payment will include a payment amount calculated as the greater of 5% of the outstanding balance or \$10.

(ii) if a potential Borrower provides written evidence that a debt will be deferred at least 12 months from the date of closing, the debt will not be included in the Debt-to-Income Ratio calculation. Payments on any type of loan that have been deferred or have not yet commenced, including student loans and accounts in forbearance, will be calculated using .5% of the outstanding balance or monthly payment reported on the potential Borrower's credit report, whichever is less. Other types of loans with deferred payment will be calculated using the monthly payment shown on the potential Borrower's credit report. If the credit report does not include a monthly payment for the loan, the monthly payment shown in the loan agreement or payment statement will be utilized.

(E) Equal Credit Opportunity Act. The Department and/or the Administrator on behalf of the Department will comply

with all federal and state laws and regulations relating to the extension of credit, including the Equal Credit Opportunity Act (ECOA) (15 U.S.C. 1691 et seq.) and its implementing regulation at 12 CFR Part 1002 (Regulation B) when qualifying potential Borrower(s) to receive a single family Mortgage Loan from the Department.

(d) The Department reserves the right to deny assistance in the event that the senior lien conditions are not to the satisfaction of the Department, as outlined in the Program Rules.

(e) Lien Position Requirements.

(1) A Mortgage Loan made by the Department shall be secured by a first lien on the real property if the Department's Mortgage Loan is the largest Mortgage Loan secured by the real property; or

(2) The Department may accept a Parity Lien position if the original principal amount of the leveraged Mortgage Loan is equal to or greater than the Department's Mortgage Loan; or

(3) The Department may accept a subordinate lien position if the original principal amount of the leveraged Mortgage Loan is at least 55% of the combined repayable or amortized loans; however, liens related to other subsidized funds provided in the form of grants and non-amortizing Mortgage Loans, such as deferred payment or Forgivable Loans, must be subordinate to the Department's payable Mortgage Loan.

(f) Loan Terms. All Mortgage Loan terms must meet all of the following criteria:

(1) May not exceed a term of 30 years;

(2) May not be for a term of less than five years; and

(3) Interest rate may be as low as 0% as provided in the Program Rules.

(g) Loan Assumption. A Mortgage Loan may be assumable if the Department determines the potential Borrower assuming the Mortgage Loan is eligible according to the underwriting criteria of this section and complies with all Program requirements in effect at the time of the assumption.

(h) Cash Assets. An Applicant with unrestricted cash assets in excess of \$25,000 must use such excess funds towards the acquisition of the property in lieu of loan proceeds. Unrestricted cash assets for this purpose are Net Family Assets defined in 24 CFR §5.603.

(i) Appraisals.

(1) An appraisal is required by the Department on each property that is part of an acquisition Activity, except for down payment assistance only, prior to closing to determine the current market value.

(2) The appraisal must conform to the Uniform Standards of Professional Appraisal Practice (USPAP) as adopted by the Appraisal Standards Board of the Appraisal Foundation.

(3) The Appraiser must have an active and current license by the Texas Appraisal Licensing and Certification Board.

(j) Combined Loan to Value. The Combined Loan to Value ratio of the property may not exceed 100% of the cost to acquire the property. The lien amounts of Forgivable Loans shall be included when determining the Combined Loan to Value ratio. The cost to acquire the property may exceed the appraised value only for an amount not to exceed the closing costs but in no case may result in cash back to the Borrower or exceed the limits under subsection (a) of this section.

(k) Escrow Accounts.

(1) An escrow account for real estate taxes, hazard and flood insurance premiums, and other related costs must be established if:

(A) The Department holds a first lien Mortgage Loan which is due and payable on a monthly basis to the Department; or

(B) The Department holds a subordinate Mortgage Loan and the first lien lender does not require an escrow account.

(2) If an escrow account held by the Department is required under one of the provisions described in this subsection, then the following provisions described in subparagraphs (A) - (G) of this paragraph are applicable:

(A) The Borrower must contribute monthly payments to cover the anticipated costs, as calculated by the Department, of real estate taxes, hazard and flood insurance premiums, and other related costs as applicable;

(B) Escrow reserves shall be calculated based on land and completed improvement values;

(C) The Department may require up to two months of payment reserves for hazard and/or flood insurance, and property taxes to be collected at the time of closing to establish the required amounts in the escrow account;

(D) In addition, the Department may also require that the property taxes be prorated at the time of closing and those funds be deposited with the Department;

(E) The Borrower will be required to deposit monthly funds to an escrow account managed by the Mortgage Loan servicer for payment of the taxes and insurance on the property. This will ensure that funds are available to pay for the cost of real estate taxes, insurance premiums, and other assessments when they come due;

(F) These funds are included in the Borrower's monthly loan payment to the Department or to the Mortgage Loan servicer; and

(G) The Department will establish and administer the escrow accounts in accordance with the Real Estate Settlement and Procedures Act of 1974 (RESPA) under 12 U.S.C. §2601 and its implementing regulations at 12 CFR Part 1024 (Regulation X), as applicable.

(l) Requirements for Originating Mortgage Loans for the Department.

(1) Any person or organization originating Mortgage Loans for the Department must be properly licensed and registered as a residential mortgage loan originator in accordance with Chapters 157 and 180 of the Texas Finance Code and its implementing regulations at Chapter 81, Part 4 of Title 7 of the TAC, unless exempt from licensure or registration pursuant to the applicable state and federal laws and regulations regarding residential mortgage loans.

(A) The Department reserves the right to reject any Mortgage Loan Application originated by an Administrator or individual that is not properly licensed or registered.

(B) The Department will not reimburse any expenses related to a Mortgage Loan Application received from an Administrator or individual that is not properly licensed or registered.

(2) The Department will not allow disbursement of any portion of the Department's Mortgage Loan for acquisition until seller delivers to the Borrower a fully executed deed to the property. After execution of the deed, the deed must be recorded in the records of the county where the property is located.

(3) The first monthly mortgage payment upon closing of the Mortgage Loan with monthly scheduled payments will be due one full month after the last day of the month in which the Mortgage Loan closed.

(m) Principal Residence. Loans are only permitted for potential Borrowers who will occupy the property as their Principal Residence. The property must be occupied by the potential Borrower within the later of 60 days after Mortgage Loan closing or construction completion, whichever occurs last. It must remain the Household's Principal Residence as defined in the Mortgage Loan documents or in the case of Forgivable Loans, until the forgiveness period has concluded in accordance with the Mortgage documents.

(n) Life-of-Loan Flood Certifications will be required to monitor for FEMA flood map revisions and community participation status changes for the term of the Mortgage Loan.

(o) Requirements for Subordinating to a Refinanced Loan. The Department may consent to the refinancing of the Household's superior third-party lender mortgage and execute a subordination agreement when the following conditions are met:

(1) Borrower is not refinancing into an adjustable rate mortgage;

(2) Combined loan balances do not exceed 100% of appraised value;

(3) There is no increase in principal or interest payments, with the exception made for Borrowers refinancing from a 30-year term to a shorter loan term;

(4) The Borrower will not receive any proceeds from the transaction unless it is for overpayment of Borrower's costs;

(5) All lienholders have consented to the refinancing; and

(6) In the case of Reverse Mortgages insured by the federal government (e.g. Home Equity Conversion Mortgage insured by the Federal Housing Administration), all other requirements are met.

#### §20.13. Amendments to Written Agreements and Contracts.

(a) The Department, acting by and through its Executive Director or his/her designee, may authorize, execute, and deliver amendments to any written Agreement or Contract that is not a Household commitment contract, provided that the requirements of this section are met unless otherwise indicated in the Program Rules.

(1) Time extensions. The Executive Director or his/her designee may grant up to a cumulative 12 months extension to the end date of any Contract unless otherwise indicated in the Program Rules. Any additional time extension beyond a cumulative 12 months granted by the Executive Director shall include a statement by the Executive Director identifying the unusual, non-foreseeable or extenuating circumstances justifying the extension. If more than a cumulative 12 months of extension is requested and the Department determines there are no unusual, non-foreseeable, or extenuating circumstances, it will be presented to the Board for approval, approval with revisions, or denial of the requested extension.

(2) Award or Contract Reductions. The Department may decrease an award for any good cause including but not limited to the request of the Administrator, insufficient eligible costs to support the award, or failure to meet deadlines or benchmarks.

(3) Changes in Households Served. Reductions in Contractual deliverables and the number of Households to be served shall require an amendment to the Contract. If such amendment is not approved, the Applicant will have the right to appeal in accordance with §1.7 of this title (relating to Appeals Process).

#### (4) Increases in Award and Contract Amounts.

(A) Requests for increases in funding will be evaluated by the Department on a first-come, first-served basis to assess the capacity to manage additional funding, the demonstrated need for additional funding and the ability to expend the increase in funding within the Contract Term.

(B) The considerations to approve an increase in funding shall include, at a minimum, fund availability, and Administrator's ability to continue to meet existing deadlines, benchmarks, and reporting requirements.

(C) Increases in funds may come from Program funds, Deobligated funds, or Program Income.

(D) Qualifying requests will be recommended to the Executive Director or his/her designee for approval.

(E) The Board must approve requests for increases in Program funds in excess of 25% of the original Contract amount.

(5) The Division Director may approve Contract budget amendments that move unexpended funds from one eligible cost category to another if the amendment would not have impacted the award of funds.

(6) The Division Director may approve other amendments to a Contract or an Agreement, including amendments to the Administrator's Service Area, benchmarks, or selection of Activities administered under a Contract or an Agreement, provided that the amendment would not have negatively impacted the priority of Board approved Applications.

(b) The Department may terminate a Contract in whole or in part if the Administrator does not achieve performance benchmarks as outlined in the Program Rule and/or Contract, or for any other reason in the Department's reasonable discretion.

(c) In all instances noted in this section, where an expected Mortgage Loan transaction is involved, Mortgage Loan documents will be modified accordingly at the expense of the Administrator/borrower.

#### §20.14. Compliance and Monitoring.

(a) The Department will perform monitoring of single family Program Contracts and Activities in order to ensure that applicable requirements of federal laws and regulations, and state laws and rules have been met, and to provide Administrators with clear communication regarding the condition and operation of these Contracts and Activities so they understand clearly, with a documented record, how they are performing in meeting obligations.

(1) The physical condition of assisted properties and Administrator's documented compliance with contractual and Program requirements may be subject to monitoring.

(2) The Department may contract with an independent third party to monitor an Activity for compliance with any conditions imposed by the Department in connection with the award of any Department funds, and appropriate state and federal laws.

(b) If an Administrator has Contracts for more than one single family Program, or other programs through the Department or the State, the Department may, at its discretion, coordinate monitoring of those programs with monitoring of single family Contracts under this chapter.

(c) In general, Administrators will be scheduled for monitoring based on federal or state monitoring requirements, or a risk assessment process including but not limited to: the number of Contracts administered by the Administrator, the amount of funds awarded and

expended, the length of time since the last monitoring, Findings identified during previous monitoring, issues identified through the submission or lack of submission of a Single Audit, complaints, and reports of fraud, waste and/or abuse. The risk assessment will also be used to determine which Administrators will have an onsite review, and which may have a desk review.

(d) The Department will provide an Administrator with written notice of any upcoming onsite or desk monitoring review, and such notice will be given to the Administrator by email to the Administrator's chief executive officer at the email address most recently provided to the Department by the Administrator. In general, a 30 calendar day notice will be provided. However, if a credible complaint of fraud is received, the Department reserves the right to conduct unannounced monitoring visits, or provide a shorter notice period. If the Department receives a complaint under §1.2 of this title (relating to Department Complaint System to the Department), it will follow the procedures outlined therein instead of this section. It is the responsibility of the Administrator to maintain current contact information with the Department for the organization, key staff members, and governing body in accordance with §1.22 of this title (relating to Providing Contact Information to the Department).

(e) Upon request, an Administrator must make available to the Department all books and records that the Department determines are reasonably relevant to the scope of the Department's review, along with access to assisted properties.

(f) Post Monitoring Procedures. After the review, a written monitoring report will be prepared for the Administrator describing the monitoring assessment and any corrective actions, if applicable. The monitoring report will be emailed to the Administrator. Issues of concern over which there is uncertainty or ambiguity may be discussed by the Department with the staff of cognizant agencies overseeing federal funding.

(g) Administrator Response. If there are any Findings and/or Concerns of noncompliance requiring corrective action, the Administrator will be provided a 30 day corrective action period, which may be extended for good cause. In order to receive an extension, the Administrator must submit a written request to the Compliance Division within the corrective action period, stating the basis for good cause that the Administrator believes justifies the extension. In general, the Department will approve or deny the extension request within three business days. Failure to timely respond to a corrective action notice and/or failure to correct all Findings will be taken into consideration if the Administrator applies for additional funding and may result in suspension of the Contract, referral to the Enforcement Committee, or other action under this title.

(h) Monitoring Close Out. After completion of the monitoring review, a close out letter will be issued to the Administrator. If the Administrator supplies evidence establishing continual compliance that negates the Finding of noncompliance, the issue of noncompliance will be rescinded. If the Administrator's response satisfies all Findings and Concerns noted in the monitoring letter, the issue of noncompliance will be noted as resolved. In some circumstances, the Administrator may be unable to secure documentation to resolve a Finding. In those instances, if there are mitigating circumstances, the Department may note the Finding is not resolved but may close the issue with no further action required. If the Administrator's response does not correct all Findings noted, the close out letter will identify the documentation that must be submitted to correct the issue. Results of monitoring Findings may be reported to the EARAC for consideration relating to Previous Participation.

(i) Options for Review. If, following the submission of corrective action documentation, Compliance staff continues to find the Administrator in noncompliance, and the Administrator disagrees, the Administrator may request or initiate review of the matter using the following options, where applicable:

(1) If the issue is related to a federal program requirement or prohibition, Administrators may contact an applicable federal program officer for guidance, or request that the Department contact applicable federal program officer for guidance without identifying the Administrator.

(2) If the issue is related to a provision of the Contract or a requirement of the TAC, or a provision of TxGMS, the Administrator may submit an appeal to the Executive Director consistent with §1.7 of this title (relating to Appeals Process).

(3) An Administrator may request Alternative Dispute Resolution (ADR). An Administrator must send a proposal to the Department's Dispute Resolution Coordinator to initiate ADR pursuant to §1.17 of this title (relating to Alternative Dispute Resolution).

(j) If an Administrator does not respond to a monitoring letter or fails to provide acceptable evidence of timely compliance after notification of an issue, the matter will be reported to the Department's Enforcement Committee for consideration of administrative penalties, full or partial cost reimbursement, or suspension.

(k) An Administrator must provide timely response to corrective action requirements imposed by other agencies. Administrator records may be reviewed during the course of monitoring or audit of the Department by HUD, the Office of the Inspector General, the State Auditor's Office, or others. If a Finding or Concern is identified during the course of a monitoring or audit by another agency, the Administrator is required to provide timely action and response within the conditions imposed by that agency's notice.

#### §20.15. Appeals.

Appeal of Department staff decisions or actions will follow requirements in Program Rules and Chapter 1 of this title (relating to Administration).

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

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TRD-202304612

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

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For further information, please call: (512) 475-3959



## CHAPTER 23. SINGLE FAMILY HOME PROGRAM

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 23, Single Family HOME Program Rule, §§23.1, 23.2, 23.20 - 23.29, 23.30 - 23.32, 23.40 - 23.42, 23.50 - 23.52, 23.60 - 23.62, and 23.70 - 23.72. The purpose of the proposed repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.



The Department has analyzed this proposed rulemaking and the analysis is described below for each category of analysis performed.

**a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.**

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed repeal would be in effect, the proposed repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity, administration of the HOME Program.

2. The proposed repeal does not require a change in work that would require the creation of new employee positions, nor is the proposed repeal significant enough to reduce work load to a degree that any existing employee positions are eliminated.

3. The proposed repeal does not require additional future legislative appropriations.

4. The proposed repeal does not result in an increase in fees paid to the Department, nor a decrease in fees paid to the Department.

5. The proposed repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The proposed action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, the administration of the Single Family HOME Program.

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

8. The proposed repeal will not negatively affect this state's economy.

**b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.**

The Department has evaluated this proposed repeal and determined that the proposed repeal will not create an economic effect on small or micro-businesses or rural communities.

**c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043.** The proposed repeal does not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

**d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).**

The Department has evaluated the proposed repeal as to its possible effects on local economies and has determined that for the first five years the proposed repeal would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

**e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5).** Mr. Wilkinson has determined that, for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of the repealed chapter would be an updated and more germane rule. There will not be economic costs to individuals required to comply with the repealed section.

**f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4).** Mr. Wilkinson has also determined that for each year of the first five years the proposed repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

**REQUEST FOR PUBLIC COMMENT.** The public comment period will be held December 22, 2023, to January 22, 2024, to receive input on the proposed repealed chapter. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Abigail Versyp, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email HOME@tdhca.state.tx.us. **ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Central time, January 22, 2024.**

**SUBCHAPTER A. GENERAL GUIDANCE**

**10 TAC §23.1, §23.2**

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

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

*§23.1. Applicability and Purpose.*

*§23.2. Definitions.*

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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Bobby Wilkinson

Executive Director

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**SUBCHAPTER B. AVAILABILITY OF FUNDS, APPLICATION REQUIREMENTS, REVIEW AND AWARD PROCEDURES, GENERAL ADMINISTRATIVE REQUIREMENTS, AND RESALE AND RECAPTURE OF FUNDS**

**10 TAC §§23.20 - 23.29**

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

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

*§23.20. Availability of Funds and Regional Allocation Formula.*

*§23.21. Application Forms and Materials and Deadlines.*

*§23.22. Contract Award Application Review Process for Open and Competitive Application Cycles.*

*§23.23. Reservation System Participant Review Process.*

- §23.24. *Administrative Deficiency Process.*
- §23.25. *General Threshold Criteria.*
- §23.26. *Contract Benchmarks and Limitations.*
- §23.27. *Reservation System Participant (RSP) Agreement.*
- §23.28. *General Administrative Requirements.*
- §23.29. *Resale and Recapture Provisions.*

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. HOMEOWNER RECONSTRUCTION ASSISTANCE PROGRAM

#### 10 TAC §§23.30 - 23.32

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

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

- §23.30. *Homeowner Reconstruction Assistance (HRA) Threshold and Selection Criteria.*
- §23.31. *Homeowner Reconstruction Assistance (HRA) General Requirements.*
- §23.32. *Homeowner Reconstruction Assistance (HRA) Administrative Requirements.*

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

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### SUBCHAPTER D. CONTRACT FOR DEED PROGRAM

#### 10 TAC §§23.40 - 23.42

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

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

- §23.40. *Contract for Deed (CFD) Threshold and Selection Criteria.*
- §23.41. *Contract for Deed (CFD) General Requirements.*
- §23.42. *Contract for Deed (CFD) Administrative Requirements.*

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

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### SUBCHAPTER E. TENANT-BASED RENTAL ASSISTANCE PROGRAM

#### 10 TAC §§23.50 - 23.52

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

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

- §23.50. *Tenant-Based Rental Assistance (TBRA) Threshold and Selection Criteria.*
- §23.51. *Tenant-Based Rental Assistance (TBRA) General Requirements.*
- §23.52. *Tenant-Based Rental Assistance (TBRA) Administrative Requirements.*

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

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### SUBCHAPTER F. SINGLE FAMILY DEVELOPMENT PROGRAM

#### 10 TAC §§23.60 - 23.62

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

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

§23.60. *Single Family Development (SFD) Threshold and Selection Criteria.*

§23.61. *Single Family Development (SFD) General Requirements.*

§23.62. *Single Family Development (SFD) Administrative Requirements.*

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

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Bobby Wilkinson  
Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: January 21, 2024

For further information, please call: (512) 475-3959



## SUBCHAPTER G. HOMEBUYER ASSISTANCE WITH NEW CONSTRUCTION (HANC)

### 10 TAC §§23.70 - 23.72

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

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

§23.70. *Homebuyer Assistance with New Construction (HANC) Threshold and Selection Criteria.*

§23.71. *Homebuyer Assistance with New Construction (HANC) General Requirements.*

§23.72. *Homebuyer Assistance with New Construction (HANC) Administrative Requirements.*

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

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## CHAPTER 23. SINGLE FAMILY HOME PROGRAM

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 23, Single Family HOME Program Rule consisting of §§23.1, 23.2, 23.20 - 23.29, 23.30 - 23.32, 23.40 - 23.42, 23.50 - 23.52, 23.60 - 23.62, and

23.70 - 23.72. The purpose of the proposed new chapter is to update the rule to implement a more germane rule and better align administration to state and federal requirements.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this proposed rulemaking and the analysis is described below for each category of analysis performed.

### a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed new rule would be in effect:

1. The proposed new rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to administration of the Department's Single Family HOME Program activities, including Homeowner Reconstruction Assistance, Contract for Deed, Tenant-Based Rental Assistance, Single Family Development, and Homebuyer Assistance with New Construction.

2. The proposed new rule does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.

3. The proposed new rule does not require additional future legislative appropriations.

4. The proposed new rule will not result in an increase in fees paid to the Department, nor a decrease in fees paid to the Department.

5. The proposed new rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.

6. The proposed new rule will not expand or repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, the administration of the Department's Single Family HOME Program.

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

8. The proposed new rule will not negatively or positively affect the state's economy.

### b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department, in drafting this proposed new rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, §2306.111.

1. The Department has evaluated this proposed new rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. There are approximately 60 rural communities currently participating in construction activities under the Single Family HOME Program that are subject to the proposed new rule for which the no economic impact of the rule is projected during the first year the rule is in effect.

3. The Department has determined that because the proposed new rule serves to clarify and update existing requirements and does not establish new requirements for which there would be an associated cost, there will be no economic effect on small or micro-businesses or rural communities

c. **TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043.** The proposed new rule does not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. **LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).**

The Department has evaluated the proposed new rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the proposed new rule has no economic effect on local employment because the rule serves to clarify and update existing requirements and does not establish new requirements or activities that may positively or negatively impact local economies.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that participation in the Single Family HOME Program is at the discretion of the local government or other eligible subrecipients, there are no "probable" effects of the proposed new rule on particular geographic regions.

e. **PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5).** Bobby Wilkinson, Executive Director, has determined that, for each year of the first five years the proposed new rule is in effect, the public benefit anticipated as a result of the rule will be an updated and more germane rule. There will not be any economic cost to any individuals required to comply with the new section because the HOME Program provides reimbursement to those entities whom are subject to the rule for the cost of compliance with the rule.

f. **FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4).** Mr. Wilkinson has also determined that for each year of the first five years the proposed new rule is in effect, enforcing or administering the rule does not have any foreseeable implications related to costs or revenues of the state or local governments because the Single Family HOME Program is a federally funded program, and no increase in the requirement to match federal funds is proposed in the rule.

**REQUEST FOR PUBLIC COMMENT.** The public comment period will be held December 22, 2023, to January 22, 2024, to receive input on the new proposed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Abigail Versyp, Rule Comments, P.O. Box 13941, Austin, Texas 8711-3941, by fax to (512) 475-0220, or email [abigail.versyp@tdhca.state.tx.us](mailto:abigail.versyp@tdhca.state.tx.us). **ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Central time, January 22, 2024.**

## SUBCHAPTER A. GENERAL GUIDANCE

### 10 TAC §23.1, §23.2

**STATUTORY AUTHORITY.** The new sections are proposed pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

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

### §23.1. Applicability and Purpose.

(a) **Applicability.** This Chapter governs the use and administration of all HOME single family Activities funds provided to the Texas Department of Housing and Community Affairs (the "Department") by the U.S. Department of Housing and Urban Development (HUD) pursuant to Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990 as amended (42 U.S.C. §§12701 - 12839) and HUD regulations at 24 CFR Part 92, as amended. Chapter 20 of this Title relating to Single Family Programs Umbrella Rule and Chapters 1 and 2 of this Title will apply to all single family activities, including Single Family Development. Unless otherwise noted herein or required by law, all provisions of this Chapter apply to any Application for a Contract award, or any Reservation submitted or received on or after the date of adoption of this Chapter. Existing Agreements executed within the preceding 12 months from the date of adoption of this Chapter or current pending Applications may be amended in writing at the request of the Administrator or Applicant, and with Department approval, so that all provisions of this Chapter apply to the Agreement or Application. Amendments proposing only partial adoption of this Chapter are prohibited. No amendment adopting this Chapter shall be granted if, in the discretion of the Department, any of the provisions of this Chapter conflict with the Notice of Funding Availability (NOFA) under which the existing Agreement was awarded or Application was submitted. The Governing Board may waive rules subject to this Chapter for good cause to meet the purpose of the HOME Program as described further in subsection (b) of this section, provided the waiver does not conflict with the federal regulations governing the use of these funds, or impact federally imposed obligation or expenditure deadlines governing the HOME Program.

(b) **Purpose.** The State's HOME Program is designed to:

(1) focus on the areas with the greatest housing need described in the State Consolidated Plan;

(2) provide funds for home ownership and rental housing through acquisition, Reconstruction, New Construction, and Tenant-Based Rental Assistance;

(3) promote partnerships among all levels of government and the private sector, including nonprofit and for-profit organizations; and

(4) provide low, very low, and extremely low-income families with affordable, decent, safe, and sanitary housing.

### §23.2. Definitions.

These words when used in this Chapter shall have the following meanings, unless the context clearly indicates otherwise. Additional definitions may be found in Tex. Gov't Code Chapter 2306 or Chapter 20 of this Title relating to Single Family Programs Umbrella Rule.

(1) **Area Median Family Income--**The income limits published annually by the U.S. Department of Housing and Urban Development (HUD) for the Housing Choice Voucher Program that is used by the Department to determine the eligibility of Applicants for the HOME Program, also referred to as AMFI.

(2) **CFR--**Code of Federal Regulations.

(3) **Commitment of Funds--**Occurs when the funds are awarded to an Administrator for a specific Activity approved by the Department and set up in the Integrated Disbursement and Information System (IDIS) established by HUD.

(4) **Construction Completion Date--**The Construction Completion Date shall be the date of completion of all improvements as stated on the affidavit of completion, provided that the affidavit is

filed within ten days of the stated date of completion or the date of filing as outlined in Tex Prop. Code §53.106.

(5) Date of Assistance--The date that assistance is provided to the Household. For Tenant-Based Rental Assistance, this is the start date of the rental subsidy. For Homeowner Reconstruction Assistance and Contract for Deed, this is the date of the loan closing or date of execution of grant agreement. For Single Family Development and Homebuyer Assistance with New Construction, this is the date that the Household executes the purchase agreement.

(6) Development Site--The area, or if scattered site, areas on which the development is proposed to be located.

(7) Direct Activity Costs--The total costs of hard construction costs, demolition costs, aerobic septic systems, refinancing costs (as applicable), acquisition and closing costs for acquisition of real property, and rental and utility subsidy and deposits.

(8) HOME Final Rule--The regulations with amendments promulgated at 24 CFR, Part 92 as published by HUD for the HOME Investment Partnerships Program at 42 U.S.C. §§12701 - 12839.

(9) Homeownership--Ownership in fee simple title in a one to four unit dwelling or in a condominium unit, or equivalent form of ownership approved by the Department. Homeownership is not right to possession under a contract for deed, installment contract, or land contract that has not converted into a deed for title ownership.

(10) Identity of Interest--An acquisition will be considered to be an Identity of Interest transaction when the purchaser has any financial interest whatsoever in the seller or lender or is subject to common control, or any family relationship by virtue of blood, marriage, or adoption exists between the purchaser and the seller or lender.

(11) Match--Funds contributed to an Activity that meet the requirements of 24 CFR §§92.218 - 92.220. Match contributed to an Activity does not include mortgage revenue bonds, non HOME-assisted projects, and cannot include any other sources of Department funding unless otherwise approved in writing by the Department.

(12) New Construction--Construction of a new Single Family Housing Unit which involves:

(A) Construction on a lot that was not the site of a Single Family Housing Unit on the date HOME assistance was requested;

(B) Construction of a new Single Family Housing Unit following acquisition; or

(C) Construction of a site-built Single Family Housing Unit that replaces a manufactured housing unit.

(13) Person--Any individual, partnership, corporation, association, unit of government, community action agency, or public or private organization of any character.

(14) Persons with Special Needs--Individuals or categories of individuals determined by the Department to have unmet housing needs as provided in the Consolidated Plan and the State's One Year Action Plan.

(15) Predevelopment Costs--Costs consistent with 24 CFR §92.212 related to a specific eligible Activity including:

(A) Predevelopment housing project costs that the Department determines to be customary and reasonable, including but not limited to consulting fees, costs of preliminary financial applications, legal fees, architectural fees, engineering fees, engagement of a development team, and site control;

(B) Pre-construction housing project costs that the Department determines to be customary and reasonable, including but not limited to, the costs of obtaining firm construction loan commitments, architectural plans and specifications, zoning approvals, engineering studies and legal fees; and

(C) Predevelopment costs do not include general operational or administrative costs.

(16) Principal--A Person, or Persons, that will exercise Control over a partnership, corporation, limited liability company, trust, or any other private entity. In the case of:

(A) Partnerships: Principals include all General Partners, special limited partners, and Principals with ownership interest;

(B) Corporations: Principals include any officer authorized by the board of directors to act on behalf of the corporation, including the president, vice president, secretary, treasurer, and all other executive officers, and each stock holder having a ten percent or more interest in the corporation; and

(C) Limited liability companies: Principals include all managing members, members having a ten percent or more interest in the limited liability company or any officer authorized to act on behalf of the limited liability company.

(17) Reconstruction--Has the same meaning as the defined term in 24 CFR §92.2.

(18) Reservation System Participant (RSP)--Administrator who has executed a written Agreement with the Department that allows for participation in the Reservation System.

(19) Service Area--The city(ies), county(ies) and/or place(s) identified in the Application and/or Agreement that the Administrator will serve.

(20) Third Party--A Person who is not:

(A) An Applicant, Administrator, Borrower, General Partner, Developer, Development Owner, or General Contractor; or

(B) An Affiliate, Affiliated Party to the Applicant, Administrator, Borrower, General Partner, Developer, Development Owner, or General Contractor; or

(C) A Person receiving any portion of the administration, contractor fee, or developer fee.

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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Bobby Wilkinson

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Texas Department of Housing and Community Affair

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## SUBCHAPTER B. AVAILABILITY OF FUNDS, APPLICATION REQUIREMENTS, REVIEW AND AWARD PROCEDURES, GENERAL

## ADMINISTRATIVE REQUIREMENTS, AND RESALE AND RECAPTURE OF FUNDS

### 10 TAC §§23.20 - 23.29

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed new sections affect no other code, article, or statute.

#### §23.20. Availability of Funds and Regional Allocation Formula.

Funds made available through an open Application cycle and subject to regional allocation formula shall be made available to each region and subregion for a time period to be specified in the applicable NOFA, after which the funds remaining shall collapse and be made available statewide.

#### §23.21. Application Forms and Materials and Deadlines.

(a) The Department will produce an Application to satisfy the Department's requirements to be qualified to administer HOME activities. The Application will be available on the Department's website.

(b) The Department must receive all Applications by the deadline specified in the NOFA.

#### §23.22. Contract Award Application Review Process for Open Application Cycles.

An Application received by the Department in response to an open Application cycle NOFA will be assigned a "Received Date." An Application will be prioritized for review based on its "Received Date." Application acceptance dates may be staggered under an open Application cycle to prioritize Applications which propose to serve areas identified in Tex. Gov't Code §2306.127 as priority for certain communities. An Application with outstanding administrative deficiencies under §23.24 of this Chapter, may be suspended from further review until all administrative deficiencies have been cured or addressed to the Department's satisfaction. Applications that have completed the review process may be presented to the Board for approval with priority over Applications that continue to have administrative deficiencies at the time Board materials are prepared, regardless of "Received Date." If all funds available under a NOFA are awarded, all remaining Applicants will be notified and the remaining Applications will not be processed.

#### §23.23. Reservation System Participant Review Process.

An Application for a Reservation System Participant (RSP) Agreement shall be reviewed and if approved under Chapter 1, Subchapter C of this Title, as amended or superseded, concerning Previous Participation and the Executive Award and Review Advisory Committee, and not denied under §23.24 of this Chapter, will be drafted and processed in the order in which it was accepted to be executed and made effective.

#### §23.24. Administrative Deficiency Process.

(a) The administrative deficiency process allows staff to request that an Applicant provide clarification, correction, or non-material missing information to resolve inconsistencies in the original Application or to assist staff in evaluating the Application. Staff will request such information via a deficiency notice. Staff will send the deficiency notice via an email or if an email address is not provided in the Application, by facsimile to the Applicant. Responses must be submitted electronically to the Department. A review of the Applicant's response may reveal that issues initially identified as an administrative deficiency are actually determined to be beyond the scope of an administrative deficiency process, meaning that they are in fact matters of a material nature not susceptible to being resolved. Department staff

may, in good faith, provide an Applicant confirmation that an administrative deficiency response has been received or that such response is satisfactory. Communication from staff that the response was satisfactory does not establish any entitlement to points, eligibility status, or to any presumption of having fulfilled any requirements. Final determination regarding the sufficiency of documentation submitted to cure an administrative deficiency as well as the distinction between material and non-material missing information are reserved for the Executive Director or authorized designee, and Board, as applicable.

(b) An Applicant may not change or supplement any part of an Application in any manner after submission to the Department, and may not add any set-asides, except in response to a direct request from the Department to remedy an administrative deficiency or by amendment of an Application after the Board approval of a HOME award. An administrative deficiency may not be cured if it would, in the Department's determination, substantially change an Application, or if the Applicant provides any new unrequested information to cure the deficiency.

(c) The time period for responding to a deficiency notice commences on the first day following the deficiency notice date. If an administrative deficiency is not resolved to the satisfaction of the Department by 5:00 p.m., central time, on the 14th day following the date of the deficiency notice, the application may be terminated. The Department may accept a corrected Board Resolution submitted after the deficiency deadline on the condition that the corrected Board Resolution resolves the deficiencies to the satisfaction of the Department, but the Board Resolution must be received and deemed satisfactory by the Department before the RSP Agreement or Contract start date. Applicants that have been terminated may reapply.

#### §23.25. General Threshold Criteria.

(a) General Threshold. All Applicants and Applications to administer a HOME Program award from the Department must submit or comply with the following:

(1) An Applicant certification of compliance with state rules promulgated by the Department, and federal laws, rules and guidance governing the HOME Program as provided in the Application.

(2) A Resolution from the Applicant's direct governing body which includes:

(A) Authorization of the submission of the Application specifying the NOFA under which funds are requested for Contract award Applications;

(B) Commitment and amount of cash reserves, if applicable, for use during the Contract or RSP Agreement term;

(C) Source of funds for Match obligation and Match amount to be contributed as a percentage of Direct Activity Costs, if applicable;

(D) Title of the person authorized to represent the organization and who also has signature authority to execute a Contract and grant agreement or loan documents, as applicable, unless otherwise stated; and

(E) Date that the resolution was passed by the governing body, which must be within six months preceding Application submission for Reservation System Participation Agreement Applications, and no earlier than the date of the Department's Governing Board approval of the NOFA for Contract award Applications.

(3) An Applicant must be registered in the System for Award Management (SAM) and have a current Unique Entity Identification (UEID) number.

(4) An Application must be substantially complete when received by the Department. An Application will be terminated if an entire tab of the Application is missing; has excessive omissions of documentation from the threshold or selection criteria or uniform Application documentation; or is so unclear, disjointed, or incomplete that a thorough review cannot reasonably be performed by the Department, as determined by the Department. Such Application will be terminated without being processed as an administrative deficiency. To the extent that a review was able to be performed, specific reasons for the Department's termination will be included in the notification sent to the Applicant but, because of the suspended review, may not include an all inclusive list of deficiencies in the Application.

§23.26. Contract Benchmarks and Limitations.

(a) Contract Award Funding Limits. Limits on the total amount of a Contract award will be established in the NOFA.

(b) Contract Award Terms. Homeowner Reconstruction Assistance awards will have a Contract term of not more than 21 months, exclusive of any applicable affordability period or loan term. Single Family Development awards will have a Contract term of not more than 24 months, exclusive of any applicable affordability period or loan term. Tenant-Based Rental Assistance awards will have a Contract term of not more than 36 months.

(c) Contract Award Benchmarks. Administrators must have attained environmental clearance for the contractually required number of Households served within six months of the effective date of the Contract. Contract Administrators must submit to the Department complete Activity setup information for the Commitment of Funds of all contractually required Households in accordance with the requirements herein within nine months from the effective date of the Contract. All remaining funds will be deobligated and reallocated in accordance with Chapter 1 of this Title relating to Reallocation of Financial Assistance.

(d) Voluntary deobligation. The Administrator may fully deobligate funds in the form of a written request signed by the signatory, or successor thereto, of the Contract. The Administrator may partially deobligate funds under a Contract in the form of a written request from the signatory if the letter also deobligates the associated number of targeted Households, funds for administrative costs, and Match and the partial deobligation would not have impacted the award of the Contract. Voluntary deobligation of a Contract does not limit an Administrator's ability to participate in an open application cycle.

(e) The Department may request information regarding the performance or status under a Contract prior to a Contract benchmark or at various times during the term of a Contract. Administrator must respond within the time limit stated in the request. Prolonged or repeated failure to respond may result in suspension of funds and ultimately in termination of the Contract by the Department.

(f) Pre-Contract Costs.

(1) The Administrator may be reimbursed for eligible administrative and Activity soft costs incurred before the effective date of the Contract in accordance with 24 CFR §92.212 and at the sole discretion of the Department.

(2) A Community Housing Development Organization may be reimbursed for Predevelopment Costs as defined in this Chapter for an Activity funded under Single Family Development.

(3) In no event will the Department reimburse expenses incurred more than six months prior to Governing Board approval of the Administrator's award.

(g) Amendments to Contract awards will be processed in accordance with Chapter 20 of this Title, relating to Single Family Programs Umbrella Rule.

§23.27. Reservation System Participant (RSP) Agreement.

(a) Terms of Agreement. The term of an RSP Agreement will not exceed 36 months. Execution of an RSP Agreement does not guarantee the availability of funds under a reservation system. Reservations submitted under an RSP agreement will be subject to the provisions of this Chapter in effect as of the date of submission by the Administrator.

(b) Limits on Number of Reservations. Except for Activities submitted under the Disaster set-aside, RSP Administrators may have no more than five Reservations per county within the RSP's Service Area submitted to the Department for approval at any given time, except that Tenant-Based Rental Assistance Reservations submitted for approval under an RSP Agreement is limited to 30 at any given time.

(c) Extremely Low-Income Households. Except for Households submitted under the Disaster set-aside, each RSP will be required to serve at least one extremely low-income Household out of every four Households submitted and approved for assistance. For purposes of this subsection, extremely low-income is defined as families that are either at or below 30 percent AMFI for the county in which they will reside or have an income that is lower than the statewide 30 percent income limit without adjustments to HUD limits.

(d) Match. Administrators must meet the Match requirement per Activity approved for assistance.

(e) Completion of Construction. For Activities involving construction, construction must be complete within 12 months from the Commitment of Funds for the Activity, unless amended in accordance with subsection (g) of this section.

(f) Household commitment contract term. The term of a Household commitment contract may not exceed 12 months, except that the Household commitment contract term for Tenant-Based Rental Assistance may not exceed 24 months. Household commitment contracts may commence after the end date of an RSP Agreement only in cases when the Administrator has submitted a Reservation on or before the termination date of the RSP Agreement.

(g) Amendments to Household commitment contracts may be considered by the Department provided the approval does not conflict with the federal regulations governing use of these funds, or impact federally imposed obligation or expenditure deadlines.

(1) The Executive Director's authorized designee may approve an amendment that extends the term of a Household commitment contract by not more than six months, except that the term of a Household commitment contract for Tenant-Based Rental Assistance may not be extended to exceed a total Household commitment contract term of 24 months.

(2) The Executive Director's authorized designee may approve one or more amendments to a Household commitment contract to:

(A) extend the Construction Completion Date by not more than six months;

(B) extend the term of rental subsidy up to a total term of 24 months;

(C) extend the draw period by not more than three months after the Construction Completion Date or termination of rental subsidy; or

(D) to increase Activity funds within the limitations set forth in this Chapter.

(3) The Executive Director may approve amendments to a Household commitment contract, except amendments to extend the contract term of a Household Commitment contract by more than 12 months.

(h) Pre-agreement costs. The Administrator may be reimbursed for eligible administrative and Activity soft costs incurred before the effective date of the RSP Agreement in accordance with 24 CFR §92.212 and at the sole discretion of the Department. In no event will the Department reimburse expenses incurred more than six months prior to the effective date of the RSP Agreement.

(i) Administrator must remain in good standing with the Department, the state of Texas, and HUD. If an Administrator is not in good standing, participation in the Reservation System will be suspended and may result in termination of the RSP Agreement.

§23.28. General Administrative Requirements.

Unless otherwise provided in this Chapter, the Administrator or Developer must comply with the requirements described in paragraphs (1) - (21) of this section, for the administration and use of HOME funds:

(1) Complete training, as applicable.

(2) Provide all applicable Department Housing Contract System access request information and documentation requirements.

(3) Establish and maintain sufficient records at its regular place of business and make available for examination by the Department, HUD, the U.S. General Accounting Office, the U.S. Comptroller, the State Auditor's Office of Texas, the Comptroller of Public Accounts, or any of their duly authorized representatives, throughout the applicable record retention period.

(4) For non-Single Family Development Contracts, develop and establish written procurement procedures that comply with federal, state, and local procurement requirements including:

(A) Develop and comply with written procurement selection criteria and committees, including appointment of a procurement officer to manage any bid process;

(B) Develop and comply with a written code of conduct governing employees, officers, or agents engaged in administering HOME funds;

(C) Ensure consultant or any procured service provider does not participate in or direct the process of procurement for services. A consultant cannot assist in their own procurement before or after an award is made;

(D) Ensure that procedures established for procurement of building construction contractors do not include requirements for the provision of general liability insurance coverage in an amount to exceed the value of the contract and do not give preference for contractors in specific geographic locations;

(E) Ensure that building construction contractors are procured in accordance with State and Federal regulations for single family HOME Activities;

(F) Ensure that professional service providers (consultants) are procured using an open competitive procedure and are not procured based solely on the lowest priced bid; and

(G) Ensure that any Request for Proposals or Invitation for Bid include:

(i) an equal opportunity disclosure and a notice that bidders are subject to search for listing on the Excluded Parties List;

(ii) bidders' protest rights and an outline of the procedures bidders must take to address procurement related disputes;

(iii) a conflict of interest disclosure;

(iv) a clear and accurate description of the technical requirements for the material, product, or service to be procured. The description must include complete, adequate, and realistic specifications;

(v) for sealed bid procedures, disclose the date, time and location for public opening of bids and indicate a fixed-price contract;

(vi) must not have a term of services greater than five years; and

(vii) for competitive proposals, disclose the specific election/evaluation criteria.

(5) In instances where a potential conflict of interest exists, follow procedures to submit required documentation to the Department sufficient to submit an exception request to HUD for any conflicts prohibited by 24 CFR §92.356. The request submitted to the Department must include a disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict by newspaper publication, a description of how the public disclosure was made, and an attorney's opinion that the conflict does not violate state or local law. No HOME funds will be committed to or reserved to assist a Household impacted by the conflict of interest regulations until HUD has granted an exception to the conflict of interest provisions.

(6) Perform environmental clearance procedures, as required, before acquiring any Property or before performing any construction activities, including demolition, or before the occurrence of the loan closing, if applicable.

(7) Develop and comply with written Applicant intake and selection criteria for program eligibility that promote and comply with Fair Housing requirements and the State's One Year Action Plan.

(8) Complete Applicant intake and Applicant selection. Notify each Applicant Household in writing of either acceptance or denial of HOME assistance within 60 days following receipt of the intake application.

(9) Determine the income eligibility of a Household using the "Annual Income" as defined at 24 CFR §5.609, by using the list of income included in HUD Handbook 4350.3 (or most recent version), and excluding from income those items listed in HUD's Updated List of Federally Mandated Exclusions from Income.

(10) Complete an updated income eligibility determination of a Household if the date of certification is more than six months prior to the Date of Assistance.

(11) For single family Activities involving construction, perform initial inspection in accordance with Chapter 20 of this Title (relating to Single Family Programs Umbrella Rule). Property inspections must include photographs of the front, back, and side elevations of the housing unit and at least one picture of each of the kitchen, family room, each bedroom and each bathrooms. The inspection must be signed and dated by the inspector and the Administrator. The photographs submitted with the initial inspection should evidence the deficiencies noted on the initial inspection and must clearly show the entire property, including other buildings located on the property.

(12) Submit a substantially complete request for the Commitment or Reservation of Funds, loan closing preparation, and for disbursements. Administrators must upload all required information and verification documentation in the Housing Contract System. Requests



determined to be substantially incomplete will not be reviewed and may be disapproved by the Department. Expenses for which reimbursement is requested must be documented as incurred. If the Department identifies administrative deficiencies during review, the Department will allow a cure period of 14 calendar days beginning at the start of the first day following the date the Administrator or Developer is notified of the deficiency. If any administrative deficiencies remain after the cure period, the Department, in its sole discretion, may disapprove the request. Disapproved requests will not be considered sufficient to meet the performance benchmark and shall not constitute a Reservation of Funds.

(13) Submit signed program documents timely as may be required for the completion of a Commitment or Reservation of Funds, and for closing preparation of the loan or grant documents. Department reserves the right to cancel or terminate Activities when program documents are not executed timely, in the Department's sole and reasonable discretion.

(14) Not proceed or allow a contractor to proceed with construction, including demolition, on any Activity or development without first completing the required environmental clearance procedures, preconstruction conference and receiving notice to proceed, if applicable, and execution of grant agreement or loan closing with the Department, whichever is applicable.

(15) Submit any Program Income received by the Administrator or Developer to the Department within 14 days of receipt; any fund remittance to the Department, including refunds, must include a written explanation of the return of funds, the Contract number, name of Administrator or Developer, Activity address and Activity number, and must be sent to the Department's accounting division.

(16) Submit required documentation for project completion reports no later than 60 days after the completion of the Activity, unless this term is extended through amendment.

(17) For Contract awards, submit certificate of Contract Completion within 14 days of the Department's request.

(18) Submit to the Department reports or information regarding the operations related to HOME funds provided by the Department.

(19) Submit evidence with the final draw for construction related activities that the builder has provided a one-year warranty specifying at a minimum that materials and equipment used by the contractor will be new and of good quality unless otherwise required, the work will be free from defects other than those inherent in the work as specified, and the work will conform to the requirements of the contract documents.

(20) Provide the Household all warranty information for work performed by the builder and any materials purchased for which a manufacturer or installer's warranty is included in the price.

(21) If required by state or federal law, place the appropriate bonding requirement in any contract or subcontract entered into by the Administrator or Developer in connection with a HOME award may result in termination of the RSP Agreement.

#### §23.29. Resale and Recapture Provisions.

(a) Recapture is the primary method the Department will use to recoup HOME funds under 24 CFR §92.254(a)(5)(ii).

(b) To ensure continued affordability, the Department has established the recapture provisions described in paragraphs (1) - (4) of this subsection and further defined in 24 CFR §92.254(a)(5)(ii).

(1) In the event that a federal affordability period is required and the assisted property is rented, leased, or no member of the Household has it as the Principal Residence, the entire HOME investment is subject to recapture. The Department will include any loan payments previously made when calculating the amount subject to recapture. Loan forgiveness is not the same thing as loan payments for purposes of this subsection.

(2) In the event that a federal affordability period is required and the assisted property is sold, including through a short sale, deed in lieu of foreclosure, or foreclosure, prior to the end of the affordability period, the Department will recapture the available amount of net proceeds based on the requirements of 24 CFR §92.254, and as outlined in the State's One Year Action Plan.

(3) The Household can sell the unit to any willing buyer at any price. In the event of sale to a qualified low-income purchaser of a HOME-assisted unit, the qualified low-income purchaser may assume the existing HOME loan and assume the recapture obligation entered into by the original buyer if no additional HOME assistance is provided to the low-income purchaser. In cases in which the subsequent homebuyer needs HOME assistance in excess of the balance of the original HOME loan, the HOME subsidy (the direct subsidy as described in 24 CFR §92.254) to the original homebuyer must be recaptured. A separate HOME subsidy must be provided to the new homebuyer, and a new affordability period must be established based on that assistance to the buyer.

(4) If there are no net proceeds from the sale, no repayment will be required of the Household and the balance of the loan shall be forgiven as outlined in the State's applicable One Year Action Plan.

(c) The Department has established the resale provisions described in paragraphs (1) - (7) of this subsection, only in the event that the Department must impose the resale provisions of 24 CFR §92.254(a)(i).

(1) Resale is defined as the continuation of the affordability period upon the sale or transfer, rental or lease, refinancing, and no member of the Household is occupying the property as their Principal Residence.

(2) In the event that a federal affordability period is required and the assisted property is rented or leased, or no member of the Household has it as the Principal Residence, the HOME investment must be repaid.

(3) In the event that a federal affordability period is required and the assisted property is sold or transferred in lieu of foreclosure to a qualified low-income buyer at an affordable price, the HOME loan balance shall be transferred to the subsequent qualified buyer and the affordability period shall remain in force to the extent allowed by law.

(4) The resale provisions shall remain in force from the date of loan closing until the expiration of the required affordability period.

(5) The Household is required to sell the home at an affordable price to a reasonable range of low-income homebuyers that will occupy the home as their Principal Residence. Affordable to a reasonable range of low-income buyers is defined as targeting Households that have income between 70 and 80 percent AMFI and meet all program requirements.

(A) The seller will be afforded a fair return on investment defined as the sum of down payment and closing costs paid from the initial seller's cash at purchase, closing costs paid by the seller at sale, the principal payments only made by the initial homebuyer in ex-

cess of the amount required by the loan, and any documented capital improvements in excess of \$500.

(B) Fair return on investment is paid to the seller at sale once first mortgage debt is paid and all other conditions of the initial written agreement are met. In the event there are no funds for fair return, then fair return does not exist. In the event there are partial funds for fair return, then the appropriate partial fair return shall remain in force.

(6) The appreciated value is the affordable sales price less first mortgage debt less fair return.

(A) If appreciated value is zero, or less than zero, then no appreciated value exists.

(B) The initial homebuyer's investment of down payment and closing costs divided by the Department's HOME investment equals the percentage of appreciated value that shall be paid to the initial homebuyer or persons as otherwise directed by law. The balance of appreciated value shall be paid to the Department.

(7) The property qualified by the initial Household will be encumbered with a lien for the full affordability period.

(d) In the event the housing unit transfers by devise, descent, or operation of law upon the death of the assisted homeowner, forgiveness of installment payments under the loan may continue until maturity or the penalty amount for noncompliance under the conditional grant agreement may be waived, if the new Household qualifies for assistance in accordance with this subchapter. If the new Household does not qualify for assistance in accordance with this Chapter, forgiveness of installment payments will cease and repayment of scheduled payments under the loan will commence and continue until maturity or payment of a penalty amount under the conditional grant agreement may be required in accordance with the terms of the conditional grant agreement.

(e) Forgiveness of installment payments under the loan may continue until maturity or the penalty amount under conditional grant agreement may be waived by the Department if the housing unit is sold by the decedent's estate to a purchasing Household that qualifies for assistance in accordance with this Chapter.

(f) Grants subject to conditional grant agreements are not subject to the entire penalty amount in the event the property is no longer the Principal Residence of any Household member.

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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Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

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For further information, please call: (512) 475-3959



## SUBCHAPTER C. HOMEOWNER RECONSTRUCTION ASSISTANCE PROGRAM

10 TAC §§23.30 - 23.32

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed new sections affect no other code, article, or statute.

### §23.30. Homeowner Reconstruction Assistance (HRA) Threshold and Selection Criteria.

(a) Match requirement. Excluding Applications under the disaster relief and persons with disabilities set asides, Match shall be required based on the tiers described in paragraphs (1) and (2) of this subsection:

(1) Zero percent of Direct Activity Costs, exclusive of Match, is required as Match:

(A) when the Service Area includes the entire unincorporated area of a county and where the population of Administrator's Service Area is less than or equal to 20,000 persons; or

(B) when the Service Area does not include the entire unincorporated area of a county and the population of the Administrator's Service Area is less than or equal to 3,000 persons.

(2) One percent of Direct Activity Costs, exclusive of Match, is required as Match for every 1,000 in population to a maximum of 15 percent.

(b) The Department shall use population figures from the most recently available U.S. census bureau's American Community Survey (ACS) as of the date of submission of the Application to determine the applicable Match. The Department may incentivize or provide preference to Applicants committing to provide additional Match above the requirement of this subsection. Such incentives may be established as selection criteria in the NOFA.

(c) Documentation is required of a commitment of at least \$40,000 in cash reserves to facilitate administration of the program and to ensure the capacity to cover costs prior to reimbursement or costs determined to be ineligible for reimbursement. The amount of the cash reserve commitment must be included in the Applicant's resolution. To meet this requirement, Applicants must submit:

(1) financial statements indicating adequate local unrestricted cash or cash equivalents to utilize as cash reserves and a letter from the Applicant's bank(s) or financial institution(s) indicating that current account balances are sufficient; or

(2) evidence of an available line of credit or equivalent in an amount equal to or exceeding the requirement in this subsection.

(d) Selection criteria for this activity will be outlined in the NOFA.

### §23.31. Homeowner Reconstruction Assistance (HRA) General Requirements.

(a) Program funds may be used for the following under this subchapter:

(1) Reconstruction of housing on the same site meeting the following conditions:

(A) Replacement of an owner-occupied site-built house with either a new site-built house or a new Manufactured Housing Unit (MHU) on the same site;

(B) Replacement of an owner-occupied MHU with a new MHU on the same site;

(C) A unit that is not owner-occupied has been destroyed may be eligible for Reconstruction under subparagraph (A) or (B) of this paragraph if:

(i) the unit was the Principal Residence of the Household as of the date of destruction where evidence of the Household's Principal Residence is established by a homestead exemption from the local taxing jurisdiction and Household certification in effect at the date of destruction; and

(ii) HOME funds are committed within 12 months of the date of destruction.

(2) New Construction of housing meeting the following conditions:

(A) Construction of site-built housing on the same site to replace an existing owner-occupied MHU;

(B) Replacement of existing owner-occupied housing with an MHU or construction of site-built housing on another site contingent upon written approval of the Department; or

(C) Replacement of a housing unit determined to be uninhabitable within four years of submission of a Reservation for funds on the same site or another site when:

(i) the unit has been rendered uninhabitable as a direct result of a natural or man-made disaster, a condemnation order from the unit of local government, or a determination from the unit of local government that the unit presents an imminent threat to life, health, and safety of occupants; and

(ii) the Household's Principal Residence is established by a homestead exemption from the local taxing jurisdiction as of the date of the disaster, condemnation order, or determination of uninhabitability through a Certification.

(b) If a housing unit has an existing mortgage loan and Department funds are provided in the form of a loan, the Department will require a first lien position if the existing mortgage loan has an outstanding balance that is less than the investment of HOME funds and any of the statements described in paragraphs (1) - (3) of this subsection are true:

(1) A federal affordability period is required;

(2) Any existing mortgage has been in place for less than three years from the date the Household applies for assistance; or

(3) The HOME loan is structured as a repayable loan.

(c) The Household must be current on any existing mortgage loans or home equity loans. If the Department's assistance is provided in the form of a loan, the property cannot have any existing home equity loan liens.

(d) Direct Activity Costs, exclusive of Match funds, are limited to the amounts described in this subsection; however, not more than once per year, the Board in its sole discretion, may increase or decrease by up to five percent of the limitation for Direct Activity Costs. Total Activity costs may not exceed HUD Subsidy Limits. Dollar amounts in a Household commitment contract are set at the time of contract execution and may not be adjusted through this process. Current dollar amounts under this subsection will be reflected on the Department's website.

(1) Reconstruction and New Construction of site-built housing: the lesser of \$120 per square foot of conditioned space or \$135,000 or for Households of five or more Persons the lesser of \$120 per square foot of conditioned space or \$150,000 for a four-bedroom unit;

(2) Replacement with energy efficient MHU: \$90,000; and

(3) Limits established in this subsection may be updated not more than annually at the discretion of the Board.

(e) In addition to the Direct Activity Costs allowable under subsection (d) of this section, a sum not to exceed \$15,000 may be requested and if approved, used to pay for any or all of the following, as applicable:

(1) Necessary environmental mitigation as identified during the Environmental review process;

(2) Installation of an aerobic septic system; and

(3) Homeowner requests for accessibility features.

(f) Activity soft costs eligible for reimbursement for Activities of the following types are limited to:

(1) Reconstruction or New Construction of site-built housing: no more than \$12,000 per housing unit;

(2) Replacement with an MHU: no more than \$3,500 per housing unit; and

(3) Third-party Activity soft costs related to costs incurred in connection with an Activity under this section, such as required housing counseling, appraisals, title reports or insurance, tax certificates, recording fees, surveys, and first year hazard and flood insurance are not subject to a maximum per Activity.

(g) Funds for administrative costs are limited to no more than five percent of the Direct Activity Costs, exclusive of Match funds.

(h) For New Construction Activities, the assistance to an eligible Household shall be in the form of a loan in the amount of the Direct Activity Costs excluding Match funds. The loan will be at zero percent interest and include deferral of payment and annual pro rata forgiveness with a term based on the federal affordability requirements as defined in 24 CFR §92.254.

(i) For Reconstruction Activities, the assistance to an eligible Household will be in the form of a grant agreement with a five year affordability period.

(j) To ensure affordability, the Department will impose resale and recapture provisions established in this Chapter.

(k) Site-built housing units must meet or exceed the 2000 International Residential Code and all applicable local codes, standards, ordinances, and zoning requirements. In addition, Reconstruction and New Construction housing is required to meet 24 CFR §92.251(a)(2) as applicable. MHUs must be installed according to the manufacturer's instructions and in accordance with Federal and State laws and regulations.

(l) Unless an exception is requested by the Household and approved by the Division Director prior to submission of the Activity, each unit must meet the design and quality requirements described in paragraphs (1) - (4) of this subsection:

(1) Include the following amenities: Wired with RG-6 COAX or better and CAT3 phone cable or better to each bedroom and living room; Blinds or window coverings for all windows; Oven/Range; Exhaust/vent fans (vented to the outside) in bathrooms; Energy-Star or equivalently rated lighting in all rooms, which may include LED bulbs. The living room and each bedroom must contain at least one ceiling lighting fixture and wiring must be capable of supporting ceiling fans;

(2) Contain no less than two bedrooms. Each unit must contain complete physical facilities and fixtures for living, sleeping, eating, cooking, and sanitation;

(3) Each bedroom must be no less than 100 square feet; have a length or width no less than 8 feet; be self contained with a door; have at least one window that provides exterior access; and have at least one closet that is not less than two feet deep and three feet wide and high enough to contain at least five feet of hanging space; and

(4) Be no less than 800 total net square feet for a two bedroom home; no less than 1,000 total net square feet for a three bedroom and two bathroom home; and no less than 1,200 total net square feet for a four bedroom and two bathroom home.

(m) Housing proposed to be constructed under this subchapter must meet the requirements of Chapters 20 and 21 of this Title and must be certified by a licensed architect or engineer.

(1) The Department will reimburse only for the first time a set of architectural plans are used, unless any subsequent site specific fees are paid to a Third Party architect, or a licensed engineer.

(2) A NOFA may include incentives or otherwise require architectural plans to incorporate "green building" elements.

§23.32. Homeowner Reconstruction Assistance (HRA) Administrative Requirements.

(a) Commitment or Reservation of Funds. The Administrator must submit the true and complete information, certified as such, with a request for the Commitment or Reservation of Funds as described in paragraphs (1) - (20) of this subsection:

(1) Head of Household name and address of housing unit for which assistance is being requested;

(2) A budget that includes the amount of Activity funds specifying the acquisition costs, construction costs, soft costs and administrative costs requested, a maximum of five percent of hard construction costs for contingency items, proposed Match to be provided, evidence that Direct Activity Cost and Soft Cost limitations are not exceeded, and evidence that any duplication of benefit is addressed;

(3) Verification of environmental clearance;

(4) A copy of the Household's intake application on a form prescribed by the Department;

(5) Certification of the income eligibility of the Household signed by the Administrator and all Household members age 18 or over, and including the date of the income eligibility determination. In instances where the total Household income is within \$3,000 of the 80 percent AMFI, all documentation used to determine the income of the Household;

(6) Project cost estimates, construction contracts, and other construction documents necessary to ensure applicable property standard requirements will be met at completion;

(7) When assistance is provided in the form of a loan, provide written consent from all Persons who have a valid lien or ownership interest in the Property;

(8) In the instance of relocation from one site to another site, the Household must document Homeownership of the existing unit to be replaced and must establish Homeownership of the lot on which the replacement housing unit will be constructed. The Household must agree to the demolition of the existing housing unit. HOME Activity funds cannot be used for the demolition of the existing unit and any funding used for the demolition is not eligible Match; however, solely for a Activity under this paragraph, the Administrator Match obligation

may be reduced by the cost of such demolition without any Contract amendment;

(9) Identification of any Lead-Based Paint (LBP);

(10) For housing units located within the 100-year floodplain or otherwise required to carry flood insurance by federal or local regulation, certification from the Household that they understand the flood insurance requirements;

(11) Consent to demolish from any existing mortgage lien holders and consent to subordinate to the Department's loan, if applicable;

(12) If applicable, documentation to address or resolve any potential conflict of interest, Identity of Interest, duplication of benefit, or floodplain mitigation;

(13) A title commitment or policy or a down date endorsement to an existing title policy evidencing the Household's ownership of the property:

(A) For New Construction Activities, a title commitment or down-date endorsement to an existing title policy the effective date title commitment must be no more than 60 days prior to of the date of Activity submission. Title commitments for loan projects that expire prior to the loan closing date must be updated and must not have any adverse changes; and

(B) For Reconstruction Activities, a title report or a title commitment dated not more than six months prior to the date of Activity submission;

(14) Documents evidencing ownership, such as a warranty deed, life estate, or 99-year leasehold;

(15) If the housing to be replaced is an MHU, a Statement of Ownership and Location (SOL) for the MHU;

(16) Tax certificate that evidences a current paid status, and in the case of delinquency, evidence of an approved payment plan with the taxing authority and evidence that the payment plan is current;

(17) In the instances of replacement with an MHU, information necessary to draft loan documents or grant agreements to issue SOL;

(18) Life event documentation, as applicable, and all information necessary to prepare any applicable affidavits such as marital status and heirship;

(19) For disaster relief set-aside Activities, evidence that the housing unit occupied by the eligible Household was damaged as a direct result of a federal, state, or locally declared disaster that occurred less than four years prior to the submission of the Activity; and

(20) Any other documentation necessary to evidence that the Activity meets the program requirements.

(b) Loan closing or grant agreement. In addition to the documents required under subsection (a) of this section, the Administrator must submit the appraisal or other valuation method approved by the Department which establishes the post construction value of improvements for Activities involving construction prior to the issuance of grant or loan documents by the Department.

(c) Disbursement of funds. The Administrator must comply with all of the requirements described in paragraphs (1) - (12) of this subsection, for a request for disbursement of funds to reimburse eligible costs incurred. Submission of documentation related to the Administrator's compliance with requirements described in paragraphs (1)

- (12) of this subsection, may be required with a request for disbursement:

(1) For construction costs associated with a loan, a down date endorsement to the title policy not older than the date of the last disbursement of funds or 45 days, whichever is later. For release of retainage the down date endorsement must be dated at least 40 days after the Construction Completion Date;

(2) For construction costs associated with a grant agreement, an interim lien waiver or final lien waiver. For release of retainage the release on final payment must be dated at least 40 days after the Construction Completion Date;

(3) If applicable, a maximum of 50 percent of Activity funds for an Activity may be drawn before providing evidence of Match. Thereafter, each Administrator must provide evidence of Match, including the date of provision, in accordance with the percentage of Activity funds disbursed;

(4) Property inspections, including photographs of the front, back, and side elevations of the housing unit and at least one picture of the each of the kitchen, family room, each bedroom and each bathroom with date and property address reflected on each photo. The inspection must be signed and dated by the inspector and Administrator;

(5) Certification that its fiscal control and fund accounting procedures are adequate to assure the proper disbursement of, and accounting for, funds provided; that no Person that would benefit from the award of HOME funds; that it has satisfied any applicable cash reserve obligation or made promises in connection therewith; that each request for disbursement of HOME funds is for the actual cost of providing a service; and that the service does not violate any conflict of interest provisions;

(6) The executed grant agreement or original, executed, legally enforceable loan documents and statement of location, if applicable, for each assisted Household containing remedies adequate to enforce any applicable affordability requirements. Original documents must evidence that such agreements have been recorded in the real property records of the county in which the housing unit is located and the original documents must be returned, duly certified as to recording by the appropriate county official;

(7) Expenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness for expenditures submitted for reimbursement. The Department may request Administrator to make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of HOME funds to Administrator as may be necessary or advisable for compliance with all program requirements;

(8) The request for funds for administrative costs must be proportionate to the amount of Direct Activity Costs requested or already disbursed;

(9) Include the withholding of ten percent of hard construction costs for retainage. Retainage will be held until at least 40 days after the Construction Completion Date;

(10) For final disbursement requests, submission of documentation required for Activity completion reports and evidence that the demolition or, if an MHU, salvage and removal of all dilapidated housing units on the lot, certification or other evidence acceptable to Department that the replacement house, whether site-built or MHU, was constructed or placed on and within the same lot for which own-

ership was established and on and within the same lot secured by the loan or grant agreement, if applicable, and evidence of floodplain mitigation;

(11) The final request for disbursement must be submitted to the Department with support documentation no later than 60 days after the termination date of the Contract in order to remain in compliance with Contract and eligible for future funding. The Department shall not be obligated to pay for costs incurred or performances rendered after the termination date of a Contract; and

(12) For costs associated with insurance policies, including title policies and homeowner insurance policies, charged as Activity costs, evidence of payment of the cost must be submitted with the retainage request.

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

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Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

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For further information, please call: (512) 475-3959



## SUBCHAPTER D. CONTRACT FOR DEED PROGRAM

### 10 TAC §§23.40 - 23.42

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed new sections affect no other code, article, or statute.

§23.40. Contract for Deed (CFD) Threshold and Selection Criteria. Documentation that the Applicant can commit at least \$40,000 in cash reserves to facilitate administration of the program and to ensure the capacity to cover costs prior to reimbursement or costs determined to be ineligible for reimbursement. The amount of the cash reserve commitment must be included in the Applicant's resolution. To meet this requirement, Applicants must submit:

(1) financial statements indicating adequate local unrestricted cash or cash equivalents to utilize as cash reserves and a letter from the Applicant's bank(s) or financial institution(s) indicating that current account balances are sufficient; or

(2) evidence of an available line of credit or equivalent in an amount equal to or exceeding the requirement in this subsection.

§23.41. Contract for Deed (CFD) General Requirements.

(a) Program funds may be utilized for Acquisition or refinance, and New Construction, of single family housing units occupied by the purchaser as shown on an executory contract for conveyance.

(b) The Household's income must not exceed 80 percent AMFI.

(c) The Department shall limit the availability of funds for CFD for a minimum of 60 days for Activities proposing to serve House-

holds whose income does not exceed 60 percent AMFI, and for properties located in a Colonia as defined in Tex. Gov't Code §2306.083.

(d) The Department will require a first lien position.

(e) Direct Activity Costs, exclusive of Match funds, are limited to the amounts described in this subsection; however, not more than once per year, the Board in its sole discretion, may increase or decrease by up to five percent of the limitation for Direct Activity Costs. Total Activity costs may not exceed HUD Subsidy Limits. Dollar amounts in a Household commitment contract are set at the time of contract execution and may not be adjusted through this process. Current dollar amounts under this subsection will be reflected on the Department's website.

(1) Refinance, acquisition, and closing costs: \$35,000. In the case of a contract for deed housing unit that involves the refinance or acquisition of a loan on an existing MHU and/or the loan for the associated land, the Executive Director may grant an exception to exceed this amount, however, the Executive Director will not grant an exception to exceed \$40,000 of assistance;

(2) Reconstruction and New Construction of site-built housing: the lesser of \$120 per square foot of conditioned space or \$135,000, or for Households of five or more Persons the lesser of \$120 per square foot of conditioned space or \$150,000 for a four-bedroom unit; and

(3) Replacement with an energy efficient MHU: \$90,000.

(f) In addition to the Direct Activity Costs allowable under subsection (e) of this section, a sum not to exceed \$15,000 may be used to pay for any or all of the following, as applicable:

(1) Necessary environmental mitigation as identified during the Environmental review process;

(2) Installation of an aerobic septic system; and

(3) Homeowner requests for accessibility features.

(g) Activity soft costs eligible for reimbursement for Activities of the following types are limited to:

(1) Acquisition or refinance, and New Construction of site-built housing: no more than \$13,500 per housing unit; and

(2) Acquisition or refinance, and replacement with an MHU: no more than \$5,000 per housing unit.

(h) Funds for administrative costs are limited to no more than eight percent of the Direct Activity Costs, exclusive of Match funds.

(i) The assistance to an eligible Household shall be in the form of a loan in the amount of the Direct Activity Costs excluding Match funds. The loan will be at zero percent interest and include deferral of payment and annual pro rata forgiveness with a term based on the federal affordability requirements as defined in 24 CFR §92.254. For refinancing activities, the minimum loan term and affordability period is 15 years, regardless of the amount of HOME assistance.

(j) To ensure affordability, the Department will impose resale or recapture provisions established in this Chapter.

(k) Site-built housing units must meet or exceed the 2000 International Residential Code and all applicable local codes, standards, ordinances, zoning requirements, and the standards outlined in 24 CFR §92.251(a)(2) as applicable. MHUs must be installed according to the manufacturer's instructions and in accordance with Federal and State laws and regulations.

(l) Unless an exception is requested by the Household and approved by the Division Director prior to submission of the Activity,

each unit must meet the design and quality requirements described in paragraphs (1) - (4) of this subsection:

(1) Include the following amenities: Wired with RG-6 COAX or better and CAT3 phone cable or better to each bedroom and living room; Blinds or window coverings for all windows; Oven/Range; Exhaust/vent fans (vented to the outside) in bathrooms; Energy-Star or equivalently rated lighting in all rooms, which may include LED bulbs. The living room and each bedroom must contain at least one ceiling lighting fixture and wiring must be capable of supporting ceiling fans;

(2) Contain no less than two bedrooms. Each unit must contain complete physical facilities and fixtures for living, sleeping, eating, cooking, and sanitation;

(3) Each bedroom must be no less than 100 square feet, have a length or width no less than eight feet, be self-contained with a door, have at least one window that provides exterior access, and have at least one closet that is not less than two feet deep and three feet wide and high enough to contain at least five feet of hanging space; and

(4) Be no less than 800 total net square feet for a two bedroom home; no less than 1,000 total net square feet for a three bedroom and two bathroom home; and no less than 1,200 total net square feet for a four bedroom and two bathroom home.

(m) Housing proposed to be constructed under this subchapter must meet the requirements of Chapters 20 and 21 of this Title (relating to Single Family Programs Umbrella Rule and Minimum Energy Efficiency Requirements for Single Family Construction Activities, respectively) and must be certified by a licensed architect or engineer.

(1) The Department will reimburse only for the first time a set of architectural plans are used, unless any subsequent site specific fees are paid to a Third Party architect, or a licensed engineer.

(2) A NOFA may include incentives or otherwise require architectural plans to incorporate "green building" elements.

#### §23.42. Contract for Deed (CFD) Administrative Requirements.

(a) Commitment or Reservation of Funds. The Administrator must submit true and correct information, certified as such, with a request for the Commitment or Reservation of Funds as described in paragraphs (1) - (15) of this subsection:

(1) Head of Household name and address of housing unit for which assistance is being requested;

(2) A budget that includes the amount of Activity funds specifying the acquisition costs, construction costs, soft costs and administrative costs requested, a maximum of five percent of hard construction costs for contingency items, proposed Match to be provided, evidence that Activity and soft costs limitations are not exceeded, and evidence that any duplication of benefit is addressed;

(3) Verification of environmental clearance;

(4) A copy of the Household's intake application on a form prescribed by the Department;

(5) Certification of the income eligibility of the Household signed by the Administrator and all Household members age 18 or over, and including the date of the income eligibility determination. In instances the total Household income is within \$3,000 of the 80 percent AMFI, all documentation used to determine the income of the Household;

(6) Project cost estimates, construction contracts, and other construction documents necessary to ensure applicable property standard requirements will be met at completion;

(7) Identification of Lead-Based Paint (LBP);

(8) For housing units located within the 100-year floodplain or otherwise required to carry flood insurance by federal or local regulation, certification from the Household that they understand the flood insurance requirements;

(9) If applicable, documentation to address or resolve any potential Conflict of Interest, Identity of Interest, duplication of benefit, or floodplain mitigation;

(10) Appraisal which includes post construction improvements for Activities involving construction;

(11) A title commitment to issue a title policy that evidences the property will transfer with no tax lien, child support lien, mechanic's or materialman's lien or any other restrictions or encumbrances that impair the good and marketable nature of title to the ownership interest and that the definition of Homeownership will be met. The effective date of the title commitment must be no more than 60 days prior to the date of Activity submission. Commitments that expire prior to execution of closing must be updated at closing and must not have any adverse changes in order to close;

(12) In the instances of replacement with an MHU, information necessary to draft loan documents and issue Statement of Ownership and Location (SOL);

(13) Life event documentation, as applicable, and all information necessary to prepare any applicable affidavits such as marital status and heirship;

(14) A copy of the recorded executory contact and a current payoff statement; and

(15) Any other documentation necessary to evidence that the Activity meets the program requirements.

(b) Disbursement of funds. The Administrator must comply all of the requirements described in paragraphs (1) - (12) of this subsection, for a request for disbursement of funds to reimburse eligible costs incurred. Submission of documentation related to the Administrator's compliance with requirements described in paragraphs (1) - (12) of this subsection may be required with a request for disbursement:

(1) For construction costs, a down date endorsement to the title policy not older than the date of the last disbursement of funds or 45 days, whichever is later. For release of retainage the down date endorsement must be dated at least 40 days after the Construction Completion Date;

(2) If applicable, a maximum of 50 percent of Activity funds for an Activity may be drawn before providing evidence of Match. Thereafter, each Administrator must provide evidence of Match, including the date of provision, in accordance with the percentage of Activity funds disbursed;

(3) Property inspections, including photographs of the front, back, and side elevations of the housing unit and at least one picture of each of the kitchen, family room, each bedroom and each bathroom with date and property address reflected on each photo. The inspection must be signed and dated by the inspector and Administrator;

(4) Certification that its fiscal control and fund accounting procedures are adequate to assure the proper disbursal of, and accounting for, funds provided, no Person that would benefit from the award of HOME funds has satisfied the Applicant's cash reserve obligation or made promises in connection therewith; that each request for disbursement of HOME funds is for the actual cost of providing a service and that the service does not violate any conflict of interest provisions;

(5) Original, executed, legally enforceable loan documents, and statement of location, as applicable, for each assisted Household containing remedies adequate to enforce any applicable affordability requirements. Original documents must evidence that such agreements have been recorded in the real property records of the county in which the housing unit is located and the original documents must be returned, duly certified as to recordation by the appropriate county official. This provision is not applicable for funds made available at the loan closing;

(6) Expenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness of each expenditure submitted for reimbursement. The Department may request Administrator or Developer to make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of HOME funds to Administrator as may be necessary or advisable for compliance with all program requirements;

(7) The request for funds for administrative costs must be proportionate to the amount of Direct Activity Costs requested or already disbursed;

(8) Table funding requests must be submitted to the Department with complete documentation no later than 14 calendar days prior to the anticipated loan closing date. Such a request must include a draft closing disclosure, title company payee identification information, the Administrator or Developer's authorization for disbursement of funds to the title company, request letter from title company to the Comptroller of Public Accounts with bank account wiring instructions, and invoices for costs being paid at closing;

(9) include the withholding of ten percent of hard construction costs for retainage. Retainage will be held until at least 40 days after the Construction Completion Date;

(10) For final disbursement requests, submission of documentation required for Activity completion reports and evidence that the demolition or, if an MHU, salvage and removal of all dilapidated housing units on the lot, certification or other evidence acceptable to Department that the replacement house, whether site-built or MHU, was constructed or placed on and within the same lot secured by the loan, and evidence of floodplain mitigation;

(11) The final request for disbursement must be submitted to the Department with support documentation no later than 60 days after the termination date of the Contract in order to remain in compliance with Contract and eligible for future funding. The Department shall not be obligated to pay for costs incurred or performances rendered after the termination date of a Contract; and

(12) For costs associated with insurance policies, including title policies and homeowner's insurance policies charged as Activity costs, evidence of payment of the cost must be submitted with the retainage request.

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

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Bobby Wilkinson  
Executive Director  
Texas Department of Housing and Community Affairs  
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**SUBCHAPTER E. TENANT-BASED RENTAL ASSISTANCE PROGRAM**

**10 TAC §§23.50 - 23.52**

**STATUTORY AUTHORITY.** The new sections are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed new sections affect no other code, article, or statute.

§23.50. Tenant-Based Rental Assistance (TBRA) Threshold and Selection Criteria.

All Applicants and Applications must submit Documentation of a commitment of at least \$15,000 for cash reserves to facilitate administration of the program and to ensure the capacity to cover costs prior to reimbursement or costs determined to be ineligible for reimbursement. The amount of the cash reserve commitment must be included in the Applicant's resolution. To meet this requirement, Applicants must submit:

(1) financial statements indicating adequate local unrestricted cash or cash equivalents to utilize as cash reserves and a letter from the Applicant's bank(s) or financial institution(s) indicating that current account balances are sufficient; or

(2) evidence of an available line of credit or equivalent in an amount equal to or exceeding the requirement in this subsection; and

(3) evidence that the Service Area for a Contract or RSP Agreement includes the entire rural or urban area of a county as identified in the Application, excluding Participating Jurisdictions. However, Service Areas must include Participating Jurisdictions as applicable if the Agreement includes access to the Persons with Disabilities set-aside. If the Applicant is a unit of local government, the Service Area may be limited to the boundaries of the jurisdiction of the Applicant.

§23.51. Tenant-Based Rental Assistance (TBRA) General Requirements.

(a) Households assisted under the general set-aside must participate in a self-sufficiency program, as described in the Administrator's policies and procedures.

(b) The amount of assistance will be determined using the HUD Housing Choice Voucher method.

(c) A Household certifying to zero income must also complete a questionnaire that includes a series of questions regarding how basic hygiene, dietary, transportation, and other living needs are met.

(d) The minimum Household contribution toward gross monthly rent must be ten percent of the Household's adjusted monthly income. The maximum Household contribution toward gross monthly rent at initial occupancy is limited to 40 percent of the Household's gross monthly income.

(e) Activity funds are limited to:

(1) Rental subsidy: Each rental subsidy term is limited to no more than 24 months. Total lifetime assistance to a Household may

not exceed 36 months cumulatively, except that a maximum of 24 additional months of assistance, for a total of 60 months cumulatively may be approved if:

(A) the Household has applied for a Section 8 Housing Choice Voucher, HUD Section 811 Supportive Housing for Persons with Disabilities, HUD Section 811 Project Rental Assistance Demonstration, or HUD Section 202 Supportive Housing for the Elderly Program, and is placed on a waiting list during their TBRA participation tenure; and

(B) the Household has not been removed from the waiting list for the Section 8 Housing Choice Voucher, HUD Section 811 Supportive Housing for Persons with Disabilities, HUD Section 811 Project Rental Assistance Demonstration, or HUD Section 202 Supportive Housing for the Elderly Program due to failure to respond to required notices or other ineligibility factors; or

(C) the Administrator submits documentation evidencing that:

(i) no Public Housing Authority within a 50 mile radius of the Household's address during their participation in TBRA has opened their waitlist during the term of the Household's participation in TBRA, or has excluded the Household's application for placement on the waiting list for any reason other than eligibility or failure to respond to required notices, such as a randomized drawing of applications that may be placed on the waitlist; and

(ii) no waiting list was opened during the term of the Household's participation in TBRA for any HUD Section 811 Supportive Housing for Persons with Disabilities, HUD Section 811 Project Rental Assistance Demonstration, or HUD Section 202 Supportive Housing for the Elderly Program located within a 50 mile radius of the Household's address during their participation in TBRA; or

(iii) the Household is not eligible for placement on a waiting list for any HUD Section 811 Supportive Housing for Persons with Disabilities, HUD Section 811 Project Rental Assistance Demonstration, or HUD Section 202 Supportive Housing for the Elderly Program located within a 50 mile radius of the Household's address during their participation in TBRA; and

(D) the Household has not been denied participation in the Section 8 Housing Choice Voucher, HUD Section 811 Supportive Housing for Persons with Disabilities, HUD Section 811 Project Rental Assistance Demonstration, or HUD Section 202 Supportive Housing for the Elderly Program while they were being assisted with HOME TBRA; and

(E) the Household did not refuse to participate in the Section 8 Housing Choice Voucher, HUD Section 811 Supportive Housing for Persons with Disabilities, HUD Section 811 Project Rental Assistance Demonstration, or HUD Section 202 Supportive Housing for the Elderly Program when a voucher was made available.

(2) Security deposit: no more than the amount equal to two month's rent for the unit.

(3) Utility deposit in conjunction with a TBRA rental subsidy.

(f) The payment standard is determined at the Date of Assistance. The payment standard utilized by the Administrator must be:

(1) For metropolitan counties and towns, the current U.S. Department of Housing and Urban Development (HUD) Small Area Fair Market Rent for the Housing Choice Voucher Program;



(2) For nonmetropolitan counties and towns, the current HUD Fair Market Rent for the Housing Choice Voucher Program;

(3) For a HOME assisted unit, the current applicable HOME rent; or

(4) The Administrator may submit a written request to the Department for approval of a different payment standard. The request must be evidenced by a market study or documentation that the PHA serving the market area has adopted a different payment standard. An Administrator may request a Reasonable Accommodation as defined in Section 1.204 of this Title for a specific Household if the Household, because of a disability, requires the features of a specific unit, and units with such features are not available in the Service Area at the payment standard.

(g) Funds for Administrative costs are limited to ten percent of Direct Activity Costs, excluding Match funds. All costs must be reasonable and customary for the Administrator's Service Area.

(h) Administrators must have a written agreement with Owner that the Owner will notify the Administrator within one month if a tenant moves out of an assisted unit prior to the lease end date.

(i) Administrator must not approve a unit if the owner is by consanguinity, affinity, or adoption the parent, child, grandparent, grandchild, sister, or brother of any member of the assisted Household, unless the Administrator determines that approving the unit would provide Reasonable Accommodation for a Household member who is a Person with Disabilities. This restriction against Administrator approval of a unit only applies at the time the Household initially receives assistance under a Contract or Agreement, but does not apply to Administrator approval of a recertification with continued tenant-based assistance in the same unit.

(j) Administrators must maintain Written Policies and Procedures established for the HOME Program in accordance with Section 10.802 of this Title, except that where the terms Owner, Property, or Development are used Administrator or Program will be substituted, as applicable. Additionally, the procedures in subsection (l) of this section (relating to the Violence Against Women Act (if in conflict with the provisions in Section 10.802 of this Title) will govern).

(k) Administrators serving a Household under a Reservation Agreement may not issue a Certificate of Eligibility to the Household prior to reserving funds for the Activity without prior written consent of the Department.

(l) Administrators are required to comply with regulations and procedures outlined in the Violence Against Women Act (VAWA), and provide tenant protections as established in the Act.

(1) An Administrator of Tenant-Based Rental Assistance must provide all Applicants (at the time of admittance or denial) and Households (before termination from the Tenant-Based Rental Assistance program or from the dwelling assisted by the Tenant-Based Rental Assistance Coupon Contract) the Department's "Notice of Occupancy Rights under the Violence Against Women Act", (based on HUD form 5380) and also provide to Households "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking" (HUD form 5382) prior to execution of a Rental Coupon Contract and before termination of assistance from the Tenant-Based Rental Assistance program or from the dwelling assisted by the Tenant-Based Rental Assistance coupon contract.

(2) Administrator must notify the Department within three days when tenant submits a Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and/or alternate documentation

to Administrator and must submit a plan to Department for continuation or termination of assistance to affected Household members.

(3) Notwithstanding any restrictions on admission, occupancy, or terminations of occupancy or assistance, or any Federal, State or local law to the contrary, Administrator may "bifurcate" a rental coupon contract, or otherwise remove a Household member from a rental coupon contract, without regard to whether a Household member is a signatory, in order to evict, remove, terminate occupancy rights, or terminate assistance to any individual who is a recipient of TBRA and who engages in criminal acts of physical violence against family members or others. This action may be taken without terminating assistance to, or otherwise penalizing the person subject to the violence.

§23.52. Tenant-Based Rental Assistance (TBRA) Administrative Requirements.

(a) Commitment or Reservation of Funds. The Administrator must submit the documents described in paragraphs (1) - (10) of this subsection, with a request for the Commitment or Reservation of Funds:

(1) Head of Household name and address of housing unit for which assistance is being requested;

(2) A budget that includes the amount of Direct Activity Costs, Activity soft costs, administrative costs requested, Match to be provided, evidence that Direct Activity Cost limitations are not exceeded, and evidence that any duplication of benefit is addressed;

(3) Verification of environmental clearance;

(4) A copy of the Household's intake application on a form prescribed by the Department;

(5) Certification of the income eligibility of the Household signed by the Administrator, and all Household members age 18 or over, and including the date of the income eligibility determination. Administrator must submit documentation used to determine the income and rental subsidy of the Household;

(6) Identification of Lead-Based Paint (LBP);

(7) If applicable, documentation to address or resolve any potential conflict of interest or duplication of benefit;

(8) Project address within 90 days of preliminary set up approval, if applicable;

(9) For Households assisted under the Disaster set-aside, verification that the household was displaced or is at-risk of displacement as a direct result of a Federal, State, or Locally declared disaster approved by the Department within four years of the date of Activity submission; and

(10) Any other documentation necessary to evidence that the Activity meets the program requirements.

(b) Disbursement of funds. The Administrator must comply with all of the requirements described in paragraphs (1) - (7) of this subsection for a request for disbursement of funds. Submission of documentation related to the Administrator compliance with requirements described in paragraphs (1) - (7) of this subsection may be required with a request for disbursement:

(1) If required or applicable, a maximum of 50 percent of Direct Activity Costs for an Activity may be drawn before providing evidence of Match. Thereafter, each Administrator must provide evidence of Match, including the date of provision, in accordance with the percentage of Direct Activity Costs disbursed;

(2) Certification that its fiscal control and fund accounting procedures are adequate to assure the proper disbursement of, and account-

ing for, funds provided, no Person that would benefit from the award of HOME funds has satisfied the Applicant's cash reserve obligation or made promises in connection therewith; that each request for disbursement of HOME funds is for the actual cost of providing a service and that the service does not violate any conflict of interest provisions;

(3) Expenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness of each expenditure submitted for reimbursement. The Department may request Administrator to make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of HOME funds to the Administrator or Developer as may be necessary or advisable for compliance with all Program Requirements;

(4) With the exception of a maximum of 25 percent of the total funds available for administrative costs, the request for funds for administrative costs must be proportionate to the amount of Direct Activity Costs requested or already disbursed;

(5) Monthly subsidy may not be requested earlier than the tenth day of the month prior to the upcoming subsidized month;

(6) For final disbursement requests, submission of documentation required for Activity completion reports; and

(7) The final request for disbursement must be submitted to the Department with support documentation no later than 60 days after the termination date of the Contract in order to remain in compliance with Contract and eligible for future funding. The Department shall not be obligated to pay for costs incurred or performances rendered after the termination date of a Contract.

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

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## SUBCHAPTER F. SINGLE FAMILY DEVELOPMENT PROGRAM

### 10 TAC §§23.60 - 23.62

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed new sections affect no other code, article, or statute.

§23.60. Single Family Development (SFD) Threshold and Selection Criteria.

All Applicants and Applications must submit or comply with this section.

(1) An Application for Community Housing Development Organization (CHDO) certification. Applicants must meet the require-

ment for CHDO certification as defined in §13.2 of this Title (relating to the Multifamily Direct Loan Rule).

(2) The Applicant must provide:

(A) evidence of a line of credit or equivalent tool of at least \$80,000 from a financial institution that will be available for use during the proposed development activities; or

(B) a letter from a third party Certified Public Accountant (CPA) verifying the capacity of the owner or developer to provide at least \$80,000 as a short term loan for development; and

(C) a letter from the developer's or owner's bank(s) confirming funds amounting to at least \$80,000 is available.

(3) A proposed development plan that is consistent with the requirements of this Chapter, all other federal and state rules, and includes:

(A) a floor plan and front exterior elevation for each proposed unit which reflects the exterior building composition;

(B) a FEMA Issued Flood Map that identifies the location of the proposed site(s);

(C) letters from local utility providers, on company letterhead, confirming each site has access to the following services: water and wastewater, sewer, electricity, garbage disposal and natural gas, if applicable;

(D) documentation of site control of each proposed lot: A recorded warranty deed with corresponding executed settlement statement; or a contract or option for the purchase of the proposed lots that is valid for at least 120 days from the date of application submission; and

(E) an "as vacant" appraisal of at least one of the proposed lots if: The Applicant has an Identity of Interest with the seller or current owner of the property; or any of the proposed property is part of a newly developed or under-development subdivision in which at least three other third-party sales cannot be evidenced. The purchase price of any lot in which the current owner has an Identity of Interest must not exceed the appraised value of the vacant lot at the time of Activity submission. The appraised value of the lot may be included in the sales price for the homebuyer transaction.

(4) The Department may prioritize Applications or otherwise incentivize Applications that partner with other lenders to provide permanent purchase money financing for the purchase of units developed with funds provided under this subchapter.

§23.61. Single Family Development (SFD) General Requirements.

(a) Program funds under this subchapter may be used for the Development of new single family housing for homeownership that complies with affordability requirements as defined at 24 CFR §92.254.

(b) Program funds under this subchapter are only eligible to be administered by a CHDO certified as such by the Department. A separate grant for CHDO operating expenses may be awarded to CHDOs that receive a Contract award if funds are provided for this purpose in the NOFA. A CHDO may not receive more than one grant of CHDO operating funds in an amount not to exceed \$50,000 within any one year period, and may not draw more than \$25,000 in CHDO operating funds in any twelve month period from any source, including CHDO operating funds from other HOME Participating Jurisdictions.

(c) The Household's income must not exceed 80 percent AMFI.

(d) Each unit must meet the design and quality requirements described in paragraphs (1) - (5) of this subsection:

(1) Current applicable International Residential Code, local codes, ordinances, and zoning ordinances in accordance with 24 CFR §92.251(a);

(2) Include the following amenities: Wired with RG-6 COAX or better and CAT3 phone cable or better to each bedroom and living room; Blinds or window coverings for all windows; Disposal and Energy-Star or equivalently rated dishwasher (must only be provided as an option to each Household); Oven/Range; Exhaust/vent fans (vented to the outside) in bathrooms; Energy-Star or equivalently rated lighting in all rooms, which may include LED bulbs. The living room and each bedroom must contain at least one ceiling lighting fixture and wiring must be capable of supporting ceiling fans; and Paved off-street parking for each unit to accommodate at least one mid-sized car and access to on-street parking for a second car;

(3) Contain no less than two bedrooms. Each unit must contain complete physical facilities and fixtures for living, sleeping, eating, cooking, and sanitation;

(4) Each bedroom must be no less than 100 square feet; have a length or width no less than 8 feet; be self contained with a door; have at least one window that provides exterior access; and have at least one closet that is not less than two feet deep and three feet wide and high enough to contain at least five feet of hanging space; and

(5) Be no less than 800 total net square feet for a two bedroom home; no less than 1,000 total net square feet for a three bedroom and two bathroom home; and no less than 1,200 total net square feet for a four bedroom and two bathroom home.

(e) Housing proposed to be constructed under this subchapter must meet the requirements in Chapters 20 and 21 of this Title and plans submitted with the Application must be certified by a licensed architect or engineer.

(f) The total hard construction costs are limited to \$120 per square foot of conditioned space and \$135,000 for units with three or fewer bedrooms and the lesser of \$120 per square foot of conditioned space or \$150,000 units with four or more bedrooms. Not more than once per year, the Board in its sole discretion, may increase or decrease by up to 5 percent of the limitation for hard construction costs. Total Activity costs may not exceed HUD Subsidy Limits. Current dollar amounts under this subsection will be reflected on the Department's website.

(g) In addition to the Direct Activity Costs allowable under subsection (f) of this section, a sum not to exceed \$15,000 may be used to pay for any or all of the following, as applicable:

(1) Necessary environmental mitigation as identified during the Environmental review process;

(2) Installation of an aerobic septic system; and

(3) Homebuyer requests for accessibility features.

(h) Developer fees (including consulting fees) are limited to 15 percent of the total hard construction costs. The developer fee will be reduced by one percent per month or partial month that the construction period exceeds the original term of the construction period financing.

(i) General Contractor Fees are limited to 15 percent of the total hard construction costs. The General Contractor is defined as one who contracts for the construction of an entire development Activity, rather than a portion of the work. The General contractor hires subcontractors, such as plumbing contractors, electrical contractors, etc., coordinates all work, and is responsible for payment to the subcontractors. A prime subcontractor will also be treated as a General Contractor, and any fees payable to the prime subcontractor will be treated as fees

to the General Contractor, in the scenarios described in paragraphs (1) and (2) of this subsection:

(1) Any subcontractor, material supplier, or equipment lessor receiving more than 50 percent of the contract sum in the construction contract will be deemed a prime subcontractor; or

(2) If more than 75 percent of the contract sum in the construction contract is subcontracted to three or fewer subcontractors, material suppliers, and equipment lessors, such parties will be deemed prime subcontractors.

(j) Construction period financing for each unit shall be structured as a zero percent interest loan with a 12-month term. The maximum construction loan amount may not exceed the total development cost less developer fees/profit, closing costs associated with the permanent mortgage financing, and ineligible Activity costs. Prior to construction loan closing, a sales contract must be executed with a qualified homebuyer.

(k) In the instance that the total development cost equals more than 100 percent of the appraised value, the portion of the development cost that exceeds 100 percent of the appraised value will be granted to the developer to buy down the purchase price. Reasonable and customary seller closing costs may be provided with HOME funds as a grant to the Developer.

(l) Direct assistance to the buyer will be structured as a first and/or second lien loan(s):

(1) A first-lien, fully amortizing, repayable loan with a 30-year term may be provided by the Department and will initially be evaluated at zero percent interest. The loan amount will not exceed the total development cost combined with reasonable and customary buyer's closing costs. Should the estimated housing payment, including all funding sources, be less than the minimum required housing payment for the minimum term, the Department may charge an interest rate to the homebuyer such that the total estimated housing payment is no less than the required minimum housing payment. In no instance shall the interest rate charged to the homebuyer exceed five percent, and such result may deem the applicant as overqualified for assistance.

(A) The total Mortgage Loan may include costs incurred for the total development cost and Mortgage Loan Closing Costs, exclusive of Match funds.

(B) The total Debt-to-Income Ratio shall not exceed the limitations set forth in Chapter 20 of this Title.

(C) For buyers whose income is equal to or less than 50 percent AMFI, the minimum required housing payment shall be no less than 15 percent of the household's gross income. For homebuyers whose income exceeds 50 percent AMFI, the minimum required housing payment shall be no less than 20 percent of the household's gross income.

(2) Downpayment and closing costs assistance is limited to the lesser of downpayment required by a third-party lender and reasonable and customary buyer's closing costs, or the amount required to ensure affordability of the HOME financing. Downpayment and closing cost assistance may not exceed ten percent of the total development cost and shall be structured as a five or ten-year deferred, forgivable loan with a subordinate lien, in accordance with the required federal affordability period.

(3) A first lien conventional mortgage not provided by the Department must meet the mortgage financing requirements outlined in Chapter 20 of this Title.

(m) Earnest money is limited to no more than \$1,000, which may be credited to the homebuyer at closing, but may not be reimbursed as cash.

(n) If a Household should become ineligible or otherwise cease participation and a replacement Household is not located within 90 days of the end of the construction period, all additional funding, closings, and draws on the award will cease and the Department will require the Applicant to repay any outstanding construction debt in full.

(o) The Division Director may approve the use of alternative floor plans or lots from those included in the approved Application, provided the requirements of this section can still be met and such changes do not materially affect the total budget.

(p) To ensure affordability, the Department will impose resale or recapture provisions established in this Chapter.

§23.62. Single Family Development (SFD) Administrative Requirements.

(a) Commitment or Reservation of Funds. The Administrator must submit true and correct information, certified as such, with a request for the Commitment of Funds as described in paragraphs (1) - (12) of this subsection:

(1) Head of Household name and address of housing unit for which assistance is being requested;

(2) A budget that includes the amount of Activity funds specifying the acquisition cost, construction costs, contractor fees, and developer fees, as applicable. A maximum of five percent of hard construction costs for contingency items, proposed Match to be provided, evidence that Activity Cost limitations are not exceeded, and evidence that any duplication of benefit is addressed;

(3) Verification of environmental clearance;

(4) A copy of the Household's intake application on a form prescribed by the Department;

(5) Certification of the income eligibility of the Household signed by the Administrator and all Household members age 18 or over, and including the date of the income eligibility determination. All documentation used to determine the income of the Household must be provided;

(6) Project cost estimates, construction contracts, and other construction documents necessary, in the Department's sole determination, to ensure applicable property standard requirements will be met at completion;

(7) Identification of Lead-Based Paint (LBP) if site remediation is needed;

(8) Executed sales contract and documentation that the first lien mortgage meets the eligibility requirements;

(9) Evidence that the housing unit will be located outside the 100-year floodplain;

(10) If applicable, documentation to address or resolve any potential conflict of interest, Identity of Interest, duplication of benefit, or floodplain mitigation;

(11) Appraisal, which includes post construction improvements; and

(12) Any other documentation necessary to evidence that the Activity meets the program requirements.

(b) Construction Loan closing. The Administrator must submit the documents described in paragraphs (1) - (2) of this subsection,

with a request for the preparation of loan closing with the request for the Commitment of Funds:

(1) A title commitment to issue a title policy that evidences the property will transfer with no tax lien, child support lien, mechanic's or materialman's lien or any other restrictions or encumbrances that impair the good and marketable nature of title to the ownership interest and that the definition of Homeownership will be met. The effective date of the title commitment must be no more than 60 days prior to the date of project submission. Commitments that expire prior to execution of closing must be updated at closing and must not have any adverse changes in order to close; and

(2) Within 90 days after the loan closing date, the Administrator must submit to the Department the original recorded deed of trust and transfer of lien, if applicable. Failure to submit these documents within 90 days after the loan closing date will result in the Department withholding payment for disbursement requests.

(c) Disbursement of funds. The Administrator must comply with the requirements described in paragraphs (1) - (11) of this subsection, for a request for disbursement of funds to reimburse eligible costs incurred. Submission of documentation related to the Administrator compliance with requirements described in paragraphs (1) - (11) of this subsection may be required with a request for disbursement:

(1) For construction costs, an interim construction binder advance endorsement not older than the date of the last disbursement of funds or 45 days, whichever is later. For release of retainage a down date endorsement to the mortgagee policy issued to the homebuyer dated at least 40 days after the Construction Completion Date;

(2) If required or applicable, a maximum of 50 percent of Direct Activity Costs for an Activity may be drawn before providing evidence of Match. Thereafter, each Administrator must provide evidence of Match, including the date of provision, in accordance with the percentage of Activity funds disbursed;

(3) Property inspections, including photographs of the front, back, and side elevations of the housing unit and at least one picture of each of the kitchen, family room, each bedroom and each bathroom with date and property address reflected on each photo. The inspection must be signed and dated by the inspector and Administrator or Developer;

(4) Certification that its fiscal control and fund accounting procedures are adequate to assure the proper disbursement of, and accounting for, funds provided, no Person that would benefit from the award of HOME funds has provided a source of Match or has satisfied the Applicant's cash reserve obligation or made promises in connection therewith; that each request for disbursement of HOME funds is for the actual cost of providing a service and that the service does not violate any conflict of interest provisions;

(5) Original, executed, legally enforceable loan documents containing remedies adequate to enforce any applicable affordability requirements. Original documents must evidence that such agreements have been recorded in the real property records of the county in which the housing unit is located and the original documents must be returned, duly certified as to recordation by the appropriate county official;

(6) Expenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness for expenditures submitted for reimbursement. The Department may request Administrator or Developer to make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of HOME funds

to Administrator or Developer as may be necessary or advisable for compliance with all Program Requirements;

(7) Table funding requests must be submitted to the Department with complete documentation no later than 14 days prior to the anticipated loan closing date. Such a request must include a draft settlement statement, title company payee identification information, the Administrator or Developer's authorization for disbursement of funds to the title company, request letter from title company to the Comptroller of Public Accounts with bank account wiring instructions, and invoices for costs being paid at closing;

(8) Include the withholding of ten percent of hard construction costs for retainage. Retainage will be held until at least 40 days after the Construction Completion Date;

(9) For final disbursement requests, submission of documentation required for Activity completion reports;

(10) The final request for disbursement must be submitted to the Department with support documentation no later than 60 days after the termination date of the Contract in order to remain in compliance with Contract and eligible for future funding. The Department shall not be obligated to pay for costs incurred or performances rendered after the termination date of a Contract; and

(11) For costs associated with insurance policies, including title policies and homeowner's insurance policies, charged as Activity costs, evidence of payment of the cost must be submitted with the retainage request.

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

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Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

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For further information, please call: (512) 475-3959



## SUBCHAPTER G. HOMEBUYER ASSISTANCE WITH NEW CONSTRUCTION (HANC)

### 10 TAC §§23.70 - 23.72

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed new sections affect no other code, article, or statute.

#### §23.70. Homebuyer Assistance with New Construction (HANC) Threshold and Selection Criteria.

(a) Threshold Match requirement. The Department shall use population figures from the most recently available U.S. Census Bureau's American Community Survey (ACS) as of the date that an Application is first submitted under the NOFA to determine the applicable Threshold Match requirement. The Department may incentivize or provide preference to Applicants committing to provide additional

Threshold Match above the requirement of this subsection. Such incentives may be established as selection criteria in the NOFA. Excluding Applications under the disaster relief and persons with disabilities set asides, Threshold Match shall be required based on the tiers described in paragraphs (1) and (2) of this subsection:

(1) No Threshold Match is required when:

(A) the Service Area includes the entire unincorporated area of a county and where the population of Administrator's Service Area is less than or equal to 20,000 persons; or

(B) the Service Area does not include the entire unincorporated area of a county, and the population of the Administrator's Service Area is less than or equal to 3,000 persons.

(2) One percent of Direct Activity Costs, exclusive of Match, is required as Match for every 1,000 in population up to a maximum of 15 percent.

(b) Cash Reserve Threshold Requirement. When HOME funds will be utilized for construction activities, documentation, as described in paragraphs (1) and (2) of this subsection, must be submitted at the time of Application that demonstrates that the Applicant has at least \$40,000 in cash reserves. The cash reserves may be utilized to facilitate administration of the program, and to ensure the capacity to cover costs prior to reimbursement or costs determined to be ineligible for reimbursement. The amount of the cash reserve commitment must be included in the Applicant's resolution. To meet this requirement, Applicants must submit:

(1) financial statements indicating adequate local unrestricted cash or cash equivalents to utilize as cash reserves and a letter from the Applicant's bank(s) or financial institution(s) indicating that current account balances are sufficient; or

(2) evidence of an available line of credit or equivalent in an amount equal to or exceeding the requirement in this subsection.

(c) Other Threshold and/or Selection criteria for this Activity may be outlined in the NOFA.

#### §23.71. Homebuyer Assistance with New Construction (HANC) General Requirements.

(a) Eligible Activities must meet the ownership requirement in paragraph (1) of this subsection and an Activity described in paragraph (2) of this subsection:

(1) Ownership requirement. A site must be owned by the beneficiary or the HOME Activity must include one of the two following Activities:

(A) Acquisition of existing single family housing or a parcel; or

(B) Refinance of non-owner occupied real property parcel not prohibited for single family housing by zoning or restrictive covenants.

(2) All Activities must include New Construction of a unit of single family housing not occupied by the Household prior to assistance; New Construction described in this subsection includes the purchase and installation of a new unit of Manufactured Housing (MHU).

(b) The unit of housing in any of the Activities described in subsection (a) of this section must be occupied by the assisted Household as their principal residence for a minimum of 15 years from the Construction Completion Date.

(c) If the assisted property is owned by the Household prior to participation, the Household must be current on any existing Mortgage Loans and taxes, and the property cannot have any existing home equity

loan liens. HOME funds may not be utilized to refinance loans made or insured by any federal program.

(d) The purchase price of acquired property and the post-improvement value of the unit may not exceed the limitations set forth in 24 CFR §92.254. Compliance with the purchase price limitation must be evidenced prior to loan closing. Compliance with the post-improvement value limitation must be evidenced with a final appraisal of the completed project prior to release of retainage.

(e) Activity Costs. Total Activity Costs, exclusive of Match funds, are limited to an amount not to exceed the federal subsidy limitations defined in 24 CFR §92.250. Direct Activity Costs, exclusive of Match and leverage, for construction are limited to:

(1) Construction of new site-built housing: The Direct Activity Costs are not restricted beyond the Total Activity Costs as identified in this subsection; and

(2) Placement of an energy efficient MHU: \$90,000.

(f) In addition to the Direct Activity Costs allowable under subsection (e) of this section, a sum not to exceed \$15,000 and not causing the total subsidy to exceed the limitations set forth by 24 CFR §92.250 may be requested and, if approved, used to pay for any or all of the following, as applicable:

(1) Necessary environmental mitigation as identified during the Environmental review process;

(2) Installation of an aerobic septic system; and

(3) Homebuyer requests for accessibility features.

(g) Activity soft costs eligible for reimbursement are limited to:

(1) New Construction of site-built housing: no more than \$13,500 per housing unit; or

(2) Replacement with an MHU: no more than \$5,000 per housing unit.

(h) Funds for administrative costs are limited to no more than eight percent of the Direct Activity Costs, exclusive of Match funds.

(i) Homebuyers may choose to obtain financing for the acquisition or construction, or any combination thereof, from a third-party lender so long as the loan meets the requirements of Section 20.13 of this Title (relating to Loan, Lien and Mortgage Requirements for Activities).

(j) Direct assistance will be structured as a fully amortizing, repayable loan and will initially be evaluated at zero percent interest. The minimum loan term shall be equal to the required federal affordability period based on the HOME investment, and shall be calculated by setting the total estimated housing payment (including principal, interest, property taxes, insurance, and any other homebuyer assistance), equal to at least the minimum required housing payment. Should the estimated housing payment, including all funding sources, be less than the minimum required housing payment for the minimum term, the Department may charge an interest rate to the homebuyer such that the total estimated housing payment is no less than the required minimum housing payment. In no instance shall the interest rate charged to the homebuyer exceed five percent and such result may deem the applicant as overqualified for assistance. The term shall not exceed 30 years and not be less than 15 years.

(1) The total Mortgage Loan may include costs incurred for Acquisition or Refinance, Mortgage Loan closing costs, and Direct Activity Costs, exclusive of Match funds.

(2) The total Debt-to-Income Ratio shall not exceed the limitations set forth in Chapter 20 of this Title.

(3) For buyers whose income is equal to or less than 50 percent AMFI, the minimum required housing payment shall be no less than 15 percent of the household's gross income. For homebuyers whose income exceeds 50 percent AMFI, the minimum required housing payment shall be no less than 20 percent of the household's gross income.

(k) Earnest money may be credited to the homebuyer at closing, but may not be reimbursed as cash. HOME funds may be used to pay other reasonable and customary closing costs that are HOME eligible costs.

(l) To ensure affordability, the Department will impose recapture provisions established in this Chapter.

(m) For New Construction, site-built housing units must meet or exceed the 2000 International Residential Code and all applicable local codes, standards, ordinances, and zoning requirements. In addition, New Construction housing is required to meet 24 CFR §92.251(a)(2) as applicable. MHUs must be installed according to the manufacturer's instructions and in accordance with Federal and State laws and regulations.

(n) Housing proposed to be constructed under this subchapter must meet the requirements of Chapters 20 and 21 of this Title (relating to Single Family Programs Umbrella Rule and Minimum Energy Efficiency Requirements for Single Family Construction Activities, respectively) and must be certified by a licensed architect or engineer.

(1) To the extent that a set of architectural plans are generated and used by an Applicant for more than one home site, the Department will reimburse only for the first time a set of architectural plans is used, unless any subsequent site specific fees are paid to a Third Party architect, or a licensed engineer for the reuse of the plans on that subsequent specific site.

(2) A NOFA may include incentives or otherwise require architectural plans to incorporate "green building" elements.

§23.72. Homebuyer Assistance with New Construction (HANC) Administrative Requirements.

(a) Commitment or Reservation of Funds. The Administrator must submit the true and complete information, certified as such, with a request for the Commitment or Reservation of Funds as described in paragraphs (1) - (15) of this subsection:

(1) Head of Household name and address of housing unit for which assistance is being requested;

(2) A budget that includes the amount of Activity funds specifying the acquisition costs, construction costs, soft costs and administrative costs requested, a maximum of five percent of hard construction costs for contingency items, proposed Match to be provided, evidence that Direct Activity Cost and Soft Cost limitations are not exceeded, and evidence that any duplication of benefit is addressed;

(3) Verification of environmental clearance from the Department;

(4) A copy of the Household's intake application on a form prescribed by the Department;

(5) Certification of the income eligibility of the Household signed by the Administrator and all Household members age 18 or over, and including the date of the income eligibility determination. All documentation used to determine the income of the Household must be provided;

(6) Project cost estimates, construction contracts, and other construction documents necessary to ensure applicable property standard requirements will be met at completion;

(7) Identification of any Lead-Based Paint (LBP) if activity involves an existing unit and certification that LBP will be mitigated as required by 24 CFR §92.355;

(8) Evidence that the housing unit will be located outside of the 100-year floodplain;

(9) If applicable, documentation to address or resolve any potential conflict of interest, Identity of Interest, or duplication of benefit;

(10) Information necessary to draft Mortgage Loan documents, including issuance of an SOL;

(11) Life event documentation, as applicable, and all information necessary to prepare any applicable affidavits such as marital status and heirship;

(12) Documentation of homebuyer completion of a homebuyer counseling program/class provided by a HUD certified housing counselor;

(13) For Activities involving acquisition of real property:

(A) A title commitment to issue a title policy that evidences that the property will transfer with no tax lien, child support lien, mechanics or materialman's lien or any other restrictions or encumbrances that impair the good and marketable nature of title to the ownership interest and that the definition of Homeownership will be met. The effective date of the title commitment must be no more than 60 days prior to the date of project submission. Commitments that expire prior to execution of closing must be updated at closing and must not have any adverse changes in order to close;

(B) Executed sales contract; and

(C) A loan estimate or letter from any other lender confirming that the loan terms and closing costs will be consistent with the executed sales contract, the first lien Mortgage Loan requirements, and the requirements of this Chapter;

(14) For Activities that do not involve acquisition of real property:

(A) A title commitment or policy, or a down date endorsement to an existing title policy, and the actual documents, or legible copies thereof, establishing the Household's ownership, such as a warranty deed or ground lease for a 99-year leasehold. The effective date of the title commitment must be no more than 60 days prior to the date of project submission. Title commitments for loan projects that expire prior to the loan closing date must be updated and must not have any adverse changes. These documents must evidence the definition of Homeownership is met;

(B) A tax certificate that evidences a current paid status;

(C) Written consent from all Persons who have a valid lien or ownership interest in the Property;

(D) Consent to demolish from any existing Mortgage Loan lien holders and consent to subordinate to the Department's loan, if applicable; and

(15) Any other documentation necessary to evidence that the Activity meets the Program requirements.

(b) Loan closing. In addition to the documents required under subsection (a) of this section, the Administrator must submit the appraisal or other valuation method approved by the Department which

establishes the post construction value of improvements prior to the issuance of loan documents by the Department.

(c) Disbursement of funds. The Administrator must comply with all of the requirements described in paragraphs (1) - (11) of this subsection, for a request for disbursement of funds to reimburse eligible costs incurred. Submission of additional documentation related to the Administrator's compliance with requirements described in paragraphs (1) - (11) of this subsection, may be required with a request for disbursement:

(1) For construction costs that are part of a loan subject to the requirements of this subsection, a down date endorsement to the title policy not older than the date of the last disbursement of funds or 45 days, whichever is later, is required. For release of retainage, the down date endorsement must be dated at least 40 days after the Construction Completion Date;

(2) If applicable, a maximum of 50 percent of Activity funds for an Activity may be drawn before providing evidence of Match. Thereafter, each Administrator must provide evidence of Match, including the date of provision, in accordance with the percentage of Activity funds disbursed;

(3) Property inspections, including photographs of the front, back, and side elevations of the housing unit and at least one picture of each of the kitchen, family room, each bedroom, and each bathroom with date and property address reflected on each photo, are required to be submitted. The inspection must be signed and dated by the inspector and Administrator;

(4) Certification of the following is required:

(A) That its fiscal control and fund accounting procedures are adequate to assure the proper disbursement of, and accounting for, funds provided;

(B) That no Person that would benefit from the award of HOME funds has satisfied the Applicant's cash reserve obligation or made promises in connection therewith;

(C) That each request for disbursement of HOME funds is for the actual cost of providing a service; and

(D) That the service does not violate any conflict of interest provisions;

(5) Original, fully executed, legally enforceable loan documents for each assisted Household containing remedies adequate to enforce any applicable affordability requirements are required. Certified copies of fully executed, recorded loan documents that are required to be recorded in the real property records of the county in which the housing unit is located must be returned to the Department, duly certified as to recordation by the appropriate county official. This documentation prior to disbursement is not applicable for funds made available at the loan closing;

(6) Expenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness for expenditures submitted for reimbursement. The Department may request Administrator to make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of HOME funds to Administrator as may be necessary or advisable for compliance with all program requirements;

(7) The request for funds for administrative costs must be proportionate to the amount of Direct Activity Costs requested or already disbursed;

(8) Disbursement requests must include the withholding of ten percent of hard construction costs for retainage. Retainage will be held until at least 40 days after the Construction Completion Date;

(9) For final disbursement requests, the following is required:

(A) Submission of documentation required for Activity completion reports and evidence that the demolition or, if an MHU, salvage and disposal of all dilapidated housing units on the lot;

(B) Certification or other evidence acceptable to Department that the replacement house, whether site-built or MHU, was constructed or placed on and within the same lot for which ownership was established and on and within the same lot secured by the loan; and

(C) A final appraisal of the property after completion of improvements;

(10) The final request for disbursement must be submitted to the Department with support documentation no later than 60 days after the termination date of the Contract in order to remain in compliance with the Contract and eligible for future funding. The Department shall not be obligated to pay for costs incurred or performances rendered after the termination date of a Contract; and

(11) For costs associated with insurance policies, including title policies and homeowner insurance policies charged as Activity costs, evidence of payment of the cost must be submitted with the retainage request.

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

Filed with the Office of the Secretary of State on December 8, 2023.

TRD-202304632

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: January 21, 2024

For further information, please call: (512) 475-3959



## CHAPTER 24. TEXAS BOOTSTRAP LOAN PROGRAM RULE

### 10 TAC §§24.1 - 24.12

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 24, Texas Bootstrap Loan Program Rule, §§24.1 - 24.12. The purpose of the proposed repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

The Department has analyzed this proposed rulemaking and the analysis is described below for each category of analysis performed.

#### a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed repeal would be in effect, the proposed repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readop-

tion making changes to an existing activity, administration of the Texas Bootstrap Loan Program.

2. The proposed repeal does not require a change in work that would require the creation of new employee positions, nor is the proposed repeal significant enough to reduce work load to a degree that any existing employee positions are eliminated.

3. The proposed repeal does not require additional future legislative appropriations.

4. The proposed repeal does not result in an increase in fees paid to the Department, nor a decrease in fees paid to the Department.

5. The proposed repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The proposed action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, the administration of the Texas Bootstrap Loan Program.

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

8. The proposed repeal will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated this proposed repeal and determined that the proposed repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The proposed repeal does not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the proposed repeal as to its possible effects on local economies and has determined that for the first five years the proposed repeal would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of the repealed chapter would be an updated and more germane rule. There will not be economic costs to individuals required to comply with the repealed chapter.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson has also determined that for each year of the first five years the proposed repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held December 22, 2023, to January 22, 2024, to receive input on the proposed repealed chapter. Written comments



may be submitted to the Texas Department of Housing and Community Affairs, Attn: Abigail Versyp, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email [abigail.versyp@tdhca.state.tx.us](mailto:abigail.versyp@tdhca.state.tx.us). ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Central time, January 22, 2024.

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

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

- §24.1. *Purpose.*
- §24.2. *Definitions.*
- §24.3. *Allocation of Funds.*
- §24.4. *Administrator Requirements.*
- §24.5. *Program Activities.*
- §24.6. *Prohibited Fees.*
- §24.7. *Distribution of Funds.*
- §24.8. *Criteria for Funding and Reservations.*
- §24.9. *Program Administration.*
- §24.10. *Owner-Builder Qualifications.*
- §24.11. *Property Guidelines and Related Issues.*
- §24.12. *Administrator Certification.*

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

Filed with the Office of the Secretary of State on December 8, 2023.

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Bobby Wilkinson  
Executive Director  
Texas Department of Housing and Community Affairs  
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For further information, please call: (512) 475-3959



## 10 TAC §§24.1 - 24.12

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 24, Texas Bootstrap Loan Program Rule, §§24.1 - 24.12. The purpose of the proposed new rule is to implement a more germane rule and better align administration to state requirements.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this proposed rulemaking and the analysis is described below for each category of analysis performed.

### a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed new rule would be in effect:

1. The proposed new rule does not create or eliminate a government program, but relates to the re-adoption of this rule which

makes changes to administration of the Texas Bootstrap Loan Program

2. The proposed new rule does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.

3. The proposed new rule does not require additional future legislative appropriations.

4. The proposed new rule does not result in an increase in fees paid to the Department nor a decrease in fees paid to the Department.

5. The proposed new rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.

6. The proposed new rule will not expand or repeal an existing regulation.

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

8. The proposed new rule will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this proposed new rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code §2306.111.

1. The Department has evaluated this rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. There are approximately 20 rural communities currently participating in the Texas Bootstrap Loan Program that are subject to the proposed new rule for which no economic impact of the rule is projected during the first year the rule is in effect.

3. The Department has determined that because the proposed new rule serves to clarify and update existing requirements and does not establish new requirements for which there would be an associated cost, there will be no economic effect on small or micro-businesses or rural communities

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The proposed new rule does not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the proposed new rule has no economic effect on local employment because the rule serves to clarify and update existing requirements and does not establish new requirements or activities that may positively or negatively impact local economies.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that participation in the Texas Bootstrap Loan Program is

at the discretion of the eligible subrecipients, there are no "probable" effects of the new rule on particular geographic regions.

e. **PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5).** Bobby Wilkinson, Executive Director, has determined that, for each year of the first five years the proposed new rule is in effect, the public benefit anticipated as a result of the rule will be a more germane rule that better aligns administration to state requirements. There will not be any economic cost to any individuals required to comply with the proposed new rule because the processes described by the rule have already been in place through the rule found at this chapter being repealed.

f. **FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4).** Mr. Wilkinson has also determined that for each year of the first five years the proposed new rule is in effect, enforcing or administering the rule does not have any foreseeable implications related to costs or revenues of the state or local governments because the rule updates and clarifies existing requirements and does not impose new requirements.

**REQUEST FOR PUBLIC COMMENT.** The public comment period will be held December 22, 2023, to January 22, 2024, to receive input on the proposed new rule. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Abigail Versyp, Rule Comments, P.O. Box 13941, Austin, Texas 8711-3941, by fax to (512) 475-0220, or email [abigail.versyp@tdhca.state.tx.us](mailto:abigail.versyp@tdhca.state.tx.us). **ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Central time, January 22, 2024.**

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

Except as described herein the proposed new rules affect no other code, article, or statute.

#### §24.1. Purpose.

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

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

#### §24.2. Definitions.

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

Construction Activities), and Chapter 26 of this title (relating to Texas Housing Trust Fund Rule).

(1) Capital Recovery Fee--A charge or assessment imposed by a political subdivision against new development in order to generate revenue for funding or recouping the costs of capital improvements or facility expansions necessitated by and attributable to the new development. The term includes amortized charges, lump-sum charges, contributions in aid of construction, and any other fee that functions as described by this definition.

(2) Loan Commitment--A written agreement between the Department and Administrator that memorializes the term of the commitment of funds for a specific Mortgage Loan to a Qualified Household.

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

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

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

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

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

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

#### §24.3. Allocation of Funds.

(a) The Department administers all Texas Bootstrap Loan Program funds provided to the Department in accordance with Tex. Gov't Code, Chapter 2306, Subchapter FF.

(b) The Department may make loans for the Texas Bootstrap Loan Program from:

(1) Available funds in the Texas Housing Trust Fund established under Tex. Gov't Code, §2306.201; or

(2) Federal block grants that may be used for the purposes of this chapter.

(c) Each state fiscal year the Department shall transfer at least \$3 million (or another amount if so required by Tex. Gov't Code or the General Appropriations Act) to the Texas Bootstrap Loan Program from money received under federal block grants or from available funds in the Texas Housing Trust Fund.

(d) The Department may use up to 10% of Program funds available per state fiscal year to enhance the ability of tax-exempt

organizations described by Tex. Gov't Code, §2306.755(a), to increase the number of such organizations that are able to implement the Program. The Department shall use that available revenue to provide financial assistance, technical training and management support.

#### §24.4. Administrator Requirements.

(a) Eligible Administrators. The following organizations or entities are eligible to become Administrators of the Texas Bootstrap Loan Program:

(1) Colonia Self Help Centers established under Tex. Gov't Code, Chapter 2306, Subchapter Z; or

(2) Nonprofit Organizations certified by the Department pursuant to Tex. Gov't Code, §2306.755.

(b) Eligibility requirements. The Administrator must enter into a Reservation Agreement with the Department in order to be eligible to submit an Activity through the Reservation System. The Administrator must have the capacity to administer and manage resources as evidenced by previous experience of managing state or federal programs.

#### §24.5. Program Activities.

(a) Texas Bootstrap Loan Program funds may be used to finance affordable housing and promote homeownership through acquisition, New Construction, or Rehabilitation of single family residential housing subject to Program Manual and Survey requirements. Administrators may reserve funds by submitting a loan application on behalf of an Owner-Builder Applicant for the Texas Bootstrap Loan Program.

(b) Manufactured Housing Units are not eligible housing types for the Texas Bootstrap Loan Program.

(c) All Texas Bootstrap Loan Program Loans will be evidenced by a promissory note and will be secured by a lien on the subject property. The following Activities are permitted by the Department under the Program:

(1) Purchase Money Loans. All Program funds are used to finance the purchase of a single-family dwelling unit and/or a piece of real property. The Department makes a loan to the Owner-Builder and the Owner-Builder's repayment obligation begins immediately. In certain situations, eligible closing costs may be financed by the loan proceeds;

(2) Residential Construction Loans. This transaction is treated as a purchase money loan and is a one-time closing with the Owner-Builder. Construction period may be up to 12 months;

(3) Interim Construction (Closing with Administrator) Loans. Interim construction is a commercial transaction between the Administrator and the Department that is with respect to a specific Owner-Builder. The construction period may be up to 12 months. Once the construction of the home is completed, the closing with the Owner-Builder will take place as a purchase money loan; and

(4) Purchase of Mortgage Loans. The Department may purchase and take assignments from Mortgage lenders of notes and other obligations evidencing loans or interest in loans for purchase money transactions as described in paragraph (1) of this subsection.

#### §24.6. Prohibited Fees.

The fees described in paragraphs (1) - (8) of this section are prohibited Program fees and may not be charged directly to the Owner-Builder; however, these fees may be charged as an allowable fee by a third party lender or servicer for a Texas Bootstrap Loan Program loan:

(1) Payment of delinquent property taxes or related fees or charges on properties to be assisted with Texas Bootstrap Loan Program funds;

(2) Loan origination fees;

(3) Application fees;

(4) Discount fees;

(5) Underwriter fees;

(6) Loan processing fees;

(7) Loan servicing fees; and

(8) Other fees not approved by the Department in writing prior to expenditure.

#### §24.7. Distribution of Funds.

(a) Set-Asides. In accordance with Tex. Gov't Code §2306.753(d), at least two-thirds of the dollar amount of Program loans made in each fiscal year must be made to Owner-Builders whose real property is located in a census tract that has a median household income that is not greater than 75% of the median state household income for the most recent year for which statistics are available.

(b) Balance of State. The remaining one-third of the dollar amount of Program loans made may be made to Owner-Builders anywhere in the state.

(c) Loan Priority. The Department may allow an Administrator access to the Reservation System 24 hours prior to all other Administrators for reservations for Owner-Builder Applicants that meet the following criteria:

(1) Annual household income is less than \$17,500; or

(2) Real property is located in a county or municipality that agrees in writing to waive the Capital Recovery Fees, building permit fee or other fees related to the house(s) to be built with the loan proceeds. Owner-Builder Applicant will not receive priority if there are none of the fees described in §24.6 of this chapter (relating to Prohibited Fees) imposed by the county or municipality or water supply company.

#### §24.8. Criteria for Funding and Reservations.

(a) The Department will distribute Program funds in accordance with the Texas Housing Trust Fund (Texas HTF) Plan in effect at the time. The Department will publish an announcement for a NOFA in the Texas Register and post the NOFA on the Department's website. The rules referenced in §24.1 of this Chapter (relating to Purpose) and the NOFA will establish and define the terms, conditions, and maximum Reservation amounts allowed per Administrator. The Department may also set a deadline for receiving Reservations or Applications. The NOFA will indicate the approximate amount of available funds. The Department may increase the amount of funds made available through the NOFA from time to time without republishing the NOFA in the Texas Register. Such increases will be reflected on the Department's website.

(b) Any Reservation containing false information will be disqualified. The Department will review and process all Reservations in the order received.

(c) Reservations received by the Department in response to a NOFA will be handled as described in paragraphs (1) - (5) of this subsection.

(1) The Department will accept Reservations until all funds under the NOFA have been committed. The Department may limit the eligibility of Reservations in the NOFA.

(2) Each Reservation will be assigned a "received date" based on the date and time the Reservation was entered into the Texas Bootstrap Loan Program Reservation system. Each Reservation will be reviewed in accordance with the Program rules.

(3) Reservations must comply with all applicable Texas Bootstrap Loan Program requirements or regulations established in this chapter. Reservations that do not comply with such requirements may be disqualified. The Administrator will be notified in writing of any cancelled or disqualified Reservations.

(4) If a Reservation contains deficiencies which, in the determination of the Department, require clarification or correction of information submitted at the time of the Reservation, the Department may request clarification or correction in the form of a deficiency notice to the Administrator. If the Administrator is unable to cure any deficiencies within 14 calendar days, the Department may decline to fund the Reservation. The Department may provide one 14 calendar day extension to the curative deadline outlined in the deficiency notice.

(5) Prior to issuing a Loan Commitment, the Department may decline to fund any Reservation entered into the Reservation system if the proposed housing Activities do not, in the Department's sole determination, represent a prudent use of the Department's funds. The Department is not obligated to proceed with any action pertaining to any Reservation which are entered, and may decide it is in the Department's best interest to refrain from committing the funds. If the Department has issued a Loan Commitment, but the Administrator or Owner-Builder Applicant has not complied with all the Program rules and guidelines, the Department may suspend funding until the Administrator or Owner-Builder Applicant has satisfied all requirements of the Program.

#### §24.9. Program Administration.

(a) Pursuant to Tex. Gov't Code §2306.754(b), the Department shall not exceed \$45,000 in household assistance for any Texas Bootstrap Loan Program loan. If it is not possible for an Owner-Builder to purchase necessary real property and build or rehabilitate adequate housing for \$45,000, the Owner-Builder must obtain the additional amounts necessary from other sources, which may include other types of Department funds, excluding Texas HTF.

(b) The Department shall make loans for Owner-Builder Applicants to enable them to:

(1) Build new residential housing, including the purchase or refinance of real property, if needed, on which to undertake such Activity; or

(2) Improve existing residential housing, including the purchase or refinance of real property, if needed, on which to undertake such Activity.

(c) Upon approval by the Department, the Administrator shall enter into, execute, and deliver to the Department the Reservation Agreement. The Department may terminate the Reservation Agreement in whole or in part if the Administrator has not performed as outlined in the Program Rule, NOFA, Reservation Agreement, or Program Manual.

(d) If the Owner-Builder Applicant qualifies for the Program, the Department will issue a Loan Commitment which reserves up to \$45,000 in funds for 12 months from the date of the Loan Commitment. The Owner-Builder Applicant will not be required to re-qualify if the Owner-Builder Applicant closes by the expiration date on the Loan Commitment. If an Owner-Builder Applicant does not close by the expiration date, the Owner-Builder Applicant must re-qualify for the Program; however, the Department may grant an extension of up to 180 days from the expiration date on the original Loan Commitment. If the Owner-Builder Applicant fails to close on the loan after the extension is granted the Reservation or loan will be cancelled.

(e) Roles and responsibilities for administering the Program Contract. Administrators are required to:

(1) Qualify potential Owner-Builders for loans;

(2) Provide Owner-Builder homeownership education classes and ensure provision of HUD-certified housing counseling;

(3) Supervise and assist Owner-Builders to build or Rehabilitate housing;

(4) Facilitate loans made or purchased by the Department under the Program; and

(5) Implement and administer the Program on behalf of the Department.

(f) Loan Servicing Agreement. Administrators may service Program loans originated on behalf of the Department. Administrators servicing Program loans on behalf of the Department must obtain prior approval and enter into a loan servicing agreement with the Department. Administrator certification for a loan servicing agreement expires annually, after which an Administrator in good standing with the Department may apply for recertification of the loan servicing agreement utilizing the recertification application provided by the Department's Loan Servicing section. Loan servicing agreements may be reevaluated from time to time and may be terminated at the discretion of the Department.

(g) First Year Consultation Agreement. If the Department notifies the Administrator that an Owner-Builder has failed to make a scheduled payment due under the Program loan, or other payments due under the Program loan documents, within the first 12 months of funding, the Administrator must meet with the Owner-Builder and provide counseling to assist in bringing the payments current. After such consultation and in the event that the Department and Administrator are not able to bring the Program loan current, the Department in accordance with its administrative rules, may apply appropriate graduated sanctions leading up to, but not limited to, deobligation of funds and future debarment from participation in the Program.

(h) Administrative Fee. The Administrator will be granted a 10% administrative fee upon completion of the house and funding of each Mortgage Loan.

(i) Construction Plans. If the activity is New Construction or reconstruction, Administrator must submit a legible copy of the proposed construction plans for approval by the Department prior to the Administrator accepting applications for Owner-Builder Applicants.

(j) Work Write-up. If Administrator's activity is Rehabilitation, Administrator must adhere to TMCS and submit work write-ups and cost estimates for Department approval prior to construction.

(k) Loan Program Requirements. The Department may purchase or originate loans that conform to the lending parameters and the specific loan Program requirements as described in paragraphs (1) - (6) of this subsection:

(1) Minimum loan amount is \$1,000;

(2) Loan term may not exceed 30 years;

(3) Loan term may not be less than five years;

(4) Loan must be at zero percent (0%) interest for the entire loan term;

(5) When refinancing a Contract for Deed, the Department will not disburse any portion of the Department's loan until the Owner-Builder receives a deed to the property; and

(6) Owner-Builder must have resided in Texas for the preceding six months prior to the date of loan application.

(l) Loan Assumption. A Program loan is assumable if the Department determines that the Owner-Builder Applicant complies with all Program requirements in effect at the time of the assumption.

§24.10. Owner-Builder Qualifications.

The Owner-Builder must:

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

(2) Be qualified as Low Income. Income eligibility of a Household is determined using the "Annual Income" as defined at 24 CFR §5.609, by using the list of income included in HUD Handbook 4350.3 (or most recent version), and excluding from income those items listed in HUD's Updated List of Federally Mandated Exclusions from Income. At least two months of source documentation of earned income must be provided.

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

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

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

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

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

(4) Successfully complete an Owner-Builder homeownership education class and HUD-certified housing counseling prior to loan funding;

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

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

§24.11. Property Guidelines and Related Issues.

(a) A final appraisal is required by the Department on each property prior to loan closing.

(b) Title Commitment.

(1) A copy of the preliminary title report including complete legal description and copies of all schedules, covenants, conditions and restrictions, easements, and any supplements thereto is required at the time of submission, and must not be more than 90 days old.

(2) Title commitments must list the Department's Loan.

(3) The final title commitment or title report submitted to the Department to draft Loan documents should not be more than 30 days old at the time of the submission in order to remain valid and effective at the date of the loan closing. Title commitments older than 90 days are no longer valid and must be updated prior to the date of loan closing.

(c) For acquisition of existing Single Family Housing Unit that will not be rehabilitated, a property inspection will be required to be completed by an inspector licensed by the Texas Real Estate Commission. A copy of the inspection report must be submitted and any deficiencies listed on the report must be corrected prior to closing. Cosmetic issues such as paint, wall texture, etc. may not be required to be corrected if utilizing a self-help construction Program. A copy of the inspection report must be provided to the Owner-Builder Applicant and the Department. The Administrator or the Owner-Builder Applicant will be responsible for the selection and the fee of the licensed inspector.

§24.12. Administrator Certification.

(a) An Administrator must be certified prior to execution of a Reservation Agreement. The term of the Reservation Agreement shall not exceed 36 months, after which an Administrator must reapply for certification and a new Reservation Agreement.

(b) The Department will produce an Application to satisfy the Department's requirements to be certified to administer the Texas Bootstrap Loan Program. The Application will be available on the Department's website. Applications for a Reservation Agreement will include, at a minimum, criteria listed in subsections (c) - (m) of this section.

(c) An Application for certification must be submitted in the format required by the Department.

(d) If the Applicant is a Nonprofit Organization, Applicant must demonstrate:

(1) The Applicant is registered and in good standing with Office of the Secretary of State and the State Comptroller's Office as a nonprofit corporation under the Texas Business Code or a nonprofit organization under any other state not-for-profit/nonprofit statute;

(2) The net earnings of the Applicant may not inure to the benefit of any member, founder, contributor, or individual, as evidenced by charter, Bylaws, or Certificate of Formation or Articles of Incorporation, as applicable;

(3) The Applicant has been granted 501(c)(3) tax-exempt status as a charitable, nonprofit corporation or as a subordinate organization of a central nonprofit corporation under §501(c)(3) of the Internal Revenue Code of 1986, as evidenced by a certificate from the IRS dated 1986 or later. The exemption ruling must be effective on the date of the Application and must continue to be effective while certified as an Administrator.

(4) The Applicant have among its purposes the provision of decent housing that is affordable to low and moderate income people as evidenced by a statement in the organization's charter, Certificate of Formation, Articles of Incorporation, Resolutions, or Bylaws.

(e) The Applicant must conform to the United States Generally Accepted Accounting Principles (GAAP) as evidenced by a notarized statement by the Executive Director or chief financial officer of the organization in a form prescribed by the Department or certification from a Certified Public Accountant.

(f) If the Applicant proposes to provide interim or residential construction funds, it must provide an audited financial statement for the most recent fiscal year or a signed and dated financial statement for the period since last published audit. If the Applicant does not have audited financial statements or a signed and dated financial statement for the period since last published audit must provide a resolution from the Board of Directors that is signed and dated within 6 months from the date of Application and certifies that the accounting procedures used by the organization conform to the GAAP. Certified Administrators that do not have audited financial statements or a signed and dated financial statement for the period since last published audit are restricted to only originating permanent loans and will be ineligible for any interim or residential construction loans, until the Department has reviewed the most current audited financial statements.

(g) The Applicant must demonstrate capacity for carrying out Mortgage Loan origination and self-help housing construction Activities, as evidenced by resumes or statements that describe the experience of key staff members who have successfully completed projects similar to those to be assisted with Texas Bootstrap Loan Program funds; or contract(s) with consultant firms or individuals who have housing experience similar to projects to be assisted with Texas Bootstrap Loan Program funds, to train appropriate key staff of the organization.

(h) Religious or Faith-based Organizations (RFOs) may sponsor an Applicant if the Applicant meets all the requirements of this section. While the governing board of an Applicant sponsored by a religious or a faith-based organization remains subject to all other requirements in this section, the RFO may retain control over appointments to the board. Additionally, RFOs must comply with the following:

(1) Housing developed must be made available exclusively for the residential use of Program beneficiaries, and must be made available to all persons regardless of religious affiliations or beliefs;

(2) Texas Bootstrap Loan Program funds may never be used to support any explicitly religious activities such as worship, religious instruction, or proselytizing; and

(3) Compliance with paragraphs (1) and (2) of this subsection must be evidenced by the Bylaws, charter or Certificate of Formation.

(i) Program Design and Guidelines. The Applicant must have policies for how the Owner-Builders participating in its Program will meet the self-help requirements and guidelines related to qualifying potential Owner-Builders.

(j) The Applicant must provide to the Department the number of houses they are proposing to build, type of proposed financing structure and construction timelines, to evidence its ability to carry out the Program.

(k) The Applicant must provide curriculum related to home-buyer education, as well as evidence of its ability to provide HUD-certified housing counseling, which may be provided by the Administrator or another HUD-certified provider.

(l) The Applicant must be in compliance with 10 TAC §1.403 (relating to Single Audit Requirements), and 10 TAC §20.8 (relating to Fair Housing, Affirmative Marketing and Reasonable Accommodations) at the time of Application.

(m) The Applicant must be in compliance with any existing Contracts awarded by the Department and is subject to the Department's Previous Participation Review process provided for in 10 TAC §1.302 (relating to Previous Participation Reviews for Department Program Awards Not Covered by §1.301 of this Subchapter) and

§1.303 (relating to Executive Award and Review Advisory Committee (EARAC) of this title.

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 December 8, 2023.

TRD-202304635

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: January 21, 2024

For further information, please call: (512) 475-3959



## CHAPTER 26. TEXAS HOUSING TRUST FUND RULE

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 26, Texas Housing Trust Fund Rule, §§26.1 - 26.7 and 26.20 - 26.28. The purpose of the proposed repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

The Department has analyzed this proposed rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed repeal would be in effect, the proposed repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity, administration of the Texas Housing Trust Fund.

2. The proposed repeal does not require a change in work that would require the creation of new employee positions, nor is the proposed repeal significant enough to reduce work load to a degree that any existing employee positions are eliminated.

3. The proposed repeal does not require additional future legislative appropriations.

4. The proposed repeal does not result in an increase in fees paid to the Department, nor a decrease in fees paid to the Department.

5. The proposed repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The proposed action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, the administration the Texas Housing Trust Fund.

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

8. The proposed repeal will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated this proposed repeal and determined that the proposed repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The proposed repeal does not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the proposed repeal as to its possible effects on local economies and has determined that for the first five years the proposed repeal would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of the repealed chapter would be an updated and more germane rule. There will not be economic costs to individuals required to comply with the repealed chapter.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson has also determined that for each year of the first five years the proposed repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held December 22, 2023, to January 22, 2024, to receive input on the proposed repealed chapter. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Abigail Versyp, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email [abigail.versyp@tdhca.state.tx.us](mailto:abigail.versyp@tdhca.state.tx.us). ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Central time, January 22, 2024.

## SUBCHAPTER A. GENERAL GUIDANCE

### 10 TAC §§26.1 - 26.7

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

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

- §26.1. *Purpose.*
- §26.2. *Definitions.*
- §26.3. *Allocation of Funds.*
- §26.4. *Use of Funds.*
- §26.5. *Prohibited Activities.*
- §26.6. *Administrator Eligibility and Requirements.*
- §26.7. *Conflict of Interest.*

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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Bobby Wilkinson  
Executive Director

Texas Department of Housing and Community Affairs

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For further information, please call: (512) 475-3959



## SUBCHAPTER B. AMY YOUNG BARRIER REMOVAL PROGRAM

### 10 TAC §§26.20 - 26.28

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

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

- §26.20. *Amy Young Barrier Removal Program Purpose.*
- §26.21. *Amy Young Barrier Removal Program Definitions.*
- §26.22. *Amy Young Barrier Removal Program Geographic Dispersion.*
- §26.23. *Amy Young Barrier Removal Program Administrative Requirements.*
- §26.24. *Amy Young Barrier Removal Program Reservation System Requirements.*
- §26.25. *Amy Young Barrier Removal Program Household Eligibility Requirements.*
- §26.26. *Amy Young Barrier Removal Program Property Eligibility Requirements.*
- §26.27. *Amy Young Barrier Removal Program Construction Requirements.*
- §26.28. *Amy Young Barrier Removal Program Project Completion Requirements.*

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

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For further information, please call: (512) 475-3959



## CHAPTER 26. TEXAS HOUSING TRUST FUND RULE

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 26, Texas Housing Trust Fund Rule, §§26.1 - 26.7 and 26.20 - 26.28. The purpose of the proposed new chapter is to implement a more germane rule and better align administration to state requirements.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this proposed rulemaking and the analysis is described below for each category of analysis performed.

**a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.**

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed new rule would be in effect:

1. The proposed rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to administration of the Texas Housing Trust Fund.
2. The proposed new rule does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The proposed new rule changes do not require additional future legislative appropriations.
4. The proposed new rule changes will not result in an increase in fees paid to the Department nor a decrease in fees paid to the Department.
5. The proposed new rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.
6. The proposed new rule will not expand or repeal an existing regulation.
7. The proposed new rule will not increase or decrease the number of individuals subject to the rule's applicability.
8. The proposed new rule will not negatively or positively affect the state's economy.

**b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.** The Department, in drafting this proposed new rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, §2306.111.

1. The Department has evaluated this proposed new rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.
2. There are approximately 20 rural communities currently participating in the Texas Housing Trust Fund that are subject to the proposed new rule for which no economic impact of the rule is projected during the first year the rule is in effect.
3. The Department has determined that because the proposed new rule serves to clarify and update existing requirements and does not establish new requirements for which there would be an associated cost, there will be no economic effect on small or micro-businesses or rural communities.

**c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043.** The proposed new rule does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

**d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).**

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the proposed new rule will be in effect the proposed rule has no economic effect on local employment because the rule serves to clarify and update existing requirements and does not establish new requirements or activities that may positively or negatively impact local economies.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that participation in the programs funded with the Texas Housing Trust Fund is at the discretion of the eligible subrecipients, there are no "probable" effects of the proposed new rule on particular geographic regions.

**e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5).** Bobby Wilkinson, Executive Director, has determined that, for each year of the first five years the proposed new rule is in effect, the public benefit anticipated as a result of the rule will be a more germane rule that better aligns administration to state requirements. There will not be any economic cost to any individuals required to comply with the proposed new rule because the processes described by the rule have already been in place through the rule found at this chapter being repealed.

**f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4).** Mr. Wilkinson has also determined that for each year of the first five years the proposed new rule is in effect, enforcing or administering the rule does not have any foreseeable implications related to costs or revenues of the state or local governments because the rule updates and clarifies existing requirements and does not impose new requirements.

**REQUEST FOR PUBLIC COMMENT.** The public comment period will be held December 22, 2023, to January 22, 2024, to receive input on the proposed new chapter. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Abigail Versyp, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by fax to (512) 475-0220, or email [abigail.versyp@tdhca.state.tx.us](mailto:abigail.versyp@tdhca.state.tx.us). **ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Central time, January 22, 2024.**

## **SUBCHAPTER A. GENERAL GUIDANCE**

### **10 TAC §§26.1 - 26.7**

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

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

#### §26.1. Purpose.

This chapter clarifies the administration of the Texas Housing Trust Fund (Texas HTF). The Texas HTF provides loans, grants or other comparable forms of assistance to income-eligible individuals, families, and households. The Texas HTF is administered in accordance with Tex. Gov't Code, Chapter 2306, Chapter 20 of this title (relating to Single Family Programs Umbrella Rule), and Chapter 24 of this title (relating to Texas Bootstrap Loan Program Rule).

#### §26.2. Definitions.



Definitions may be found in Tex. Gov't Code, Chapter 2306; Chapter 1 of this title (relating to Administration), Chapter 2 of this title (relating to Enforcement), Chapter 20 of this title (relating to Single Family Programs Umbrella Rule), Chapter 21 of this title (relating to Minimum Energy Efficiency Requirements for Single Family Construction Activities), and Chapter 24 of this title (relating to Texas Bootstrap Loan Program Rule), unless the context or the Notice of Funding Availability (NOFA) indicates otherwise.

§26.3. Allocation of Funds.

(a) The Department administers all Texas HTF funds provided to the Department in accordance with Tex. Gov't Code, Chapter 2306. The Department may solicit gifts and grants to endow the fund.

(b) Pursuant to Tex. Gov't Code §2306.202(b), use of the Texas HTF is limited to providing:

(1) Assistance for individuals and families of low and very low income;

(2) Technical assistance and capacity building to nonprofit organizations engaged in developing housing for individuals and families of low and very low income;

(3) Security for repayment of revenue bonds issued to finance housing for individuals and families of low and very low income; and

(4) Subject to the limitations in Tex. Gov't Code §2306.251(c), the Department may also use the fund to acquire property to endow the fund.

(c) Set-Asides. In accordance with Tex. Gov't Code §2306.202(a) and program guidelines:

(1) In each biennium, the first \$2.6 million available through the Texas HTF for loans, grants, or other comparable forms of assistance shall be set aside and made available exclusively for Local Units of Government, Public Housing Authorities, and Nonprofit Organizations;

(2) Any additional funds may also be made available to for-profit organizations provided that at least 45% of available funds, as determined on September 1 of each state fiscal year, in excess of the first \$2.6 million shall be made available to Nonprofit Organizations for the purpose of acquiring, rehabilitating, and developing decent, safe, and sanitary housing; and

(3) The remaining portion shall be distributed to Nonprofit Organizations, for-profit organizations, and other eligible entities, pursuant to Tex. Gov't Code §2306.202.

§26.4. Use of Funds.

(a) Use of additional or Deobligated Funds. In the event the Department receives additional funds, such as loan repayments, donations, or interest earnings, the Department will redistribute the funds in accordance with the Texas HTF plan in effect at the time the additional funds become available.

(b) Reprogramming of Funds. If funding for a program is undersubscribed or funds not utilized, within a timeframe as determined by the Department, remaining funds may be reprogrammed at the discretion of the Department consistent with the Texas HTF plan in effect at the time.

(c) Use of excess loan repayments and interest earnings. The Texas HTF may be used to respond to unanticipated challenges that may arise in the course of implementing approved single family Program Contracts, activities, or assets that are not readily addressed with federal funds. In the event that Texas HTF loan repayments and interest earnings exceed the requirements under the Texas HTF interest

earnings and loan repayments Rider in the General Appropriations Act, up to \$250,000 per biennium of these excess Texas HTF loan repayments and interest earnings may be used for this purpose. If a balance exists from the previous biennium, the Department shall transfer only the necessary amount to replenish this fund to a maximum balance of \$250,000 at the start of the biennium. These funds may be used as described in this subsection.

(1) Funds are to be used for internal disposition.

(2) Neither Households nor Program Administrators are eligible to apply for these funds.

(3) Any funds used under this subsection requires authorization of the Executive Director.

(4) Uses for the funds must meet at least one of the following criteria:

(A) For Households previously assisted by the Department with Department funds, for which the Department has confirmed that further work is still required, and for which the original source of funds is no longer able to be used; or

(B) Properties previously owned by Households assisted by the Department, having been foreclosed upon by the Department, and requiring additional carrying costs or improvements to sell the property or transfer the property for an affordable purpose.

§26.5. Prohibited Activities.

(a) Persons receiving or benefiting from Texas HTF funds, as determined by the Department, may not be currently delinquent or in default with child support, government loans, or any other debt owed to the State of Texas.

(b) The activities described in paragraphs (1) - (8) of this subsection are prohibited in relation to the origination of a Texas HTF loan, but may be charged as an allowable cost by a third party lender for the origination of all other loans originated in connection with a Texas HTF loan:

(1) Payment of delinquent property taxes or related fees or charges on properties to be assisted with Texas HTF funds;

(2) Loan origination fees;

(3) Application fees;

(4) Discount fees;

(5) Underwriter fees;

(6) Loan processing fees;

(7) Loan servicing fees; and

(8) Other fees not approved by the Department in writing prior to expenditure.

§26.6. Administrator Eligibility and Requirements.

Administrator must enter into a written Agreement with the Department in order to be eligible to access the Texas Housing Trust Fund.

§26.7. Conflict of Interest.

In addition to the conflict of interest requirements in Uniform Grants Management Standards (UGMS) or Texas Grants Management Standards (TXGMS) (as applicable to the Contract), no person who is an employee, agent, consultant, officer, trustee, director, member of a governing board or other oversight body, elected official or appointed official of the Administrator who exercises or has exercised any functions or responsibilities with respect to Texas HTF activities under the State Act, or who is in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a

personal or financial interest or benefit from a Texas HTF assisted activity, or have an interest in any Texas HTF Contract, subcontract, or agreement, or the proceeds hereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

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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Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

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## SUBCHAPTER B. AMY YOUNG BARRIER REMOVAL PROGRAM

### 10 TAC §§26.20 - 26.28

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed new sections affect no other code, article, or statute.

#### §26.20. Amy Young Barrier Removal Program Purpose.

The Amy Young Barrier Removal Program (the Program or AYBRP) provides one-time grants in combined Hard and Soft Costs to Persons with Disabilities in a Household qualified as Low-Income. Grant limits per household will be identified in the Notice of Funding Availability (NOFA). Grants are for home modifications that increase accessibility and eliminate substandard conditions.

#### §26.21. Amy Young Barrier Removal Program Definitions.

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

(1) Administrative Fee--Funds equal to 10% of the Project Costs (combined Hard and Soft Costs) paid to an Administrator upon completion of a project.

(2) Hard Costs--Site-specific costs incurred during construction, including, but not limited to: general requirements, building permits, jobsite toilet rental, dumpster fees, site preparation, demolition, construction materials, labor, installation equipment expenses, etc.

(3) Household Assistance Contract--A written agreement between the Department and Administrator that memorializes the term of the commitment of funds for a specific Activity.

(4) Low-Income--Household income calculated in accordance with the Program Manual that does not exceed the greater of

80% of the Area Median Family Income or 80% of the State Median Family Income, adjusted for Household size, in accordance with the current HOME Investment Partnerships Program income limits, as defined by HUD.

(5) Project Costs--Program funds (combined Hard and Soft Costs) that directly assist a Household.

(6) Reservation System Participant (RSP)--Administrator who has executed a written Agreement with the Department that allows for participation in the Reservation System.

(7) Soft Costs--Costs related to and identified with a specific Single Family Housing Unit other than construction costs.

#### §26.22. Amy Young Barrier Removal Program Geographic Dispersion.

(a) The process to promote geographic dispersion of program funds is as described in this subsection:

(1) For a published period not less than 30 days and in accordance with the NOFA, each state region will be allocated funding amounts for its rural and urban subregions. During this initial period, these funds may be reserved only for Households located in these rural and urban subregions;

(2) After the initial release of funds under paragraph (1) of this subsection, each state region will combine any remaining funds from its rural and urban subregions into one regional balance for a second published period not to exceed 90 calendar days. During this second period, these funds may be reserved only for Households located in that state region; and

(3) After no more than 180 calendar days following the initial release date, any funds remaining across all state regions will collapse into one statewide pool. For as long as funds are available, these funds may be reserved for any Households anywhere in the state on a first-come, first-served basis.

(b) If any additional funds beyond the original program allocations that derive from Texas HTF loan repayments, interest earnings, deobligations, and/or other Texas HTF funds in excess of those funds required under Rider 8 or the Department's appropriation made under the General Appropriations Act may be reprogrammed at the discretion of the Department.

#### §26.23. Amy Young Barrier Removal Program Administrative Requirements.

(a) To participate in the Program, an eligible participant must first be approved as an Administrator by the Department through the submission of a Reservation System Access Application. Eligible participants include, but are not limited to: Colonia Self-Help Centers established under Tex. Gov't Code, Chapter 2306, Subchapter Z; Councils of Government; Units of Local Government; Nonprofit Organizations; Local Mental Health Authorities; and Public Housing Authorities. An eligible participant may be further limited by NOFA.

(b) The Department will produce an Application to satisfy the requirements for an eligible participant to apply to become an AYBR Administrator. The application will be available on the Department's website. Applications to access the Reservation System will include, at a minimum, criteria listed in paragraphs (1) - (7) of this subsection.

(1) A Nonprofit Organization must submit a current letter of determination from the Internal Revenue Service (IRS) under §501(c)(3), a charitable, nonprofit corporation, of the Internal Revenue Code of 1986, as evidenced by a certificate from the IRS that is dated 1986 or later. The exemption ruling must be effective throughout the term of the RSP Agreement to access the Reservation System.

(2) A private Nonprofit Organization must be registered and in good standing with the Office of the Secretary of State and the State Comptroller's Office to do business in the State of Texas.

(3) The Applicant must demonstrate at least two years of capacity and experience in housing rehabilitation in Texas. The Applicant will be required to provide a summary of experience that must describe the capacity of key staff members and their skills and experience in client intake, records management, and managing housing rehabilitation. It must also describe organizational knowledge and experience in serving Persons with Disabilities.

(4) The Applicant must provide evidence of adherence to applicable financial accountability standards, demonstrated by an audited financial statement by a Certified Public Accountant for the most recent fiscal year. For a Nonprofit Organizations that does not yet have audited financial statements, the Department may accept a resolution from the Board of Directors that is signed and dated within the six months preceding the Application and that certifies that the procedures used by the organization conform to the requirements in 10 TAC §1.402 (relating to Cost Principles and Administrative Requirements), and that the accounting procedures used by the organization conform to Generally Accepted Accounting Principles (GAAP) or the Financial Accounting Standards Board (FASB), as applicable.

(5) The Applicant must submit a resolution from the Applicant's direct governing body that authorizes the submission of the Application and is signed and dated within the six months preceding the date of application submission. The resolution must include the name and title of the individual authorized to execute an RSP Agreement.

(6) The Applicant's history will be evaluated in accordance with 10 TAC Chapter 1, Subchapter A, §1.302 and §1.303, (relating to Previous Participation Reviews for Department Program Awards Not Covered by §1.301 of this Subchapter, and Executive Director Review, respectively). Access to funds may be subject to terms and conditions.

(7) If applicable, the Applicant must submit copies of executed contracts with consultants or other organizations that are assisting in the implementation of the applicant's AYBR Program activities. The Applicant must provide a summary of the consultant or other organization's experience in housing rehabilitation and/or serving Persons with Disabilities.

(c) Administrators must follow the processes and procedures as required by the Department through its governing statute (Chapter 2306 of the Government Code), Administrative Rules (Texas Administrative Code, Title 10, Part 1), Reservation Agreement, Program Manual, forms, and NOFA.

§26.24. Amy Young Barrier Removal Program Reservation System Requirements.

(a) Terms of Agreement. The term of an RSP Agreement will not exceed the lesser of 36 months, or the term limitation defined in the NOFA. Execution of an RSP Agreement does not guarantee the availability of funds under a reservation system. Reservations submitted under an RSP agreement will be subject to the provisions of this chapter in effect as of the date of submission by the Administrator.

(b) Limit on Number of Reservations. The limitation on the number of Reservations will be established in the NOFA.

(c) Administrator must remain in good standing with the Department and the state of Texas. If an Administrator is not in good standing, participation in the Reservation System will be suspended and may result in termination of the RSP Agreement.

(d) Reservations will be processed in the order submitted on the Reservation System. Submission of a Reservation consisting of support documentation on behalf of a Household does not guarantee funding.

(e) Reservations may be submitted in stages, and shall be processed through each stage as outlined in the Program Manual. All stages must be completed on or before the expiration of the Household Assistance Contract.

(f) Administrator must submit a substantially complete request for each stage of the Reservation as outlined in the Program Manual. Administrators must upload all required information and verification documentation in the Contract System. Requests determined to be substantially incomplete will not be reviewed and may be disapproved by the Department. If the Department identifies administrative deficiencies during review, the Department will allow a cure period of 14 calendar days beginning at the start of the first day following the date the Administrator is notified of the deficiency. If any administrative deficiencies remain after the cure period, the Department, in its sole discretion, may disapprove the request. Disapproved requests shall not constitute a Reservation of Funds.

(g) If a Household is determined to be eligible for assistance from the Department, the Department will issue a Household Assistance Contract reflecting the maximum award amount permitted under the NOFA in Project Costs and an Administrative Fee equal to 10% of the combined Hard and Soft costs in the Contract System on behalf of the Household, funding permitting. The term of the Household Assistance Contract shall not exceed 270 days, unless the term is amended in accordance with the requirements of 10 TAC §20.13 (relating to Amendments to Written Agreements and Contracts).

§26.25. Amy Young Barrier Removal Program Household Eligibility Requirements.

(a) At least one Household member shall meet the definition of Persons with Disabilities.

(b) The assisted Household must be qualified as Low-Income.

(c) The assisted Household's liquid assets shall not exceed \$25,000. Liquid assets are considered to be cash deposited in checking or savings accounts, money markets, certificates of deposit, mutual funds, or brokerage accounts; the net value of stocks or bonds that may be easily converted to cash; and the net cash value calculated utilizing the appraisal district's market value for any real property that is not a principal residence. Funds in tax deferred accounts for retirement or education savings, including but not limited to Individual Retirement Accounts, 401(k)s, 529 plans, and whole life insurance policies are excluded from the liquid assets calculation.

(d) The Household may be ineligible for the program if there is debt owed to the State of Texas, including a tax delinquency; a child support delinquency; a student loan default; or any other delinquent debt owed to the State of Texas.

§26.26. Amy Young Barrier Removal Program Property Eligibility Requirements.

(a) Owner-occupied homes are eligible for Program assistance. In owner-occupied homes, the owner of record must reside in the home as their permanent residence unless otherwise approved by the Department. If the property is family-owned and the owner of record is deceased or not a Household member, the Department may deem the property renter-occupied unless satisfactory documentation is provided to the Department that confirms otherwise.

(b) Certain rental units are eligible for Program assistance and must meet the following requirements:

(1) In rental units, all Household occupants, including the Person with Disability, must be named on the Program intake application and household income certification.

(2) The owner of record for the property shall provide a statement allowing accessibility modifications to be made to the property.

(c) The following rental properties are ineligible for Program assistance:

(1) Property that is or has been developed, owned, or managed by that Administrator or an Affiliate;

(2) Rental units in properties that are financed with any federal funds or that are subject to 10 TAC Chapter 1, Subchapter B, §1.206 (relating to Applicability of the Construction Standards for Compliance with §504 of the Rehabilitation Act of 1973);

(3) Rental units that have substandard and unsafe conditions identified in the initial inspection. Program funds may not be used to correct substandard or unsafe conditions in rental units, but may be used for accessibility modifications only after the substandard and unsafe conditions have been corrected at the property owner's expense; or

(4) Rental units owned by a property owner who is delinquent on property taxes associated with the property occupied by the Household.

§26.27. Amy Young Barrier Removal Program Construction Requirements.

(a) Inspections.

(1) Initial inspection arranged by the Administrator is required and must identify the accessibility modifications needed by the Person with Disability; assess and document the condition of the property; and identify all deficiencies that constitute life-threatening hazards and unsafe conditions.

(2) Final inspection arranged by the Administrator is required and must verify, assess, and document that all construction activities have been repaired, replaced, and/or installed in a professional manner consistent with all applicable building codes and Program requirements, and as required in the Work Write-Up as described in subsection (e) of this section.

(b) A Manufactured Housing Unit may be eligible for Program assistance if it was constructed on or after January 1, 1995. The Department may allow Manufactured Housing Units older than January 1, 1995, to receive only exterior accessibility modifications (i.e., ramps, handrails, concrete flatwork) as long as the Administrator can verify that the unit itself will be free of hazardous and unsafe conditions.

(c) Construction standards.

(1) Administrator must follow all applicable sections of local building codes and ordinances, pursuant to Section 214.212 of the Local Government Code. Where local codes do not exist, the 2015 International Residential Code (IRC), including Appendix J for Existing Buildings and Structures, is the applicable code for the Program.

(2) Accessibility modifications shall be made with consideration to 2010 American Disability Act (ADA) Standards, but may vary from the ADA Standards in order to meet specific accessibility needs of the household as requested and agreed to by the assisted household.

(3) Administrators must adhere to Chapter 21 of this title, (relating to Minimum Energy Efficiency Requirements for Single Family Construction Activities).

(4) Administrators and subcontractors must honor a twelve-month warranty on all completed items in their scope of work.

(d) Life-threatening hazards and unsafe conditions.

(1) Administrators may make repairs to eliminate life-threatening hazards and correct unsafe conditions in the Single-Family Housing as long as no more than 25% of the Project Hard Costs budget is utilized for this purpose, unless otherwise approved by the Department.

(2) Life-threatening hazards and unsafe conditions include, but are not limited to: faulty or damaged electrical systems; faulty or damaged gas-fueled systems; faulty, damaged or absent heating and cooling systems; faulty or damaged plumbing systems, including sanitary sewer systems; faulty, damaged or absent smoke, fire and carbon monoxide detection/alarm systems; structural systems on the verge of collapse or failure; environmental hazards such as mold, lead-based paint, asbestos or radon; serious pest infestation; absence of adequate emergency escape and rescue openings and fire egress; and the absence of ground fault circuit interrupters (GFCI) and arc fault circuit interrupters (AFCI) in applicable locations.

(3) If the work write-up addresses any of the following line items, the percentage of Project Hard Costs devoted to eliminating substandard, unsafe conditions may only exceed 25% by the amount of the following line item's cost: emergency escape, rescue openings and fire egress; ground fault circuit interrupters (GFCI); arc fault circuit interrupters (AFCI); and smoke, fire, and carbon monoxide detection/alarm systems. The combination of these line items plus the correction of any other unsafe conditions cannot exceed 40% of Project Hard Costs budget.

(4) All areas and components of the Single-Family Housing Unit must be free of life-threatening hazards and unsafe conditions at project completion.

(e) Work-Write Ups. The Department shall review work-write ups (also referred to as "scope of work") and cost estimates prior to the Administrator soliciting bids.

(f) Bids. The Department shall review all line item bids Administrator selects for award prior to the commencement of construction. Lump sum bids will not be accepted.

(g) Change orders. An Administrator seeking a change order must obtain written Department approval prior to the commencement of any work related to the proposed change. Failure to get prior Departmental approval may result in disallowed costs.

§26.28. Amy Young Barrier Removal Program Project Completion Requirements.

(a) The Administrator must complete all construction activities prior to the expiration of the Household Assistance Contract and the Administrator must submit the Project and Administrative Draw Request, with required supporting documentation, in the Housing Contract System for reimbursement by the Department. The Department may grant a one-time, 30-calendar day extension to the Project completion deadline. The Department may grant additional extensions due to extenuating circumstances that are beyond the Administrator's control.

(b) The Administrator must submit evidence with the final Draw that the builder has provided a one-year warranty specifying at a minimum that materials and equipment used by the contractor will be new and of good quality unless otherwise required, the work will be free from defects other than those inherent in the work as specified, and the work will conform to the requirements of the contract documents.

(c) The Administrator must provide the Household all warranty information for work performed by the builder and any materials

purchased for which a manufacturer or installer's warranty is included in the price.

(d) The Department will reimburse the Administrator in one, single payment after the Administrator's successful submission of the Project and Administrative Draw Request per Department instructions. Interim Draws may not be permitted. The Department reserves the right to delay Draw approval in the event that the Household expresses dissatisfaction with the work completed in order to resolve any outstanding conflicts between the Household and the Administrator and its subcontractors.

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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Bobby Wilkinson

Executive Director

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## **TITLE 16. ECONOMIC REGULATION**

### **PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION**

#### **CHAPTER 111. SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS**

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 111, Subchapter A, §111.1; Subchapter C, §111.23; Subchapter F, §111.50; Subchapter P, §§111.150, 111.151, and 111.155; Subchapter Q, §111.160; and Subchapter T, §111.190 and §111.192; and the repeal of existing rules at Subchapter O, §111.140, regarding the Speech-Language Pathologists and Audiologists program. These proposed changes are referred to as "proposed rules."

#### **EXPLANATION OF AND JUSTIFICATION FOR THE RULES**

The rules under 16 TAC Chapter 111, implement Texas Occupations Code, Chapter 401, Speech-Language Pathologists and Audiologists; and Chapter 51, the enabling statute of the Texas Commission of Licensing and Regulation (Commission) and the Department. Specific provisions within this rule chapter also implement the statutory requirements under Texas Occupations Code, Chapters 53, 108, 111, 112, 116, and 402, as applicable.

The proposed rules are necessary to implement recommended changes from the Speech Language Pathologists and Audiologists Advisory Board with input from two of its workgroups; implement select changes from Department staff as a result of the four-year rule review; and make technical corrections from two previous rulemakings.

#### *Advisory Board Workgroup Changes*

The proposed rules implement recommended changes from the Speech Language Pathologists and Audiologists Advisory Board

based on input from two of its workgroups. The advisory board agreed with the recommended changes from both workgroups, and those recommended changes are included in these proposed rules.

First, the Licensing Workgroup recommended changes to address how a licensee may provide proof of licensure to a client when providing telehealth services and services outside of an office setting. This workgroup recommended changes to §111.151, which currently requires a licensee to display a license certificate or carry a license identification card. The requirement to always carry a license while providing services is not convenient and can be burdensome in some clinical settings. The proposed rules provide an additional option and allow a licensee to provide proof of licensure to a requestor through the Department's online license search.

Second, the Standard of Care Workgroup recommended changes to address cognition screenings as part of the communication screenings. This workgroup recommended changes to §111.190 to add provisions on cognition screening as it relates to communication function. Cognition plays an important part in understanding communication, and screening for communication-related cognition issues will allow providers to recommend therapy or rehabilitation. The proposed rules provide that cognitive processes affecting communication function may be screened for under communication screening.

#### *Four-Year Rule Review Changes*

The proposed rules implement select changes from Department staff as a result of the four-year rule review conducted under Government Code §2001.039. The Department conducted the required four-year review of the rules under 16 TAC Chapter 111, and the Commission readopted the rule chapter in its entirety and in its current form. (Proposed Rule Reviews, 45 TexReg 7281, October 9, 2020. Adopted Rule Reviews, 46 TexReg 2050, March 26, 2021). In response to the Notice of Intent to Review that was published, the Department received public comments regarding 16 TAC Chapter 111, but none of those public comments affect these proposed rules.

The proposed rules include select changes from Department staff based on the Department's review of the rules during the rule review process. These changes include clarification and clean-up changes to existing rules and updates to statute and rule citations.

#### *Technical Corrections*

The proposed rules make technical corrections from two previous rulemakings: the emergency telehealth rules (Emergency Rules, 46 TexReg 5313, August 27, 2021) and the comprehensive telehealth rules (Proposed Rules, 46 TexReg 5698, September 10, 2021. Adopted Rules, 46 TexReg 9021, December 24, 2021). In the previous rulemakings, the "in-person" supervision requirement was removed throughout the rules package in multiple rules (both rulemakings); the definitions of "direct supervision" and "indirect supervision" were amended (both rulemakings); and a new definition of "tele-supervision" was added that replaced former language regarding supervision through telehealth or telepractice/telehealth (comprehensive rulemaking). The preambles for those rules explained that the rules allow for direct and indirect supervision to be performed through tele-supervision and that in-person supervision is not required.

The previous rulemakings amended §111.50(e) regarding supervision of speech-language pathology assistants, and the preambles stated: "Subsection (e) is amended to allow supervision to be performed through tele-supervision and not require in-person supervision." The "in-person" reference was removed from the introduction paragraph of §111.50(e), but inadvertently was not removed from paragraphs (e)(4) and (e)(6). The proposed rules make technical corrections to remove the remaining "in-person" references under §111.50(e).

#### *Advisory Board Recommendations*

The proposed rules were presented to and discussed by the Speech-Language Pathologists and Audiologists Advisory Board at its meeting on October 31, 2023. The Advisory Board did not make any changes to the proposed rules. The Advisory Board voted and recommended that the proposed rules be published in the *Texas Register* for public comment.

#### SECTION-BY-SECTION SUMMARY

##### *Subchapter A. General Provisions.*

The proposed rules amend §111.1. Authority and Applicability. The proposed rules change the name of the section from "Authority" to "Authority and Applicability." The proposed rules amend subsection (a) to identify the other statutes that are implemented by the rules in Chapter 111. The proposed rules also add new subsection (b) to explain that the Chapters 60 and 100 rules also apply to the Speech-Language Pathologists and Audiologists program. This new provision replaces the rules under Subchapter O, §111.140, Rules, which are being repealed.

##### *Subchapter C. Examinations.*

The proposed rules amend §111.23, License Examination--Jurisprudence Examinations. The proposed rules change the name of the section from "License Examination--Jurisprudence Examination" to "License Examination--Jurisprudence Examinations." The proposed rules amend subsection (a) to recognize that there are two separate jurisprudence exams - one for speech-language pathology and another for audiology; and amend subsection (b) to update the reference to examinations. The proposed rules also create separate provisions for the speech-language pathology jurisprudence examination and the audiology jurisprudence examination. The current general provision under subsection (c) is amended to apply only to the speech-language pathology jurisprudence examination, and a separate provision for the audiology jurisprudence examination is being added as new subsection (d). There are no substantive changes to these provisions.

##### *Subchapter F. Requirements for Assistant in Speech-Language Pathology License.*

The proposed rules amend §111.50, Assistant in Speech-Language Pathology License--Licensing Requirements--Education and Clinical Observation and Experience. The proposed rules make technical corrections to §111.50(e) from two previous rulemakings as discussed above. Under subsection (e), the proposed rules remove the "in-person" references under paragraphs (e)(4) and (e)(6).

##### *Subchapter O. Responsibilities of the Commission and the Department.*

The proposed rules repeal Subchapter O, Responsibilities of the Commission and the Department, and §111.140, Rules. These explanatory provisions are no longer necessary, since sufficient time has passed since the program was transferred to the De-

partment. New provisions regarding the applicability of the rules under Chapters 60 and 100 have been included in the changes to §111.1, Authority and Applicability. The rules under Chapters 60 and 100 have broader applicability than the specific provisions cited in §111.140.

##### *Subchapter P. Responsibilities of the Licensee and Code of Ethics.*

The proposed rules amend §111.150, Changes of Name, Address, or Other Information. The proposed rules update subsection (a) to provide that a licensee notify the Department of any changes to the specified information in a form and manner prescribed by the Department.

The proposed rules amend §111.151, Consumer Information, Display of License, and Proof of Licensure. The proposed rules reflect the recommendations from the Speech-Language Pathology and Audiology Advisory Board with input from its Licensing Workgroup as discussed above. The proposed rules change the name of the section from "Consumer Information and Display of License" to "Consumer Information, Display of License, and Proof of Licensure." The proposed rules add a new subsection (e), which requires a licensee, upon request, to provide proof of licensure to a client by showing the current license certificate, the current license identification card, or the current results of a license search on the Department's website.

The proposed rules amend §111.155, Standards of Ethical Practice (Code of Ethics). The proposed rules update the statutory citation in subsection (a)(16).

##### *Subchapter Q. Fees.*

The proposed rules amend §111.160, Fees. The proposed rules update the cross-referenced fee provisions in subsections (k) - (m) to use updated, standardized fee language.

##### *Subchapter T. Screening Procedures.*

The proposed rules amend §111.190, Communication Screening. The proposed rules reflect the recommendations from the Speech-Language Pathology and Audiology Advisory Board with input from its Standard of Care Workgroup as discussed above. The proposed rules amend subsection (a) to clarify that individuals licensed under the Act may conduct communication screenings. In addition, the proposed rules amend subsection (b) to provide that communication screenings may include cursory assessments of cognition to determine if further testing is indicated, and to provide that the aspects of cognition to be screened are any cognitive processes affecting communication function. Finally, the proposed rules amend subsection (c) to provide that cognition screenings should be conducted in the client's dominant language and primary mode of communication.

The proposed rules amend §111.192, Newborn Hearing Screening. The proposed rules update the rule citation in subsection (b) to reflect the Health and Human Services Commission's transfer of the rules related to Early Childhood Intervention Services to a new rule chapter in the Texas Administrative Code (TAC).

#### FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rules.

Mr. Couvillon also has determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rules.

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, enforcing or administering the proposed rules does not have foreseeable implications relating to costs or revenues of state or local governments.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

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

#### PUBLIC BENEFITS

Mr. Couvillon also has determined that for each year of the first five-year period the proposed rules are in effect, the public benefits will be as follows.

The proposed rules add cognition screening as it relates to communication function. Cognition plays an important part in understanding communication, and screening for communication-related cognition issues will allow providers to recommend therapy or rehabilitation.

The proposed rules will allow a license holder to provide proof of licensure to a requestor through TDLR's online license search. The requirement to always carry a license while providing services can be burdensome in some clinical settings, and this change reduces burdens while still ensuring public protection.

The proposed rules include clarification and clean-up changes to existing rules and updates to the statute and rule citations. These changes will ensure that the rules are clear and that they reflect the current requirements.

The proposed rules also make technical corrections. The proposed rules remove the remaining "in-person" language that acts as a restriction on supervision of SLP assistants. This change will provide additional flexibility to supervisors and supervisees and will align with previous rule changes.

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

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules.

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

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

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

The proposed rules do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is

not required to take any further action under Government Code §2001.0045.

#### GOVERNMENT GROWTH IMPACT STATEMENT

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

1. The proposed rules do not create or eliminate a government program.
2. Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.
3. Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency.
4. The proposed rules do not require an increase or decrease in fees paid to the agency.
5. The proposed rules do not create a new regulation.
6. The proposed rules expand, limit, or repeal an existing regulation. The proposed rules repeal an existing regulation by eliminating an in-person requirement for supervision. The proposed rules expand an existing regulation by providing that cognition screening as it relates to communication function may be conducted. The proposed rules expand an existing regulation by allowing a person to provide proof of licensure through the Department's online license search.
7. The proposed rules do not increase or decrease the number of individuals subject to the rules' applicability.
8. The proposed rules do not positively or adversely affect this state's economy.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENTS

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

#### SUBCHAPTER A. GENERAL PROVISIONS

##### 16 TAC §111.1

#### STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The proposed rules are also proposed under Texas Occupa-

tions Code, Chapter 401, Speech-Language Pathologists and Audiologists.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51 and 401. No other statutes, articles, or codes are affected by the proposed rules.

§111.1. Authority and Applicability.

(a) This chapter is promulgated under the authority of [the] Texas Occupations Code, Chapters 51 and 401, and Chapter 402 as applicable. Specific provisions within this chapter also implement the statutory requirements under Texas Occupations Code, Chapters 53, 108, 111, 112, and 116.

(b) In addition to this chapter, the rules under 16 TAC Chapter 60, Procedural Rules of the Commission and the Department, and 16 TAC Chapter 100, General Provisions for Health-Related Programs, are applicable to the Speech-Language Pathologists and Audiologists program.

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

Filed with the Office of the Secretary of State on December 8, 2023.

TRD-202304593

Doug Jennings

General Counsel

Texas Department of Licensing and Regulation

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For further information, please call: (512) 475-4879



SUBCHAPTER C. EXAMINATIONS

16 TAC §111.23

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The proposed rules are also proposed under Texas Occupations Code, Chapter 401, Speech-Language Pathologists and Audiologists.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51 and 401. No other statutes, articles, or codes are affected by the proposed rules.

§111.23. License Examination--Jurisprudence Examinations [Examination].

(a) The department shall develop and administer separate jurisprudence examinations in speech-language pathology and audiology. The [a] jurisprudence examination is used to determine an applicant's knowledge of the Act, this chapter, and any other applicable laws of this state affecting the practice of speech-language pathology or audiology.

(b) The department shall revise the jurisprudence examinations [examination] as needed.

(c) An applicant [All applicants] for licensure as a speech-language pathologist, a speech-language pathology intern, or a speech-language pathology assistant shall submit proof of successful completion of the speech-language pathology jurisprudence examination at the time of application, unless applying for an upgrade. The jurisprudence examination must be completed no more than 12 months prior to the date of licensure application.

(d) An applicant for licensure as an audiologist, an audiology intern, or an audiology assistant shall submit proof of successful completion of the audiology jurisprudence examination at the time of application, unless applying for an upgrade. The jurisprudence examination must be completed no more than 12 months prior to the date of licensure application.

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

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SUBCHAPTER F. REQUIREMENTS FOR ASSISTANT IN SPEECH-LANGUAGE PATHOLOGY LICENSE

16 TAC §111.50

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The proposed rules are also proposed under Texas Occupations Code, Chapter 401, Speech-Language Pathologists and Audiologists.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51 and 401. No other statutes, articles, or codes are affected by the proposed rules.

§111.50. Assistant in Speech-Language Pathology License--Licensing Requirements--Education and Clinical Observation and Experience.

(a) - (d) (No change.)

(e) An applicant who has not acquired the twenty-five (25) hours of clinical observation and twenty-five (25) hours of clinical experience referenced in subsection (a)(3), shall not meet the minimum qualifications for the assistant license. These hours must be obtained through an accredited college or university, or through a Clinical Deficiency Plan. All hours must be completed under direct supervision. In order to acquire these hours, the applicant shall first obtain the assistant license by submitting the forms, fees, and documentation referenced in



§111.55 and include the prescribed Clinical Deficiency Plan to acquire the clinical observation and clinical assisting experience hours lacking.

(1) - (3) (No change.)

(4) Immediately upon completion of the Clinical Deficiency Plan, the licensed speech-language pathologist identified in the plan shall submit a statement or information that the licensed assistant successfully completed the clinical observation and clinical assisting experience and that all hours worked by the licensed assistant were under the ~~[in-person,]~~ direct supervision of the licensed speech-language pathologist. This statement shall specify the number of hours completed and verify completion of the training identified in the Clinical Deficiency Plan.

(5) (No change.)

(6) A licensed assistant may continue to practice under the ~~[in-person,]~~ direct supervision of the licensed speech-language pathologist who provided the licensed assistant with the training while the department evaluates the documentation identified in paragraph (4). All hours worked by the licensed assistant must be under the ~~[in-person,]~~ direct supervision of the licensed speech-language pathologist.

(7) (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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General Counsel

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## SUBCHAPTER O. RESPONSIBILITIES OF THE COMMISSION AND THE DEPARTMENT

### 16 TAC §111.140

#### STATUTORY AUTHORITY

The proposed repeal is proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The proposed repeal is also proposed under Texas Occupations Code, Chapter 401, Speech-Language Pathologists and Audiologists.

The statutory provisions affected by the proposed repeal are those set forth in Texas Occupations Code, Chapters 51 and 401. No other statutes, articles, or codes are affected by the proposed repeal.

#### §111.140. 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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Doug Jennings

General Counsel

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## SUBCHAPTER P. RESPONSIBILITIES OF THE LICENSEE AND CODE OF ETHICS

### 16 TAC §§111.150, 111.151, 111.155

#### STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The proposed rules are also proposed under Texas Occupations Code, Chapter 401, Speech-Language Pathologists and Audiologists.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51 and 401. No other statutes, articles, or codes are affected by the proposed rules.

#### §111.150. Changes of Name, Address, or Other Information.

(a) A licensee is required to provide current name, address, telephone number, and employment information. The licensee shall notify the department of any changes within thirty (30) days of such changes in a form and manner prescribed by the department ~~[on a department-approved form or using a department-approved method].~~

(b) A request to change the name currently on record must be submitted in writing with a copy of a divorce decree, marriage certificate, legal name change document, or social security card showing the new name.

(c) To receive a duplicate license, the licensee shall submit the duplicate/replacement fee required under §111.160.

#### §111.151. Consumer Information, ~~[and]~~ Display of License, and Proof of Licensure.

(a) A licensee shall notify each client of the name, mailing address, telephone number and website of the department for the purpose of directing complaints to the department. A licensee shall display this notification:

(1) on a sign prominently displayed in the primary office or place of employment of the licensee, if any; and

(2) on a written document such as a written contract, a bill for service, or office information brochure provided by the licensee to a client or third party.

(b) A licensee shall display the license certificate in the primary office or place of employment. In the absence of a primary office or place of employment or when the licensee is employed in multiple locations, the licensee shall carry a current license identification card.

(c) A licensee shall not display a photocopy of a license certificate or carry a photocopy of an identification card in lieu of the original

document. A file copy shall be clearly marked as a copy across the face of the document.

(d) A licensee shall not make any alteration on a license certificate or identification card.

(e) Upon request, a licensee shall provide proof of licensure to a client by showing the current license certificate, the current license identification card, or the current results of a license search on the department's website.

§111.155. *Standards of Ethical Practice (Code of Ethics).*

(a) A licensee shall:

(1) - (15) (No change.)

(16) be subject to disciplinary action by the department if the licensee is issued a written reprimand, is assessed a civil penalty by a court, or has an administrative penalty imposed by the attorney general's office under the Crime Victims Compensation Act, Texas Code of Criminal Procedure, [~~Chapter 56, Subchapter B (effective until January 1, 2021) and] Chapter 56B [(effective on January 1, 2021)];~~

(17) - (18) (No change.)

(b) (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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Doug Jennings

General Counsel

Texas Department of Licensing and Regulation

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For further information, please call: (512) 475-4879



## SUBCHAPTER Q. FEES

### 16 TAC §111.160

#### STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The proposed rules are also proposed under Texas Occupations Code, Chapter 401, Speech-Language Pathologists and Audiologists.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51 and 401. No other statutes, articles, or codes are affected by the proposed rules.

§111.160. *Fees.*

(a) - (j) (No change.)

(k) Late renewal fees for licenses issued under this chapter are provided under §60.83 [~~of this title (relating to Late Renewal Fees)].~~

(l) A dishonored [~~dishonored/returned check or] payment fee is the fee prescribed under §60.82 [~~of this title (relating to Dishonored Payment Device)].~~~~

(m) The fee for a criminal history evaluation letter is the fee prescribed under §60.42 [~~of this title (relating to Criminal History Evaluation Letters)].~~

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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Doug Jennings

General Counsel

Texas Department of Licensing and Regulation

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For further information, please call: (512) 475-4879



## SUBCHAPTER T. SCREENING PROCEDURES

### 16 TAC §111.190, §111.192

#### STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The proposed rules are also proposed under Texas Occupations Code, Chapter 401, Speech-Language Pathologists and Audiologists.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51 and 401. No other statutes, articles, or codes are affected by the proposed rules.

§111.190. *Communication Screening.*

(a) Individuals licensed under the Act may conduct [~~participate in] communication screening.~~

(b) Communication screening may [~~should] include cursory assessments of language, [and] speech, and cognition to determine if further testing is indicated. Formal instruments and informal observations may be used for the assessment. If the screening is not passed, a detailed evaluation is indicated.~~

(1) The aspects of language to be screened may include phonology, morphology, syntax, semantics, and pragmatics.

(2) The aspects of speech to be screened may include articulation or speech sound production, voice (including phonation and resonance), and fluency.

(3) The aspects of cognition to be screened are any cognitive processes affecting communication function.

(c) Language, [~~and] speech, and cognition~~ screening should be conducted in the client's dominant language and primary mode of communication.

§111.192. *Newborn Hearing Screening.*

(a) Individuals licensed under the Act may participate in universal newborn hearing screening as defined by the Texas Health and Safety Code, Chapter 47.

(b) Individuals licensed under this Act are subject to 25 TAC Chapter 37, regarding reporting hearing screening or audiologic out-

comes to the Department of State Health Services (DSHS) through the designated electronic tracking system, and 26 TAC Chapter 350 [40 TAC Chapter 108], regarding referral of children under the age of three years to Early Childhood Intervention (ECI).

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 December 8, 2023.

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Doug Jennings

General Counsel

Texas Department of Licensing and Regulation

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For further information, please call: (512) 475-4879



## TITLE 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 33. STATEMENT OF INVESTMENT OBJECTIVES, POLICIES, AND GUIDELINES

#### OF THE TEXAS PERMANENT SCHOOL FUND

#### SUBCHAPTER A. STATE BOARD OF

#### EDUCATION RULES

##### 19 TAC §33.2

The State Board of Education (SBOE) proposes an amendment to §33.2, concerning distributions to the Available School Fund (ASF). The proposed amendment would reinsert information related to the Permanent School Fund (PSF) distribution policy that was mistakenly repealed when 19 TAC Chapter 33 was revised to implement Senate Bill (SB) 1232, 87th Texas Legislature, Regular Session, 2021.

**BACKGROUND INFORMATION AND JUSTIFICATION:** Senate Bill 1232, 87th Texas Legislature, Regular Session, 2021, established the Texas PSF Corporation and transferred responsibilities to manage and invest the fund to the Texas PSF Corporation. As a result, SBOE rules in Chapter 33 were significantly revised and reorganized effective March 1, 2023.

The proposed amendment would reinstate mistakenly repealed language in §33.2 that addresses the SBOE's responsibilities to determine a rate for PSF distributions to the ASF.

The SBOE approved the proposed amendment for first reading and filing authorization at its November 17, 2023 meeting.

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

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

**SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT:** The proposal has no direct adverse economic im-

pact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis specified in Texas Government Code, §2006.002, is required.

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

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

**GOVERNMENT GROWTH IMPACT:** Texas Education Agency (TEA) staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand an existing regulation by reestablishing mistakenly repealed provisions to align with SB 1232, 87th Texas Legislature, Regular Session, 2021. The provisions would address the SBOE's responsibilities to determine a rate for PSF distributions to the ASF.

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

**PUBLIC BENEFIT AND COST TO PERSONS:** Mr. Meyer has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be clarifying provisions related to distributions to the ASF required by the Texas Constitution, Article VII, §5(a)(1), that were mistakenly repealed when Chapter 33 was revised to implement SB 1232, 87th Texas Legislature, Regular Session, 2021. There is no anticipated economic cost to persons who are required to comply with the proposal.

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

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

**PUBLIC COMMENTS:** The public comment period on the proposal begins December 22, 2023, and ends at 5:00 p.m. on January 22, 2024. A form for submitting public comments is available on the TEA website at <https://tea.texas.gov/about-tea/laws-and-rules/sboe-rules-tac/proposed-state-board-of-education-rules>. The SBOE will take registered oral and written comments on the proposal at the appropriate committee meeting in January-February 2024 in accordance with the SBOE board operating policies and procedures. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on December 22, 2023.

**STATUTORY AUTHORITY.** The amendment is proposed under Texas Constitution, Article VII, §5(a)(2), which authorizes the State Board of Education (SBOE) to make distributions from the

Permanent School Fund (PSF) to the available school fund with certain limits; and Texas Constitution, Article VII, §5(f), which authorizes the SBOE to manage and invest the PSF according to the prudent investor standard and make investments it deems appropriate.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Constitution, Article VII, §5(a)(2) and (f).

§33.2. *Distributions to the Available School Fund.*

Each year, the State Board of Education (SBOE) shall determine whether a distribution to the Available School Fund (ASF) shall be made for the current state fiscal year. The SBOE shall determine whether such distribution is permitted under the Texas Constitution, Article VII, §5(a)(2). The annual determination for the current fiscal year shall include a projection of the expected total return of the Permanent School Fund (PSF) at the end of the current fiscal year and the realized returns during the nine preceding state fiscal years. Any one-year distribution to the ASF shall not exceed 6.0% of the average market value of the PSF, excluding real property managed, sold, or acquired under the Texas Constitution, Article VII, §4, as determined under the Texas Constitution, Article VII, §5(a)(1). When adopting the rate of distribution, the SBOE shall strive to balance the needs of current and future generations of Texas school children by attempting to maintain consistent levels of distributions per student and assets per student, after adjusting for inflation.

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 December 11, 2023.

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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For further information, please call: (512) 475-1497



CHAPTER 109. BUDGETING, ACCOUNTING,  
AND AUDITING  
SUBCHAPTER C. ADOPTIONS BY  
REFERENCE

19 TAC §109.41

The State Board of Education (SBOE) proposes an amendment to §109.41, concerning budgeting, accounting, and auditing. The proposed amendment would adopt by reference the updated *Financial Accountability System Resource Guide* (FASRG), Version 19, which would include allowable costs for dyslexia and related disorders added by House Bill (HB) 3928, 88th Texas Legislature, Regular Session, 2023.

BACKGROUND INFORMATION AND JUSTIFICATION: The FASRG describes the rules of financial accounting for school districts, charter schools, and education service centers and is adopted by reference under §109.41. Revisions to the FASRG would align the content with current governmental accounting and auditing standards, remove obsolete requirements, and remove descriptions and discussions of best practices and other non-mandatory elements.

Requirements for financial accounting and reporting are derived from generally accepted accounting principles (GAAP). School districts and charter schools are required to adhere to GAAP. Legal and contractual considerations typical of the government environment are reflected in the fund structure basis of accounting.

An important function of governmental accounting systems is to enable administrators to assure and report on compliance with finance-related legal provisions. This assurance and reporting process means that the accounting system and its terminology, fund structure, and procedures must be adapted to satisfy finance-related legal requirements. However, the basic financial statements of school districts and charter schools should be prepared in conformity with GAAP.

School district and charter school accounting systems shall use the accounting code structure presented in the Account Code section of the FASRG (Module 1). Funds shall be classified and identified on required financial statements by the same code number and terminology provided in the Account Code section of the FASRG (Module 1).

The FASRG, Version 19, contains six modules on the following topics: Module 1, Financial Accounting and Reporting (FAR) and FAR Appendices; Module 2, Special Supplement - Charter Schools; Module 3, Special Supplement - Non-profit Charter Schools Chart of Accounts; Module 4, Auditing; Module 5, Purchasing; and Module 6, Compensatory Education, Guidelines, Financial Treatment, and an Auditing and Reporting System.

State law provides authority for both the SBOE and the commissioner of education to adopt rules on financial accounting. To accomplish this, the SBOE and the commissioner each adopt the FASRG by reference under separate rules. The SBOE adopts the FASRG by reference under §109.41, and the commissioner adopts the FASRG by reference under 19 TAC §109.5001.

The following changes would be made to Modules 1-6 of the FASRG.

*Module 1, Financial Accounting and Reporting (FAR) and FAR Appendices*

Module 1 aligns with current governmental accounting standards. Proposed Module 1 would include the following changes. Updates would be made to accounting codes and accounting guidance, which would include allowable costs for dyslexia and related disorders added by HB 3928, 88th Texas Legislature, Regular Session, 2023, and previous guidance would be clarified. School districts and charter schools would be required to maintain proper budgeting and financial accounting and reporting systems. In addition, school districts would be required to establish principles and policies to ensure uniformity in accounting in conformity with GAAP established by the Governmental Accounting Standards Board (GASB).

*Module 2, Special Supplement - Charter Schools*

Module 2 aligns with current financial accounting reporting standards. Proposed Module 2 would include the following significant changes. Updates would be made to accounting codes and accounting guidance, including a requirement for the recording of Teacher Retirement System (TRS) on-behalf revenue and payments and the calculation for the amounts, and previous guidance would be clarified. The proposed module would establish financial and accounting requirements for Texas public charter schools to ensure uniformity in accounting in conformity with GAAP. The proposed module would also include

current guidance that complements the American Institute of Certified Public Accountants (AICPA) *Audit and Accounting Guide, State and Local Governments* and supplements the *Government Auditing Standards* of the United States Government Accountability Office (GAO). These requirements would facilitate preparation of financial statements that conform to GAAP established by the Financial Accounting Standards Board (FASB).

#### *Module 3, Special Supplement - Non-profit Charter Schools Chart of Accounts*

Module 3 aligns with current financial accounting standards. Proposed Module 3 would include the following changes. Updates would be made to accounting codes and accounting guidance, which would include allowable costs for dyslexia and related disorders added by HB 3928, 88th Texas Legislature, Regular Session, 2023, as well as the addition of accounting codes for TRS on-behalf payments, and previous guidance would be clarified. Charter schools would be required to maintain proper budgeting and financial accounting and reporting systems that are in conformity with Texas Education Data Standards in the Texas Student Data System Public Education Information Management System. In addition, charter schools would be required to establish principles and policies to ensure uniformity in accounting in conformity with GAAP established by the FASB. The proposed module would also include current auditing guidance that complements the AICPA *Audit and Accounting Guide, State and Local Governments* and supplements the *Government Auditing Standards* of the United States GAO. These requirements would facilitate preparation of financial statements that conform to GAAP established by the FASB.

#### *Module 4, Auditing*

Module 4 aligns with current auditing standards. Proposed Module 4 would include the following changes. Updates would be made to accounting codes and accounting guidance, and previous guidance would be clarified. The proposed module would establish auditing requirements for Texas public school districts and charter schools and include current requirements from TEC, §44.008, as well as Code of Federal Regulations, Title 2, Part 200, Subpart F, Audit Requirements, that implement the federal Single Audit Act. The proposed module would also include current auditing guidance that complements the AICPA *Audit and Accounting Guide, State and Local Governments* and supplements the *Government Auditing Standards* of the United States GAO. These requirements would facilitate preparation of financial statements that conform to GAAP established by the GASB.

#### *Module 5, Purchasing*

Module 5 aligns with current purchasing laws and standards. Proposed Module 5 would include the following changes. Updates would be made to purchasing guidance that has changed from previous legislation. Purchasing rules that needed additional explanation would be clarified. School districts and charter schools would be required to establish procurement policies and procedures that align with their unique operating environment and ensure compliance with relevant statutes and policies.

#### *Module 6, Compensatory Education, Guidelines, Financial Treatment, and an Auditing and Reporting System*

Proposed Module 6 would include the following changes. Updates would be made to clarify language that needed additional explanation, and other changes would be made due to changes in law. School districts and charter schools would be required to

maintain proper budgeting and financial accounting and reporting systems. The module would provide information to assist local school officials' understanding of the numerous options for use of the state compensatory education allotment and provide current guidance for compliance.

The FASRG is posted on the Texas Education Agency (TEA) website at <https://tea.texas.gov/finance-and-grants/financial-accountability/financial-accountability-system-resource-guide>.

The SBOE approved the proposed amendment for first reading and filing authorization at its November 17, 2023 meeting.

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

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

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

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

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

**GOVERNMENT GROWTH IMPACT:** TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand and limit an existing regulation. The proposal would amend requirements and provide updated governmental accounting and auditing standards. In some instances, the proposed changes would add information, and in some instances, information would be removed.

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

**PUBLIC BENEFIT AND COST TO PERSONS:** Mr. Meyer has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be ensuring that the provisions of the FASRG align with current governmental accounting and auditing standards for school districts and charter schools. There is no anticipated economic cost to persons who are required to comply with the proposal.

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

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

**PUBLIC COMMENTS:** The public comment period on the proposal begins December 22, 2023, and ends at 5:00 p.m. on January 22, 2024. A form for submitting public comments is available on the TEA website at <https://tea.texas.gov/about-tea/laws-and-rules/sboe-rules-tac/proposed-state-board-of-education-rules>. The SBOE will take registered oral and written comments on the proposal at the appropriate committee meeting in January-February 2024 in accordance with the SBOE board operating policies and procedures. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on December 22, 2023.

**STATUTORY AUTHORITY.** The amendment is proposed under Texas Education Code (TEC), §7.102(c)(32), which requires the State Board of Education (SBOE) to adopt rules concerning school district budgets and audits of school district fiscal accounts as required under TEC, Chapter 44, Subchapter A; TEC, §44.007(a), which requires the board of trustees of each school district to adopt and install a standard school fiscal accounting system that conforms with generally accepted accounting principles. TEC, §44.007(b), requires the accounting system to meet at least the minimum requirements prescribed by the commissioner, subject to review and comment by the state auditor. TEC, §44.007(c), requires a record to be kept of all revenues realized and of all expenditures made during the fiscal year for which a budget is adopted. A report of the revenues and expenditures for the preceding fiscal year is required to be filed with the agency on or before the date set by the SBOE. TEC, §44.007(d), requires each district, as part of the report required by TEC, §44.007, to include management, cost accounting, and financial information in a format prescribed by the SBOE in a manner sufficient to enable the board to monitor the funding process and determine educational system costs by district, campus, and program; and TEC, §44.008(b), which requires the independent audit to meet at least the minimum requirements and be in the format prescribed by the SBOE, subject to review and comment by the state auditor. The audit must include an audit of the accuracy of the fiscal information provided by the district through the Texas Student Data System Public Education Information Management System.

**CROSS REFERENCE TO STATUTE.** The amendment implements Texas Education Code, §§7.102(c)(32), 44.007(a)-(d), and 44.008(b).

§109.41. *Financial Accountability System Resource Guide.*

The rules for financial accounting are described in the official Texas Education Agency (TEA) publication *Financial Accountability System Resource Guide, Version 19 [18.0]*, which is adopted by this reference as the agency's official rule. A copy is available on the TEA website with information related to financial compliance.

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 December 11, 2023.

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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For further information, please call: (512) 475-1497



## SUBCHAPTER EE. COMMISSIONER'S RULES CONCERNING FINANCIAL ACCOUNTING GUIDELINES

### 19 TAC §109.5001

The Texas Education Agency (TEA) proposes an amendment to §109.5001, budgeting, accounting, and auditing. The proposed amendment would adopt by reference the updated *Financial Accountability System Resource Guide* (FASRG), Version 19, which would include allowable costs for dyslexia and related disorders added by House Bill (HB) 3928, 88th Texas Legislature, Regular Session, 2023.

**BACKGROUND INFORMATION AND JUSTIFICATION:** The FASRG describes the rules of financial accounting for school districts, charter schools, and education service centers and is adopted by reference under §109.5001. Revisions to the FASRG would align the content with current governmental accounting and auditing standards, remove obsolete requirements, and remove descriptions and discussions of best practices and other non-mandatory elements.

Requirements for financial accounting and reporting are derived from generally accepted accounting principles (GAAP). School districts and charter schools are required to adhere to GAAP. Legal and contractual considerations typical of the government environment are reflected in the fund structure basis of accounting.

An important function of governmental accounting systems is to enable administrators to assure and report on compliance with finance-related legal provisions. This assurance and reporting process means that the accounting system and its terminology, fund structure, and procedures must be adapted to satisfy finance-related legal requirements. However, the basic financial statements of school districts and charter schools should be prepared in conformity with GAAP.

School district and charter school accounting systems shall use the accounting code structure presented in the Account Code section of the FASRG (Module 1). Funds shall be classified and identified on required financial statements by the same code number and terminology provided in the Account Code section of the FASRG (Module 1).

The FASRG, Version 19, contains six modules on the following topics: Module 1, Financial Accounting and Reporting (FAR) and FAR Appendices; Module 2, Special Supplement - Charter Schools; Module 3, Special Supplement - Non-profit Charter Schools Chart of Accounts; Module 4, Auditing; Module 5, Purchasing; and Module 6, Compensatory Education, Guidelines, Financial Treatment, and an Auditing and Reporting System.

State law provides authority for both the State Board of Education (SBOE) and the commissioner of education to adopt rules on financial accounting. To accomplish this, the SBOE and the commissioner each adopt the FASRG by reference under separate rules. The SBOE adopts the FASRG by reference under

19 TAC §109.41, and the commissioner adopts the FASRG by reference under §109.5001.

The following changes would be made to Modules 1-6 of the FASRG.

*Module 1, Financial Accounting and Reporting (FAR) and FAR Appendices*

Module 1 aligns with current governmental accounting standards. Proposed Module 1 would include the following changes. Updates would be made to accounting codes and accounting guidance, which would include allowable costs for dyslexia and related disorders added by HB 3928, 88th Texas Legislature, Regular Session, 2023, and previous guidance would be clarified. School districts and charter schools would be required to maintain proper budgeting and financial accounting and reporting systems. In addition, school districts would be required to establish principles and policies to ensure uniformity in accounting in conformity with GAAP established by the Governmental Accounting Standards Board (GASB).

*Module 2, Special Supplement - Charter Schools*

Module 2 aligns with current financial accounting reporting standards. Proposed Module 2 would include the following significant changes. Updates would be made to accounting codes and accounting guidance, including a requirement for the recording of Teacher Retirement System (TRS) on-behalf revenue and payments and the calculation for the amounts, and previous guidance would be clarified. The proposed module would establish financial and accounting requirements for Texas public charter schools to ensure uniformity in accounting in conformity with GAAP. The proposed module would also include current guidance that complements the American Institute of Certified Public Accountants (AICPA) *Audit and Accounting Guide, State and Local Governments* and supplements the *Government Auditing Standards* of the United States Government Accountability Office (GAO). These requirements would facilitate preparation of financial statements that conform to GAAP established by the Financial Accounting Standards Board (FASB).

*Module 3, Special Supplement - Non-profit Charter Schools Chart of Accounts*

Module 3 aligns with current financial accounting standards. Proposed Module 3 would include the following changes. Updates would be made to accounting codes and accounting guidance, which would include allowable costs for dyslexia and related disorders added by HB 3928, 88th Texas Legislature, Regular Session, 2023, as well as the addition of accounting codes for TRS on-behalf payments, and previous guidance would be clarified. Charter schools would be required to maintain proper budgeting and financial accounting and reporting systems that are in conformity with Texas Education Data Standards in the Texas Student Data System Public Education Information Management System. In addition, charter schools would be required to establish principles and policies to ensure uniformity in accounting in conformity with GAAP established by the FASB. The proposed module would also include current auditing guidance that complements the AICPA *Audit and Accounting Guide, State and Local Governments* and supplements the *Government Auditing Standards* of the United States GAO. These requirements would facilitate preparation of financial statements that conform to GAAP established by the FASB.

*Module 4, Auditing*

Module 4 aligns with current auditing standards. Proposed Module 4 would include the following changes. Updates would be made to accounting codes and accounting guidance, and previous guidance would be clarified. The proposed module would establish auditing requirements for Texas public school districts and charter schools and include current requirements from TEC, §44.008, as well as Code of Federal Regulations, Title 2, Part 200, Subpart F, Audit Requirements, that implement the federal Single Audit Act. The proposed module would also include current auditing guidance that complements the AICPA *Audit and Accounting Guide, State and Local Governments* and supplements the *Government Auditing Standards* of the United States GAO. These requirements would facilitate preparation of financial statements that conform to GAAP established by the GASB.

*Module 5, Purchasing*

Module 5 aligns with current purchasing laws and standards. Proposed Module 5 would include the following changes. Updates would be made to purchasing guidance that has changed from previous legislation. Purchasing rules that needed additional explanation would be clarified. School districts and charter schools would be required to establish procurement policies and procedures that align with their unique operating environment and ensure compliance with relevant statutes and policies.

*Module 6, Compensatory Education, Guidelines, Financial Treatment, and an Auditing and Reporting System*

Proposed Module 6 would include the following changes. Updates would be made to clarify language that needed additional explanation, and other changes would be made due to changes in law. School districts and charter schools would be required to maintain proper budgeting and financial accounting and reporting systems. The module would provide information to assist local school officials' understanding of the numerous options for use of the state compensatory education allotment and provide current guidance for compliance.

The FASRG is posted on the TEA website at <https://tea.texas.gov/finance-and-grants/financial-accountability/financial-accountability-system-resource-guide>.

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

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

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

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

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

**GOVERNMENT GROWTH IMPACT:** TEA staff prepared a Government Growth Impact Statement assessment for this proposed

rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand and limit an existing regulation. The proposal would amend requirements and provide updated governmental accounting and auditing standards. In some instances, the proposed changes would add information, and in some instances, information would be removed.

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

**PUBLIC BENEFIT AND COST TO PERSONS:** Mr. Meyer has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be ensuring that the provisions of the FASRG align with current governmental accounting and auditing standards for school districts and charter schools. There is no anticipated economic cost to persons who are required to comply with the proposal.

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

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

**PUBLIC COMMENTS:** The public comment period on the proposal begins December 22, 2023, and ends January 22, 2024. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on December 22, 2023. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About\\_TEA/Laws\\_and\\_Rules/Commissioner\\_Rules\\_\(TAC\)/Proposed\\_Commissioner\\_of\\_Education\\_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

**STATUTORY AUTHORITY.** The amendment is proposed under Texas Education Code (TEC), §7.102(c)(32), which requires the State Board of Education (SBOE) to adopt rules concerning school district budgets and audits of school district fiscal accounts as required under TEC, Chapter 44, Subchapter A; TEC, §44.007(a), which requires the board of trustees of each school district to adopt and install a standard school fiscal accounting system that conforms with generally accepted accounting principles. TEC, §44.007(b), requires the accounting system to meet at least the minimum requirements prescribed by the commissioner, subject to review and comment by the state auditor. TEC, §44.007(c), requires a record to be kept of all revenues realized and of all expenditures made during the fiscal year for which a budget is adopted. A report of the revenues and expenditures for the preceding fiscal year is required to be filed with the agency on or before the date set by the SBOE. TEC, §44.007(d), requires each district, as part of the report required by TEC, §44.007, to include management, cost accounting, and financial information in a format prescribed by the SBOE in a manner sufficient to enable the board to monitor

the funding process and determine educational system costs by district, campus, and program; and TEC, §44.008(b), which requires the independent audit to meet at least the minimum requirements and be in the format prescribed by the SBOE, subject to review and comment by the state auditor. The audit must include an audit of the accuracy of the fiscal information provided by the district through the Texas Student Data System Public Education Information Management System.

**CROSS REFERENCE TO STATUTE.** The amendment implements Texas Education Code, §§7.102(c)(32), 44.007(a)-(d), and 44.008(b).

§109.5001. *Financial Accountability System Resource Guide.*

The rules for financial accounting are described in the official Texas Education Agency (TEA) publication Financial Accountability System Resource Guide, Version 19 [18-0], which is adopted by this reference as the agency's official rule. A copy is available on the TEA website with information related to financial compliance.

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 December 11, 2023.

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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For further information, please call: (512) 475-1497



## CHAPTER 112. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR SCIENCE

### SUBCHAPTER B. MIDDLE SCHOOL

#### 19 TAC §112.26

The State Board of Education (SBOE) proposes an amendment to §112.26, concerning Grade 6 science. The proposed amendment would correct punctuation errors in one student expectation.

**BACKGROUND INFORMATION AND JUSTIFICATION:** In accordance with statutory requirements that the SBOE by rule identify the essential knowledge and skills of each subject in the required curriculum, the SBOE follows a board-approved cycle to review and revise the essential knowledge and skills for each subject.

At the September 2019 meeting, SBOE members were asked to designate content advisors for the review and revision of the science Texas Essential Knowledge and Skills (TEKS). In December 2019, applications to serve on science TEKS review work groups were posted on the Texas Education Agency (TEA) website. Additionally, in December 2019, TEA distributed a survey to collect information from educators regarding the review and revision of the science TEKS. TEA staff provided applications for the science review work groups to SBOE members on a monthly basis from December 2019 to June 2020 and in September, October, and December 2020. At the January 2020 SBOE meeting, the SBOE provided specific guidance for the TEKS review work groups.



Also in January 2020, science TEKS review content advisors met in a face-to-face meeting to develop consensus recommendations regarding revisions to the science TEKS to share with future work groups. At that time, the content advisors met with representatives from Work Group A to discuss the consensus recommendations. Work Group A convened in February 2020 to review survey results, content advisor consensus recommendations, and the SBOE's guidance to work groups to develop recommendations for how science TEKS review work groups can address these areas. Work Group B was convened virtually in June 2020 to develop recommendations for four high school science courses: Biology, Chemistry, Integrated Physics and Chemistry, and Physics. In November 2020, the SBOE approved for second reading and final adoption proposed new §§112.41-112.45 for implementation beginning in the 2023-2024 school year.

Work Group D was convened for monthly meetings from November 2020-February 2021 to develop recommendations for TEKS for five additional high school science courses: Aquatic Science, Astronomy, Earth and Space Science, Environmental Systems, and a new course Specialized Topics in Science. In June 2021, the board gave final approval to the additional high school science courses. Specialized Topics in Science was approved for implementation beginning in the 2022-2023 school year. Aquatic Science, Astronomy, Earth and Space Science, and Environmental Systems were approved for implementation beginning in the 2024-2025 school year.

Between August and November 2020, Work Group C convened for a series of virtual meetings to develop recommendations for the Grades 6-8 science TEKS. Work Group E was convened for monthly meetings between January and March 2021 to develop recommendations for the science TEKS for Kindergarten-Grade 5. Work Groups C and E were reconvened in May and June 2021 to address public feedback and revise their draft recommendations. Work Group F was convened for a series of virtual meetings in July 2021 to address SBOE feedback provided at the April and June 2021 SBOE meetings, vertically align the elementary and middle school standards, meet with content advisors, and finalize the draft recommendations for the Kindergarten-Grade 8 TEKS for science. At the September 2021 SBOE meeting, the board approved for first reading and filing authorization proposed new TEKS for Kindergarten-Grade 5 science. At the November 2021 SBOE meeting, the board approved for second reading and final adoption proposed new 19 TAC §§112.1-112.7 and 112.25-112.28.

Following adoption of the revised standards, an error was discovered in one Grade 6 student expectation. An additional comma changed the intended meaning of the student expectation.

The proposed amendment would remove the additional comma from subsection (b)(11)(A) and make a technical edit to punctuation at the end of the student expectation.

The SBOE approved the proposed amendment for first reading and filing authorization at its November 17, 2023 meeting.

**FISCAL IMPACT:** Monica Martinez, associate commissioner for standards and programs, has determined that for the first five years the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

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

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

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

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

**GOVERNMENT GROWTH IMPACT:** TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, the proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not expand, limit, or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

**PUBLIC BENEFIT AND COST TO PERSONS:** Ms. Martinez has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be correcting the error prior to the implementation of the new standards in the 2024-2025 school year to ensure that students receive instruction on the intended content. There is no anticipated economic cost to persons who are required to comply with the proposal.

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

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

**PUBLIC COMMENTS:** The public comment period on the proposal begins December 22, 2023, and ends at 5:00 p.m. on January 22, 2024. A form for submitting public comments is available on the TEA website at <https://tea.texas.gov/about-tea/laws-and-rules/sboe-rules-tac/proposed-state-board-of-education-rules>. The SBOE will take registered oral and written comments on the proposal at the appropriate committee meeting in January-February 2024 in accordance with the SBOE board operating policies and procedures. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on December 22, 2023.

**STATUTORY AUTHORITY.** The amendment is proposed under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; and TEC, §28.002(c), which

requires the SBOE to identify by rule the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §7.102(c)(4) and §28.002(a) and (c).

§112.26. *Science, Grade 6, Adopted 2021.*

(a) (No change.)

(b) Knowledge and skills.

(1) - (10) (No change.)

(11) Earth and space. The student understands how resources are managed. The student is expected to:

(A) research and describe why resource management is important in reducing global energy[;] poverty, malnutrition, and air and water pollution[;] and

(B) (No change.)

(12) - (13) (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 December 11, 2023.

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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For further information, please call: (512) 475-1497



## TITLE 22. EXAMINING BOARDS

### PART 11. TEXAS BOARD OF NURSING

#### CHAPTER 213. PRACTICE AND PROCEDURE

##### 22 TAC §213.36, §213.37

Introduction. The Texas Board of Nursing (Board) proposes new §213.36, relating to Alleged Standard of Care Violations by Advanced Practice Registered Nurses and new §213.37, relating to Disclosure of Expert Reviewer's Report. These rules are proposed under the authority of the Occupations Code § 301.151 and are necessary for compliance with the statutory mandates found in Texas Occupations Code §§ 301.457, 301.4575, and 301.464.

During the 88th Legislative Session, the Texas Legislature enacted SB 1343 which requires that complaints alleging a standard-of-care violation by an Advanced Practice Registered Nurse (APRN) be reviewed by an expert reviewer, appointed by the Board, who is an APRN practicing in the same advanced practice role and with the same population focus as the APRN who is the subject of the complaint. The bill further requires that the appointed expert reviewer determine whether the APRN violated the standard-of-care applicable to the circumstances

of the allegation, record the expert reviewer's conclusions in a report, and submit the report to the Board. Before initiating informal proceedings involving the APRN, the Board must provide notice of the proceedings along with a deidentified copy of the expert reviewer's report. The proposed rule sections implement these statutory requirements.

#### Section by Section Overview

Proposed new 22 Texas Administrative Code §213.36 sets forth the process the Board must follow when investigating an alleged standard of care violation by an APRN. Proposed §213.36(a) implements Tex. Occ. Code § 301.457(h) by establishing that the Board shall appoint an APRN reviewer to assist in the investigation in the same practice role with the same population focus if the Board determines that an act of the APRN likely falls below an applicable standard of care. Proposed §213.36(b) implements Tex. Occ. Code § 301.457(i), mirroring the statutory language regarding when the Board may not refer a complaint to against an APRN to an APRN reviewer. Proposed §213.36(c) implements Tex. Occ. Code § 301.4575(1)&(2), mirroring the statutory language regarding the procedures for an advanced practice registered nurse review. Proposed §213.36(d) implements Tex. Occ. Code § 301.4575 by providing guidance as to the contents of the preliminary report to be submitted by the reviewer.

Proposed new 22 Texas Administrative Code §213.37 sets forth the procedure for the disclosure of the expert reviewer's report. This new section implements Tex. Occ. Code § 301.464(b) by providing that the notice of any informal proceeding include a copy of the expert report with any identifying information other than the role and population focus of the expert reviewer redacted.

Fiscal Note. Kristin Benton, RN, DNP, Executive Director, has determined that for each year of the first five years the proposed new sections will be in effect, there will be no anticipated change in the revenue to state government as a result of the enforcement or administration of the proposal.

Public Benefit/Cost Note. Dr. Benton has also determined that for each year of the first five years that the proposed rules are in effect, the anticipated public benefit will be the adoption of rules that comply with statutory mandates.

There are no new anticipated costs of compliance associated with the proposal. The proposed rules do not impose any requirement or condition on board regulated entities. Thus, the Board does not anticipate any new costs of compliance resulting from the proposal. Further, the Board is not required to comply with the requirements of Tex. Gov't Code. §2001.0045(b) because the proposed rule is not anticipated to result in new costs of compliance, is necessary to protect the health, safety, and welfare of the residents of this state, and is necessary to implement legislation, as provided by §2001.0045(c).

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses and Rural Communities. The Government Code §2006.002(c) and (f) require, that if a proposed rule may have an economic impact on small businesses or micro businesses or rural communities, state agencies must prepare, as part of the rulemaking process, an economic impact statement that assesses the potential impact of the proposed rule on these businesses and communities and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule. Section 2006.002(c-1) requires that the regulatory analysis "consider, if consistent with the health, safety,

and environmental and economic welfare of the state, using regulatory methods that will accomplish the objectives of applicable rules while minimizing adverse impacts on small businesses." Therefore, an agency is not required to consider alternatives that, while possibly minimizing adverse impacts on small and micro businesses, would not be protective of the health, safety, and environmental and economic welfare of the state.

The Government Code §2006.001(1) defines a micro business as a legal entity, including a corporation, partnership, or sole proprietorship that: (i) is formed for the purpose of making a profit; (ii) is independently owned and operated; and (iii) has not more than 20 employees. The Government Code §2006.001(2) defines a small business as a legal entity, including a corporation, partnership, or sole proprietorship, that: (i) is formed for the purpose of making a profit; (ii) is independently owned and operated; and (iii) has fewer than 100 employees or less than \$6 million in annual gross receipts. Each of the elements in §2006.001(1) and §2006.001(2) must be met in order for an entity to qualify as a micro business or small business. The Government Code §2006.001(1-a) defines a rural community as a municipality with a population of less than 25,000.

These proposed rules, mandated by statute, cannot be reasonably expected to result in any costs of compliance for small businesses, micro businesses, or rural communities. As such, the Board is not required to prepare an economic impact statement and regulatory flexibility analysis.

Government Growth Impact Statement. The Board is required, pursuant to Tex. Gov't Code §2001.0221 and 34 Texas Administrative Code §11.1, to prepare a government growth impact statement. The Board has determined for each year of the first five years the proposed amendments will be in effect: (i) the proposal does not create or eliminate a government program; (ii) implementation of the proposal does not require the creation of new employee positions or the elimination of existing employee positions, as the proposal is not expected to have an effect on existing agency positions; (iii) implementation of the proposal does not require an increase or decrease in future legislative appropriations to the Board, as the proposal is not as the Board intends to shift necessary resources to comply with the statutory mandate; (iv) the proposal does not require an increase or decrease in fees paid to the Board; (v) the proposal references new statutory requirements for the Board to follow in investigations but does not add additional requirements for licensees; (vi) the proposal does not expand or repeal an existing regulation; (vii) the proposed rule does not increase or decrease the number of individuals subject to the rule's applicability; and (viii) the proposal does not have an effect on the state's economy.

Takings Impact Assessment. The Board has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

Request for Public Comment. Comments on this proposal may be submitted to James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to dusty.johnston@bon.texas.gov, or faxed to (512) 305-8101. Comments must be received no later than thirty (30) days from the date of publication of this proposal. If a hearing is held, written and oral comments presented at the hearing will be considered.

Statutory Authority. These rule sections are proposed under the authority of Texas Occupations Code §§ 301.151 and 301.457.

Cross Reference to Statute. The following statutes are affected by this proposal: Texas Occupations Code §§ 301.151, 301.457, 301.4575 and 301.464.

§213.36. Alleged Standard of Care Violations by Advanced Practice Registered Nurses.

(a) If, during the course of investigating a complaint made against an APRN, the board determines that an act of the APRN likely falls below an acceptable standard of care, the board shall appoint another APRN as an expert reviewer to assist in the investigation. An APRN appointed as an expert reviewer under this section must practice in the same advanced practice role with the same population focus as the APRN who is the subject of the complaint.

(b) The board may not refer a complaint against an APRN to an expert reviewer appointed under this section if the act alleged is:

(1) within the scope of practice applicable to a nurse who is not an advanced practice registered nurse; or

(2) considered unprofessional conduct, as described by Occupations Code, § 301.452(b)(10).

(c) An expert reviewer appointed under this section to review allegations against an APRN shall:

(1) determine whether the APRN violated the standard of care applicable to the circumstances of the allegation; and

(2) issue to the board a preliminary written report of the expert reviewer's conclusions.

(d) A report issued by an expert reviewer under this section must include:

(1) relevant facts concerning the medical care rendered;

(2) the applicable standard of care;

(3) application of the standard of care to the relevant facts;

(4) a determination of whether the standard of care has been violated; and

(5) a summation of the expert reviewer's opinion.

§213.37. Disclosure of Expert Reviewer's Report.

(a) Before initiating informal proceedings to resolve a complaint referred to an expert reviewer under §213.36 of this title (relating to Alleged Standard of Care Violations by Advanced Practice Registered Nurses), the board shall provide a copy of the expert reviewer's report issued under that section to the advanced practice registered nurse who is the subject of the complaint.

(b) Before providing an expert reviewer's report, the board shall redact:

(1) identifying information of the expert reviewer, other than the expert reviewer's role and population focus; and

(2) confidential information, as described by Occupations Code, §§ 301.460 and 301.466, or that is otherwise privileged or confidential under the Nursing Practice Act or other applicable law.

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 December 7, 2023.



## CHAPTER 214. VOCATIONAL NURSING EDUCATION

### 22 TAC §214.14

The Texas Board of Nursing (Board) proposes new 22 Texas Administrative Code §214.14, relating to use of vendor created standardized examinations by a private school of nursing in a manner that may deny students graduation and opportunity to take the NCLEX (National Council Licensure Examination) licensure exam. The rule is being proposed under the authority of the Occupations Code § 301.151 and Tex. Occ. Code § 301.1571, effective September 1, 2023.

#### Background.

In 2017, the Texas Board of Nursing (BON) issued the Board Education Guideline 3.7.4.a in response to numerous reports and questions from students, parents, and policymakers about the use of vendor-created standardized examinations, especially when these exams are used to deny students the opportunity to take the NCLEX licensure exam. Many vocational and professional nursing education programs had incorporated the use of these exams into the curriculum in various ways. At the time, a survey revealed many nursing programs were using these exams as a graduation requirement or to deny students from receiving their affidavit of graduation, which is required to be submitted to register for the NCLEX licensure exam.

Although the BON had no purview over a nursing program's decisions to use these exams, BON staff met with three vendors to clarify the intended purposes for these exams and to assist nursing programs in their use. All vendors agreed standardized examinations are one of many measures of program quality. With input from the vendors, Board Education Guideline 3.7.4.a was drafted which outlines the effective uses of vendor-created standardized exams as an evaluation of student progress and cautions nursing programs from using these exams in a high-stakes manner. The guideline recommends that these exams should not prevent students from progressing or graduating.

Six years later, a second survey revealed that despite BON's guideline and cautions, some nursing programs disregarded BON's recommendation and continue to use vendor-created standardized exams in a high-stakes manner.

During the 88th Legislative Session, the Texas Legislature enacted S.B. 1429 which authorized the BON to adopt rules to prohibit the use of vendor-created standardized examinations as a graduation requirement or to deny students an affidavit of graduation.

#### Section by Section Overview.

22 Texas Administrative Code §214.14(a) prohibits a vocational nursing education program from using a student's score on a standardized examination as a graduation requirement; or as the basis for denying the student an affidavit of graduation.

22 Texas Administrative Code §214.14(b) prohibits the vocational nursing education program from using a student's score to account for more than 10 (ten) percent of the student's final grade in any course provided under the program.

22 Texas Administrative Code §214.14(c) lists the only permissible ways vocational nursing education program may use a standardized examination prepared by a private entity. These include letting students familiarize themselves with computerized testing, using scores as a component of program admissions criteria, evaluating a student's strengths and weaknesses for remediation purposes; and identifying students who are experiencing academic difficulties and require early remediation. The rule also allows use of standardized test scores in assessing the effectiveness of the program by providing trend data, comparisons with nationwide averages, assessment of student knowledge of program content, assessment of success in curriculum revisions or changes, and as a measure of student mastery of program content.

22 Texas Administrative Code §214.14(d) prohibits the vocational nursing education program from requiring the student, based on the student's score, to attend any course offered by the private entity that created the standardize exam.

22 Texas Administrative Code §214.149(e) clarifies that failure to comply with the requirements of this section will subject a vocational nursing education program to board disciplinary action, including a change in the program's approval status.

**Fiscal Note.** Dr. Kristin Benton, DNP, RN, Executive Director, has determined that for each year of the first five years the proposal will be in effect, there will be no change in the revenue to state government as a result of the enforcement or administration of the proposal.

**Public Benefit/Cost Note.** Dr. Benton has also determined that for each year of the first five years the proposal is in effect, the anticipated public benefit will be the adoption of rules that comply with SB 1429 and codify the appropriate and recommended uses for standardized exams outlined in Board Education Guideline 3.7.4. and prevent the use of these exams as way of denying graduation and opportunity to take the NCLEX licensure exam by those students who have otherwise completed the approved curriculum. There are no anticipated costs of compliance with the proposal.

**Costs Under the Government Code §2001.0045.** The Government Code §2001.0045 prohibits agencies from adopting a rule that imposes costs on regulated persons unless the agency repeals a rule that imposes a total cost on regulated persons that is equal to or greater than the total cost imposed on regulated persons by the proposed rule or amends a rule to decrease the total cost imposed on regulated persons by an amount that is equal to or greater than the cost imposed on the persons by the proposed rule. Pursuant to §2001.0045(c)(9), this prohibition does not apply to a rule that is necessary to implement legislation, unless the legislature specifically states §2001.0045 applies to the rule. There are no anticipated costs of compliance with the proposal, and the proposal is necessary for consistency with the statutory requirements of SB 1429.

**Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses.** The Government Code §2006.002(c) and (f) require, that if a proposed rule may have an economic impact on small businesses, micro businesses, or rural communities, state agencies must prepare, as part of the rule-making process, an economic impact statement that assesses

the potential impact of the proposed rule on these businesses and communities and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule. Because there are no anticipated costs of compliance associated with the proposal, an economic impact statement and regulatory flexibility analysis is not required.

Government Growth Impact Statement. The Board is required, pursuant to Tex. Gov't Code §2001.0221 and 34 Texas Administrative Code §11.1, to prepare a government growth impact statement. The Board has determined for each year of the first five years the proposed amendments will be in effect: (i) the proposal does not create or eliminate a government program; (ii) the proposal is not expected to have an effect on current agency positions; (iii) implementation of the proposal does not require an increase or decrease in future legislative appropriations to the Board; (iv) the proposal does not affect the fees paid to the Board; (v) the proposal amends existing regulations for consistency with the statutory requirements of SB 1429; (vi) the proposal does not expand, limit, or repeal an existing regulation; (vii) the proposal does not extend to new entities not previously subject to the rule; and (viii) the proposal will not affect the state's economy.

Takings Impact Assessment. The Board has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

Request for Public Comment. To be considered, written comments on this proposal should be submitted to James W. Johnston, General Counsel, Texas Board of Nursing, 1801 Congress, Suite 10-200, Austin, Texas 78701, or by e-mail to [Dusty.Johnston@bon.texas.gov](mailto:Dusty.Johnston@bon.texas.gov), or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

Statutory Authority. The proposal is proposed under the authority of the Occupations Code §301.151 and SB 1429, which amends the Occupations Code § 301.1571

Texas Occupations Code § 301.151 addresses the Board's rule-making authority. Texas Occupations Code § 301.1571 relates to the use of standardized examination by a school of nursing and educational program and imposes the duty upon the Board of Nursing to adopt rules specifically to implement its provisions.

Cross Reference To Statute. The following statutes are affected by this proposal: the Occupations Code §§ 301.151 and 301.1571

§214.14. Use of Standardized Examination Prepared by Private Entity.

(a) A vocational nursing education program shall not use a student's score on a standardized examination prepared by a private entity:

- (1) as a graduation requirement; or
- (2) as the basis for denying the student an affidavit of graduation.

(b) A vocational nursing education program shall not use a student's score on one or more standardized examinations prepared by a private entity to account for more than 10 percent of the student's final grade in any course provided under the program. At least 90 percent of a student's final grade in each course provided under the program must

be based on metrics other than the student's scores on standardized examinations prepared by a private entity.

(c) A vocational nursing education program may use a standardized examination prepared by a private entity only to:

(1) familiarize students with computerized testing;

(2) assess potential or enrolled students, including by using student scores on standardized examinations prepared by a private entity:

(A) as one component of program admissions criteria;

(B) in evaluating a student's strengths and weaknesses for remediation purposes; and

(C) to identify students who are experiencing academic difficulties and require early remediation; and

(3) assess the effectiveness of the program by providing:

(A) trend data on student performance;

(B) a comparison of student performance with nationwide averages;

(C) feedback regarding student knowledge of program content;

(D) data necessary to monitor the effectiveness of specific course, level, and program curriculum revisions;

(E) data necessary to evaluate the effectiveness of program curriculum content for revision purposes; and

(F) a measure of student mastery of program content.

(d) A vocational nursing education program that determines, on the basis of a student's score on a standardized examination by a private entity, that the student is in need of remediation, shall not require the student to attend any course offered by the private entity that created the standardized examination.

(e) Failure to comply with the requirements of this section will subject a vocational nursing education program to board disciplinary action, including a change in the program's approval status under §214.4 of this title (relating to Approval).

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 December 8, 2023.

TRD-202304604

James W. Johnston

General Counsel

Texas Board of Nursing

Earliest possible date of adoption: January 21, 2024

For further information, please call: (512) 305-6879



## CHAPTER 215. PROFESSIONAL NURSING EDUCATION

### 22 TAC §215.14

The Texas Board of Nursing (Board) proposes new 22 Texas Administrative Code §215.14, relating to use of vendor created standardized examinations by a private school of nursing in a

manner that may deny students graduation and opportunity to take the NCLEX (National Council Licenser Examination) licensure exam. The rule is being proposed under the authority of the Texas Occupations Code § 301.151 and Texas Occupations Code § 301.1571, effective September 1, 2023.

#### Background.

In 2017, the Texas Board of Nursing (BON) issued the Board Education Guideline 3.7.4.a in response to numerous reports and questions from students, parents, and policymakers about the use of vendor-created standardized examinations, especially when these exams are used to deny students the opportunity to take the NCLEX licensure exam. Many vocational and professional nursing education programs had incorporated the use of these exams into the curriculum in various ways. At the time, a survey revealed many nursing programs were using these exams as a graduation requirement or to deny students from receiving their affidavit of graduation, which is required to be submitted to register for the NCLEX licensure exam.

Although the BON had no purview over a nursing program's decisions to use these exams, BON staff met with three vendors to clarify the intended purposes for these exams and to assist nursing programs in their use. All vendors agreed standardized examinations are one of many measures of program quality. With input from the vendors, Board Education Guideline 3.7.4.a was drafted which outlines the effective uses of vendor-created standardized exams as an evaluation of student progress and cautions nursing programs from using these exams in a high-stakes manner. The guideline recommends that these exams should not prevent students from progressing or graduating.

Six years later, a second survey revealed that despite BON's guideline and cautions, some nursing programs disregarded BON's recommendation and continue to use vendor-created standardized exams in a high-stakes manner.

During the 88th Legislative Session, the Texas Legislature enacted S.B. 1429 which authorized the BON to adopt rules to prohibit the use of vendor-created standardized examinations as a graduation requirement or to deny students an affidavit of graduation.

#### Section by Section Overview.

22 Texas Administrative Code §215.14(a) prohibits a professional nursing education program from using a student's score on a standardized examination as a graduation requirement; or as the basis for denying the student an affidavit of graduation.

22 Texas Administrative Code §215.14(b) prohibits the professional nursing education program from using a student's score to account for more than 10 (ten) percent of the student's final grade in any course provided under the program.

22 Texas Administrative Code §215.14(c) lists the only permissible ways professional nursing education program may use a standardized examination prepared by a private entity. These include letting students familiarize themselves with computerized testing, using scores as a component of program admissions criteria, evaluating a student's strengths and weaknesses for remediation purposes; and identifying students who are experiencing academic difficulties and require early remediation. The rule also allows use of standardized test scores in assessing the effectiveness of the program by providing trend data, comparisons with nationwide averages, assessment of student knowledge of program content, assessment of success in curriculum revisions or

changes, and as a measure of student mastery of program content.

22 Texas Administrative Code §215.14(d) prohibits the professional nursing education program from requiring the student, based on the student's score, to attend any course offered by the private entity that created the standardized exam.

22 Texas Administrative Code §215.14(e) clarifies that failure to comply with the requirements of this section will subject a professional nursing education program to board disciplinary action, including a change in the program's approval status.

Fiscal Note. Dr. Kristin Benton, DNP, RN, Executive Director, has determined that for each year of the first five years the proposed new rule will be in effect, there will be no change in the revenue to state government as a result of the enforcement or administration of the proposal.

Public Benefit/Cost Note. Dr. Benton has also determined that for each year of the first five years the proposed new rule is in effect, the anticipated public benefit will be the adoption of rules that comply with SB 1429 and codify the appropriate and recommended uses for standardized exams outlined in Board Education Guideline 3.7.4. and prevent the use of these exams as way of denying graduation and opportunity to take the NCLEX licensure exam by those students who have otherwise completed the approved curriculum. There are no anticipated costs of compliance with the proposal.

Costs Under the Government Code §2001.0045. The Government Code §2001.0045 prohibits agencies from adopting a rule that imposes costs on regulated persons unless the agency repeals a rule that imposes a total cost on regulated persons that is equal to or greater than the total cost imposed on regulated persons by the proposed new rule or amends a rule to decrease the total cost imposed on regulated persons by an amount that is equal to or greater than the cost imposed on the persons by the proposed rule. Pursuant to §2001.0045(c)(9), this prohibition does not apply to a rule that is necessary to implement legislation, unless the legislature specifically states §2001.0045 applies to the rule. There are no anticipated costs of compliance with the proposal, and the proposal is necessary for consistency with the statutory requirements of SB 1429.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses and Rural Communities. The Government Code §2006.002(c) and (f) require, that if a proposed rule may have an economic impact on small businesses, micro businesses, or rural communities, state agencies must prepare, as part of the rulemaking process, an economic impact statement that assesses the potential impact of the proposed rule on these businesses and communities and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule. Because there are no anticipated costs of compliance associated with the proposal, an economic impact statement and regulatory flexibility analysis is not required.

Government Growth Impact Statement. The Board is required, pursuant to Tex. Gov't Code §2001.0221 and 34 Texas Administrative Code §11.1, to prepare a government growth impact statement. The Board has determined for each year of the first five years the proposed new rule will be in effect: (i) the proposal does not create or eliminate a government program; (ii) the proposal is not expected to have an effect on current agency positions; (iii) implementation of the proposal does not require an increase or decrease in future legislative appropriations to the Board; (iv) the proposal does not affect the fees paid to the

Board; (v) the proposal amends existing regulations for consistency with the statutory requirements of SB 1429; (vi) the proposal does not expand, limit, or repeal an existing regulation; (vii) the proposal does not extend to new entities not previously subject to the rule; and (viii) the proposal will not affect the state's economy.

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

**Request for Public Comment.** To be considered, written comments on this proposal should be submitted to James W. Johnston, General Counsel, Texas Board of Nursing, 1801 Congress, Suite 10-200, Austin, Texas 78701, or by e-mail to Dusty.Johnston@bon.texas.gov, or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

**Statutory Authority.** The proposed new rule is proposed under the authority of the Texas Occupations Code §301.151 and SB 1429, which amends the Texas Occupations Code § 301.1571.

Section 301.151 addresses the Board's rulemaking authority. Section 301.1571 relates to the use of standardized examination by a school of nursing and educational program and imposes the duty upon the Board of Nursing to adopt rules specifically to implement its provisions.

**Cross Reference To Statute.** The following statutes are affected by this proposal: Texas Occupations Code §§ 301.151 and 301.1571.

§215.14. Use of Standardized Examination Prepared by Private Entity.

(a) A professional nursing education program shall not use a student's score on a standardized examination prepared by a private entity:

- (1) as a graduation requirement; or
- (2) as the basis for denying the student an affidavit of graduation.

(b) A professional nursing education program shall not use a student's score on one or more standardized examinations prepared by a private entity to account for more than 10 percent of the student's final grade in any course provided under the program. At least 90 percent of students' final grade in each course provided under the program must be based on metrics other than students' scores on standardized examinations prepared by a private entity.

(c) A professional nursing education program may use a standardized examination prepared by a private entity only to:

- (1) familiarize students with computerized testing;
- (2) assess potential or enrolled students, including by using student scores on a standardized examination prepared by a private entity:
  - (A) as one component of program admissions criteria;
  - (B) in evaluating a student's strengths and weaknesses for remediation purposes; and
  - (C) to identify students who are experiencing academic difficulties and require early remediation; and

(3) assess the effectiveness of the program by providing:

- (A) trend data on student performance;
- (B) a comparison of student performance with nationwide averages;
- (C) feedback regarding student knowledge of program content;
- (D) data necessary to monitor the effectiveness of specific course, level, and program curriculum revisions;
- (E) data necessary to evaluate the effectiveness of program curriculum content for revision purposes; and
- (F) a measure of student mastery of program content.

(d) A professional nursing education program that determines, on the basis of a student's score on a standardized examination by a private entity, that the student is in need of remediation, shall not require the student to attend any course offered by the private entity that created the standardized examination.

(e) Failure to comply with the requirements of this section will subject a professional nursing education program to board disciplinary action, including a change in the program's approval status under §215.4 of this chapter (relating to Approval).

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 December 8, 2023.

TRD-202304605  
James W. Johnston  
General Counsel  
Texas Board of Nursing

Earliest possible date of adoption: January 21, 2024  
For further information, please call: (512) 305-6879



## PART 15. TEXAS STATE BOARD OF PHARMACY

### CHAPTER 283. LICENSING REQUIREMENTS FOR PHARMACISTS

#### 22 TAC §283.12

The Texas State Board of Pharmacy proposes amendments to §283.12, concerning Licenses for Military Service Members, Military Veterans, and Military Spouses. The amendments, if adopted, clarify that the requirements for obtaining an interim license for a military service member or military spouse do not affect rights that may be provided under federal law.

Daniel Carroll, Pharm.D., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Dr. Carroll has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to provide clear regulations that reflect the relationship between complementary rights under federal law and Board rules. There is no anticipated adverse eco-

conomic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

For each year of the first five years the proposed amendments will be in effect, Dr. Carroll has determined the following:

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

Written comments on the amendments may be submitted to Eamon D. Briggs, Deputy General Counsel, Texas State Board of Pharmacy, 1801 Congress Avenue, Suite 13.100, Austin, Texas 78701-1319, FAX (512) 305-8061. Comments must be received by 5:00 p.m., January 30, 2024.

The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§283.12. *Licenses for Military Service Members, Military Veterans, and Military Spouses.*

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

(1) Active duty--Current full-time military service in the armed forces of the United States or active duty military service as a member of the Texas military forces, or similar military service of another state.

(2) Armed forces of the United States--The army, navy, air force, space force, coast guard, or marine corps of the United States or a reserve unit of one of those branches of the armed forces.

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

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

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

(b) Alternative licensing procedure. For the purpose of §55.004, Occupations Code, an applicant for a pharmacist license who is a military service member, military veteran, or military spouse may complete the following alternative procedures for licensing as a pharmacist.

(1) Requirements for licensing by reciprocity. An applicant for licensing by reciprocity who meets all of the following requirements may be granted a temporary license as specified in this subsection prior to completing the NABP application for pharmacist license by reciprocity, and taking and passing the Texas Pharmacy Jurisprudence Examination. The applicant shall:

(A) complete the Texas application for pharmacist license by reciprocity that includes the following:

- (i) name;
- (ii) addresses, phone numbers, date of birth, and social security number; and
- (iii) any other information requested on the application;

(B) meet the educational and age requirements as set forth in §283.3 of this title (relating to Educational and Age Requirements);

(C) present to the board proof of initial licensing by examination and proof that any current licenses and any other licenses granted to the applicant by any other state have not been suspended, revoked, canceled, surrendered, or otherwise restricted for any reason;

(D) meet all requirements necessary for the board to access the criminal history records information, including submitting fingerprint information, and such criminal history check does not reveal any disposition for a crime specified in §281.64 of this title (relating to Sanctions for Criminal Offenses) indicating a sanction of denial, revocation, or suspension;

(E) be exempt from the application and examination fees paid to the board set forth in §283.9(a)(2)(A) and (b) of this title (relating to Fee Requirements for Licensure by Examination, Score Transfer and Reciprocity); and

(F) provide documentation of eligibility, including:

(i) military identification indicating that the applicant is a military service member, military veteran, or military dependent, if a military spouse; and

(ii) marriage certificate, if a military spouse.

(2) Requirements for an applicant whose Texas pharmacist license has expired. An applicant whose Texas pharmacist license has expired within five years preceding the application date:

(A) shall complete the Texas application for licensing that includes the following:

- (i) name;
- (ii) addresses, phone numbers, date of birth, and social security number; and
- (iii) any other information requested on the application;

(B) shall provide documentation of eligibility, including:

(i) military identification indicating that the applicant is a military service member, military veteran, or military dependent, if a military spouse; and



(ii) marriage certificate, if a military spouse;

(C) shall pay the renewal fee specified in §295.5 of this title (relating to Pharmacist License or Renewal Fees); however, the applicant shall be exempt from the fees specified in §295.7(3) of this title (relating to Pharmacist License Renewal);

(D) shall complete approved continuing education requirements according to the following schedule:

(i) if the Texas pharmacist license has been expired for more than one year but less than two years, the applicant shall complete 15 contact hours of approved continuing education;

(ii) if the Texas pharmacist license has been expired for more than two years but less than three years, the applicant shall complete 30 contact hours of approved continuing education; or

(iii) if the Texas pharmacist license has been expired for more than three years but less than five years, the applicant shall complete 45 contact hours of approved continuing education; and

(E) is not required to take the Texas Pharmacy Jurisprudence Examination.

(3) A temporary license issued under this section is valid for no more than six months and may be extended, if disciplinary action is pending, or upon request, as otherwise determined reasonably necessary by the executive director of the board.

(4) A temporary license issued under this section expires within six months of issuance if the individual fails to pass the Texas Pharmacy Jurisprudence Examination within six months or fails to take the Texas Pharmacy Jurisprudence Examination within six months.

(5) An individual may not serve as pharmacist-in-charge of a pharmacy with a temporary license issued under this subsection.

(c) Expedited licensing procedure. For the purpose of §55.005, Occupations Code, an applicant for a pharmacist license who is a military service member, military veteran, or military spouse and who holds a current license as a pharmacist issued by another state may complete the following expedited procedures for licensing as a pharmacist. The applicant shall:

(1) meet the educational and age requirements specified in §283.3 of this title (relating to Educational and Age Requirements);

(2) meet all requirements necessary in order for the board to access the criminal history record information, including submitting fingerprint information and being responsible for all associated costs;

(3) complete the Texas and NABP applications for reciprocity. Any fraudulent statement made in the application for reciprocity is grounds for denial of the application. If such application is granted, any fraudulent statement is grounds for suspension, revocation, and/or cancellation of any license so granted by the board. The Texas application includes the following information:

(A) name;

(B) addresses, phone numbers, date of birth, and social security number; and

(C) any other information requested on the application;

(4) present to the board proof of initial licensing by examination and proof that their current license and any other license or licenses granted to the applicant by any other state have not been suspended, revoked, canceled, surrendered, or otherwise restricted for any reason;

(5) pass the Texas Pharmacy Jurisprudence Examination with a minimum grade of 75. (The passing grade may be used for the purpose of licensure by reciprocity for a period of two years from the date of passing the examination.) Should the applicant fail to achieve a minimum grade of 75 on the Texas Pharmacy Jurisprudence Examination, such applicant, in order to be licensed, shall retake the Texas Pharmacy Jurisprudence Examination as specified in §283.11 of this title (relating to Examination Retake Requirements) until such time as a minimum grade of 75 is achieved; and

(6) be exempt from the application and examination fees paid to the board set forth in §283.9(a)(2)(A) and (b).

(d) License renewal. As specified in §55.003, Occupations Code, a military service member who holds a pharmacist license is entitled to two years of additional time to complete any requirements related to the renewal of the military service member's license.

(1) A military service member who fails to renew their pharmacist license in a timely manner because the individual was serving as a military service member shall submit to the board:

(A) name, address, and license number of the pharmacist;

(B) military identification indicating that the individual is a military service member; and

(C) a statement requesting up to two years of additional time to complete the renewal.

(2) A military service member specified in paragraph (1) of this subsection shall be exempt from fees specified in §295.7(3) of this title (relating to Pharmacist License Renewal).

(3) A military service member specified in paragraph (1) of this subsection is entitled to two additional years of time to complete the continuing education requirements specified in §295.8 of this title (relating to Continuing Education Requirements).

(e) Inactive status. The holder of a pharmacist license who is a military service member, a military veteran, or a military spouse who holds a pharmacist license and who is not engaged in the practice of pharmacy in this state may place the license on inactive status as specified in §295.9 of this title (relating to Inactive License). The inactive license holder:

(1) shall provide documentation to include:

(A) military identification indicating that the pharmacist is a military service member, military veteran, or military dependent, if a military spouse; and

(B) marriage certificate, if a military spouse;

(2) shall be exempt from the fees specified in §295.9(a)(1)(C) and §295.9(a)(2)(C) of this title;

(3) shall not practice pharmacy in this state; and

(4) may reactivate the license as specified in §295.9 of this title (relating to Inactive License).

(f) Interim license for military service member or military spouse. In accordance with §55.0041, Occupations Code, a military service member or military spouse who is currently licensed in good standing by a jurisdiction with licensing requirements that are substantially equivalent to the licensing requirements in this state may be issued an interim pharmacist license. The military service member or military spouse:

(1) shall provide documentation to include:

(A) a notification of intent to practice form including any additional information requested;

(B) proof of the military service member or military spouse's residency in this state, including a copy of the permanent change of station order for the military service member or military service member to whom the military spouse is married;

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

(D) verification from the jurisdiction in which the military service member or military spouse holds an active pharmacist license that the military service member or military spouse's license is in good standing;

(2) may not practice pharmacy in this state until issued an interim pharmacist license;

(3) may hold an interim pharmacist license only for the period during which the military service member or military service member to whom the military spouse is married is stationed at a military installation in this state, but not to exceed three years from the date of issuance of the interim license; and

(4) may not renew the interim pharmacist license.

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

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 December 6, 2023.

TRD-202304567

Daniel Carroll, Pharm.D.

Executive Director

Texas State Board of Pharmacy

Earliest possible date of adoption: January 21, 2024

For further information, please call: (512) 305-8033



## CHAPTER 291. PHARMACIES

### SUBCHAPTER D. INSTITUTIONAL PHARMACY (CLASS C)

#### 22 TAC §291.74

The Texas State Board of Pharmacy proposes amendments to §291.74, concerning Operational Standards. The amendments, if adopted, specify prepackaging and labeling requirements for a participating provider to dispense donated prescription drugs under Chapter 442, Health and Safety Code, in accordance with House Bill 4332.

Daniel Carroll, Pharm.D., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Dr. Carroll has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to provide consistency between

state law and Board rules. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

For each year of the first five years the proposed amendments will be in effect, Dr. Carroll has determined the following:

(1) The proposed amendments do not create or eliminate a government program;

(2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions;

(3) Implementation of the proposed amendments does not require an increase or decrease in the future legislative appropriations to the agency;

(4) The proposed amendments do not require an increase or decrease in fees paid to the agency;

(5) The proposed amendments do not create a new regulation;

(6) The proposed amendments do limit an existing regulation in order to be consistent with state law;

(7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability; and

(8) The proposed amendments do not positively or adversely affect this state's economy.

Written comments on the amendments may be submitted to Eamon D. Briggs, Deputy General Counsel, Texas State Board of Pharmacy, 1801 Congress Avenue, Suite 13.100, Austin, Texas 78701-1319, FAX (512) 305-8061. Comments must be received by 5:00 p.m., January 30, 2024.

The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

#### §291.74. Operational Standards.

##### (a) Licensing requirements.

(1) A Class C pharmacy shall register annually or biennially with the board on a pharmacy license application provided by the board, following the procedures specified in §291.1 of this title (relating to Pharmacy License Application).

(2) A Class C pharmacy which changes ownership shall notify the board within 10 days of the change of ownership and apply for a new and separate license as specified in §291.3 of this title (relating to Required Notifications).

(3) A Class C pharmacy which changes location and/or name shall notify the board of the change as specified in §291.3 of this title.

(4) A Class C pharmacy owned by a partnership or corporation which changes managing officers shall notify the board in writing of the names of the new managing officers within 10 days of the change following the procedures in §291.3 of this title.

(5) A Class C pharmacy shall notify the board in writing within 10 days of closing, following the procedures in §291.5 of this title (relating to Closing a Pharmacy).

(6) A fee as specified in §291.6 of this title (relating to Pharmacy License Fees) will be charged for the issuance and renewal of a license and the issuance of an amended license.

(7) A separate license is required for each principal place of business and only one pharmacy license may be issued to a specific location.

(8) A Class C pharmacy, licensed under the Act, §560.051(a)(3), which also operates another type of pharmacy which would otherwise be required to be licensed under the Act, §560.051(a)(1) (Community Pharmacy (Class A)) or the Act, §560.051(a)(2) (Nuclear Pharmacy (Class B)), is not required to secure a license for the such other type of pharmacy; provided, however, such licensee is required to comply with the provisions of §291.31 of this title (relating to Definitions), §291.32 of this title (relating to Personnel), §291.33 of this title (relating to Operational Standards), §291.34 of this title (relating to Records), and §291.35 of this title (relating to Official Prescription Records), contained in Community Pharmacy (Class A), or §291.51 of this title (relating to Purpose), §291.52 of this title (relating to Definitions), §291.53 of this title (relating to Personnel), §291.54 of this title (relating to Operational Standards), and §291.55 of this title (relating to Records), contained in Nuclear Pharmacy (Class B), to the extent such sections are applicable to the operation of the pharmacy.

(9) A Class C pharmacy engaged in the compounding of non-sterile preparations shall comply with the provisions of §291.131 of this title (relating to Pharmacies Compounding Non-sterile Preparations).

(10) Class C pharmacy personnel shall not compound sterile preparations unless the pharmacy has applied for and obtained a Class C-S pharmacy.

(11) A Class C pharmacy engaged in the provision of remote pharmacy services, including storage and dispensing of prescription drugs, shall comply with the provisions of §291.121 of this title (relating to Remote Pharmacy Services).

(12) A Class C pharmacy engaged in centralized prescription dispensing and/or prescription drug or medication order processing shall comply with the provisions of §291.123 of this title (relating to Central Prescription Drug or Medication Order Processing) and/or §291.125 of this title (relating to Centralized Prescription Dispensing).

(13) A Class C pharmacy with an ongoing clinical pharmacy program that proposes to allow a pharmacy technician to verify the accuracy of work performed by another pharmacy technician relating to the filling of floor stock and unit dose distribution systems for a patient admitted to the hospital if the patient's orders have previously been reviewed and approved by a pharmacist shall make application to the board and submit any information specified on the application.

(14) A rural hospital that wishes to allow a pharmacy technician to perform the duties specified in §291.73(e)(2)(D) of this title (relating to Personnel), shall make application to the board and submit any information specified on the application.

(A) A rural hospital may not allow a pharmacy technician to perform the duties specified in §291.73(e)(2)(D) of this title until the board has reviewed and approved the application and issued an amended license to the pharmacy.

(B) Every two years, in conjunction with the application for renewal of the pharmacy license, the pharmacist-in-charge shall

update the application for pharmacy technicians to perform the duties specified in §291.73(e)(2)(D) of this title and shall attest as required on the application.

(b) Environment.

(1) General requirements.

(A) The institutional pharmacy shall have adequate space necessary for the storage, compounding, labeling, dispensing, and sterile preparation of drugs prepared in the pharmacy, and additional space, depending on the size and scope of pharmaceutical services.

(B) The institutional pharmacy shall be arranged in an orderly fashion and shall be kept clean. All required equipment shall be clean and in good operating condition.

(C) A sink with hot and cold running water exclusive of restroom facilities shall be available to all pharmacy personnel and shall be maintained in a sanitary condition at all times.

(D) The institutional pharmacy shall be properly lighted and ventilated.

(E) The temperature of the institutional pharmacy shall be maintained within a range compatible with the proper storage of drugs. The temperature of the refrigerator and/or freezer shall be maintained within a range compatible with the proper storage of drugs.

(F) If the institutional pharmacy has flammable materials, the pharmacy shall have a designated area for the storage of flammable materials. Such area shall meet the requirements set by local and state fire laws.

(G) The institutional pharmacy shall store antiseptics, other drugs for external use, and disinfectants separately from internal and injectable medications.

(2) Security requirements.

(A) The institutional pharmacy shall be enclosed and capable of being locked by key, combination or other mechanical or electronic means, so as to prohibit access by unauthorized individuals. Only individuals authorized by the pharmacist-in-charge shall enter the pharmacy.

(B) Each pharmacist on duty shall be responsible for the security of the institutional pharmacy, including provisions for adequate safeguards against theft or diversion of dangerous drugs, controlled substances, and records for such drugs.

(C) The institutional pharmacy shall have locked storage for Schedule II controlled substances and other drugs requiring additional security.

(c) Equipment and supplies. Institutional pharmacies distributing medication orders shall have the following equipment:

(1) data processing system including a printer or comparable equipment; and

(2) refrigerator and/or freezer and a system or device (e.g., thermometer) to monitor the temperature to ensure that proper storage requirements are met.

(d) Library. A reference library shall be maintained that includes the following in hard-copy or electronic format and that pharmacy personnel shall be capable of accessing at all times:

(1) current copies of the following:

(A) Texas Pharmacy Act and rules;

- (B) Texas Dangerous Drug Act and rules;
- (C) Texas Controlled Substances Act and regulations;

and

(D) Federal Controlled Substances Act and regulations (or official publication describing the requirements of the Federal Controlled Substances Act and regulations);

(2) at least one current or updated reference from each of the following categories:

(A) drug interactions. A reference text on drug interactions, such as Drug Interaction Facts. A separate reference is not required if other references maintained by the pharmacy contain drug interaction information including information needed to determine severity or significance of the interaction and appropriate recommendations or actions to be taken;

(B) a general information reference text;

(3) a current or updated reference on injectable drug products;

(4) basic antidote information and the telephone number of the nearest regional poison control center;

(5) metric-apothecary weight and measure conversion charts.

(e) Absence of a pharmacist.

(1) Medication orders.

(A) In facilities with a full-time pharmacist, if a practitioner orders a drug for administration to a bona fide patient of the facility when the pharmacy is closed, the following is applicable:

(i) Prescription drugs and devices only in sufficient quantities for immediate therapeutic needs may be removed from the institutional pharmacy;

(ii) Only a designated licensed nurse or practitioner may remove such drugs and devices;

(iii) A record shall be made at the time of withdrawal by the authorized person removing the drugs and devices. The record shall contain the following information:

(I) name of patient;

(II) name of device or drug, strength, and dosage form;

(III) dose prescribed;

(IV) quantity taken;

(V) time and date; and

(VI) signature (first initial and last name or full signature) or electronic signature of person making withdrawal;

(iv) The original or direct copy of the medication order may substitute for such record, providing the medication order meets all the requirements of clause (iii) of this subparagraph; and

(v) The pharmacist shall verify the withdrawal of drugs from the pharmacy and perform a drug regimen review as specified in subsection (g)(1)(B) of this section as soon as practical, but in no event more than 72 hours from the time of such withdrawal.

(B) In facilities with a part-time or consultant pharmacist, if a practitioner orders a drug for administration to a bona fide patient of the facility when the pharmacist is not on duty, or when the pharmacy is closed, the following is applicable:

(i) Prescription drugs and devices only in sufficient quantities for therapeutic needs may be removed from the institutional pharmacy;

(ii) Only a designated licensed nurse or practitioner may remove such drugs and devices;

(iii) A record shall be made at the time of withdrawal by the authorized person removing the drugs and devices; the record shall meet the same requirements as specified in subparagraph (A)(iii) and (iv) of this paragraph;

(iv) The pharmacist shall verify the withdrawal of drugs from the pharmacy after a reasonable interval, but in no event may such interval exceed seven days; and

(v) The pharmacist shall perform a drug regimen review as specified in subsection (g)(1)(B) of this section as follows:

(I) If the facility has an average daily inpatient census of ten or less, the pharmacist shall perform the drug review after a reasonable interval, but in no event may such interval exceed seven (7) days; or

(II) If the facility has an average inpatient daily census above ten, the pharmacist shall perform the drug review after a reasonable interval, but in no event may such interval exceed 96 hours.

(vi) The average daily inpatient census shall be calculated by hospitals annually immediately following the submission of the hospital's Medicare Cost Report and the number used for purposes of subparagraph (B)(v)(I) and (II) of this paragraph shall be the average of the inpatient daily census in the report and the previous two reports for a three year period.

(2) Floor stock. In facilities using a floor stock method of drug distribution, the following is applicable:

(A) Prescription drugs and devices may be removed from the pharmacy only in the original manufacturer's container or prepackaged container.

(B) Only a designated licensed nurse or practitioner may remove such drugs and devices.

(C) A record shall be made at the time of withdrawal by the authorized person removing the drug or device; the record shall contain the following information:

(i) name of the drug, strength, and dosage form;

(ii) quantity removed;

(iii) location of floor stock;

(iv) date and time; and

(v) signature (first initial and last name or full signature) or electronic signature of person making the withdrawal.

(D) The pharmacist shall verify the withdrawal of drugs from the pharmacy after a reasonable interval, but in no event may such interval exceed seven days.

(3) Rural hospitals. In rural hospitals when a pharmacy technician performs the duties listed in §291.73(e)(2)(D) of this title, the following is applicable:

(A) the pharmacy technician shall make a record of all drugs distributed from the pharmacy. The record shall be maintained in the pharmacy for two years and contain the following information:

(i) name of patient or location where floor stock is distributed;

- form;
- (ii) name of device or drug, strength, and dosage
  - (iii) dose prescribed or ordered;
  - (iv) quantity distributed;
  - (v) time and date of the distribution; and
  - (vi) signature (first initial and last name or full signature) or electronic signature of nurse or practitioner that verified the actions of the pharmacy technician.

(B) The original or direct copy of the medication order may substitute for the record specified in subparagraph (A) of this paragraph, provided the medication order meets all the requirements of subparagraph (A) of this paragraph.

(C) The pharmacist shall:

(i) verify and document the verification of all distributions made from the pharmacy in the absence of a pharmacist as soon as practical, but in no event more than seven (7) days from the time of such distribution;

(ii) perform a drug regimen review for all medication orders as specified in subsection (g)(1)(B) of this section and document such verification including any discrepancies noted by the pharmacist as follows:

(I) If the facility has an average daily inpatient census of ten or less, the pharmacist shall perform the drug review as soon as practical, but in no event more than seven (7) days from the time of such distribution; or

(II) If the facility has an average daily inpatient census above ten, the pharmacist shall perform the drug review after a reasonable interval, but in no event may such interval exceed 96 hours;

(iii) review any discrepancy noted by the pharmacist with the pharmacy technician(s) and make any change in procedures or processes necessary to prevent future problems; and

(iv) report any adverse events that have a potential for harm to a patient to the appropriate committee of the hospital that reviews adverse events.

(D) The average daily inpatient census shall be calculated by hospitals annually immediately following the submission of the hospital's Medicare Cost Report and the number used for purposes of subparagraph (C)(ii)(I) and (II) of this paragraph shall be the average of the inpatient daily census in the report and the previous two reports for a three year period.

(f) Drugs.

(1) Procurement, preparation and storage.

(A) The pharmacist-in-charge shall have the responsibility for the procurement and storage of drugs, but may receive input from other appropriate staff of the facility, relative to such responsibility.

(B) The pharmacist-in-charge shall have the responsibility for determining specifications of all drugs procured by the facility.

(C) Institutional pharmacies may not sell, purchase, trade or possess prescription drug samples, unless the pharmacy meets the requirements as specified in §291.16 of this title (relating to Samples).

(D) All drugs shall be stored at the proper temperatures, as defined in the USP/NF and in §291.15 of this title (relating to Storage of Drugs).

(E) Any drug bearing an expiration date may not be distributed beyond the expiration date of the drug.

(F) Outdated and other unusable drugs shall be removed from stock and shall be quarantined together until such drugs are disposed of properly.

(2) Formulary.

(A) A formulary shall be developed by the facility committee performing the pharmacy and therapeutics function for the facility. For the purpose of this section, a formulary is a compilation of pharmaceuticals that reflects the current clinical judgment of a facility's medical staff.

(B) The pharmacist-in-charge or pharmacist designated by the pharmacist-in-charge shall be a full voting member of the committee performing the pharmacy and therapeutics function for the facility, when such committee is performing the pharmacy and therapeutics function.

(C) A practitioner may grant approval for pharmacists at the facility to interchange, in accordance with the facility's formulary, for the prescribed drugs on the practitioner's medication orders provided:

(i) the pharmacy and therapeutics committee has developed a formulary;

(ii) the formulary has been approved by the medical staff committee of the facility;

(iii) there is a reasonable method for the practitioner to override any interchange; and

(iv) the practitioner authorizes pharmacists in the facility to interchange on his/her medication orders in accordance with the facility's formulary through his/her written agreement to abide by the policies and procedures of the medical staff and facility.

(3) Prepackaging of drugs.

(A) Distribution within a facility.

(i) Drugs may be prepackaged in quantities suitable for internal distribution by a pharmacist or by pharmacy technicians or pharmacy technician trainees under the direction and direct supervision of a pharmacist.

(ii) The label of a prepackaged unit shall indicate:

(I) brand name and strength of the drug; or if no brand name, then the generic name, strength, and name of the manufacturer or distributor;

(II) facility's unique lot number;

(III) expiration date based on currently available literature; and

(IV) quantity of the drug, if the quantity is greater than one.

(iii) Records of prepackaging shall be maintained to show:

(I) name of the drug, strength, and dosage form;

(II) facility's unique lot number;

(III) manufacturer or distributor;

- (IV) manufacturer's lot number;
- (V) expiration date;
- (VI) quantity per prepackaged unit;
- (VII) number of prepackaged units;
- (VIII) date packaged;
- (IX) name, initials, or electronic signature of the

prepacker; and

(X) name, initials, or electronic signature of the responsible pharmacist.

(iv) Stock packages, prepackaged units, and control records shall be quarantined together until checked/released by the pharmacist.

(B) Distribution to other Class C (Institutional) pharmacies under common ownership.

(i) Drugs may be prepackaged in quantities suitable for distribution to other Class C (Institutional) pharmacies under common ownership by a pharmacist or by pharmacy technicians or pharmacy technician trainees under the direction and direct supervision of a pharmacist.

(ii) The label of a prepackaged unit shall indicate:

(I) brand name and strength of the drug; or if no brand name, then the generic name, strength, and name of the manufacturer or distributor;

- (II) facility's unique lot number;
- (III) expiration date based on currently available

literature;

(IV) quantity of the drug, if the quantity is greater

than one; and

(V) name of the facility responsible for prepack-

aging the drug.

(iii) Records of prepackaging shall be maintained to

show:

- (I) name of the drug, strength, and dosage form;
- (II) facility's unique lot number;
- (III) manufacturer or distributor;
- (IV) manufacturer's lot number;
- (V) expiration date;
- (VI) quantity per prepackaged unit;
- (VII) number of prepackaged units;
- (VIII) date packaged;
- (IX) name, initials, or electronic signature of the

prepacker;

(X) name, initials, or electronic signature of the responsible pharmacist; and

(XI) name of the facility receiving the prepack-

aged drug.

(iv) Stock packages, prepackaged units, and control records shall be quarantined together until checked/released by the pharmacist.

(v) The pharmacy shall have written procedure for the recall of any drug prepackaged for another Class C pharmacy under common ownership. The recall procedures shall require:

(I) notification to the pharmacy to which the prepackaged drug was distributed;

(II) quarantine of the product if there is a suspicion of harm to a patient;

(III) a mandatory recall if there is confirmed or probable harm to a patient; and

(IV) notification to the board if a mandatory recall is instituted.

(4) Sterile preparations prepared in a location other than the pharmacy. A distinctive supplementary label shall be affixed to the container of any admixture. The label shall bear at a minimum:

(A) patient's name and location, if not immediately administered;

(B) name and amount of drug(s) added;

(C) name of the basic solution;

(D) name or identifying code of person who prepared admixture; and

(E) expiration date of solution.

(5) Distribution.

(A) Medication orders.

(i) Drugs may be given to patients in facilities only on the order of a practitioner. No change in the order for drugs may be made without the approval of a practitioner except as authorized by the practitioner in compliance with paragraph (2)(C) of this subsection.

(ii) Drugs may be distributed only from the original or a direct copy of the practitioner's medication order.

(iii) Pharmacy technicians and pharmacy technician trainees may not receive oral medication orders.

(iv) Institutional pharmacies shall be exempt from the labeling provisions and patient notification requirements of §562.006 and §562.009 of the Act, as respects drugs distributed pursuant to medication orders.

(B) Procedures.

(i) Written policies and procedures for a drug distribution system (best suited for the particular institutional pharmacy) shall be developed and implemented by the pharmacist-in-charge, with the advice of the committee performing the pharmacy and therapeutics function for the facility.

(ii) The written policies and procedures for the drug distribution system shall include, but not be limited to, procedures regarding the following:

(I) pharmaceutical care services;

(II) handling, storage and disposal of cytotoxic drugs and waste;

(III) disposal of unusable drugs and supplies;

(IV) security;

(V) equipment;

(VI) sanitation;

- (VII) reference materials;
- (VIII) drug selection and procurement;
- (IX) drug storage;
- (X) controlled substances;
- (XI) investigational drugs, including the obtaining of protocols from the principal investigator;
- (XII) prepackaging and manufacturing;
- (XIII) stop orders;
- (XIV) reporting of medication errors, adverse drug reactions/events, and drug product defects;
- (XV) physician orders;
- (XVI) floor stocks;
- (XVII) drugs brought into the facility;
- (XVIII) furlough medications;
- (XIX) self-administration;
- (XX) emergency drug supply;
- (XXI) formulary;
- (XXII) monthly inspections of nursing stations and other areas where drugs are stored, distributed, administered or dispensed;
- (XXIII) control of drug samples;
- (XXIV) outdated and other unusable drugs;
- (XXV) routine distribution of patient medication;
- (XXVI) preparation and distribution of sterile preparations;
- (XXVII) handling of medication orders when a pharmacist is not on duty;
- (XXVIII) use of automated compounding or counting devices;
- (XXIX) use of data processing and direct imaging systems;
- (XXX) drug administration to include infusion devices and drug delivery systems;
- (XXXI) drug labeling;
- (XXXII) recordkeeping;
- (XXXIII) quality assurance/quality control;
- (XXXIV) duties and education and training of professional and nonprofessional staff;
- (XXXV) procedures for a pharmacy technician to verify the accuracy of work performed by another pharmacy technician, if applicable;
- (XXXVI) operation of the pharmacy when a pharmacist is not on-site; and
- (XXXVII) emergency preparedness plan, to include continuity of patient therapy and public safety.

(6) Discharge Prescriptions. Discharge prescriptions must be dispensed and labeled in accordance with §291.33 of this title (relating to Operational Standards) except that certain medications packaged in unit-of-use containers, such as metered-dose inhalers, insulin pens,

topical creams or ointments, or ophthalmic or otic preparation that are administered to the patient during the time the patient was a patient in the hospital, may be provided to the patient upon discharge provided the pharmacy receives a discharge order and the product bears a label containing the following information:

- (A) name of the patient;
- (B) name and strength of the medication;
- (C) name of the prescribing or attending practitioner;
- (D) directions for use;
- (E) duration of therapy (if applicable); and
- (F) name and telephone number of the pharmacy.

(7) Redistribution of Donated Prepackaged Prescription Drugs.

(A) A participating provider may dispense to a recipient donated prescription drugs that are prepackaged and labeled in accordance with §442.0515, Health and Safety Code, and this paragraph.

(B) Drugs may be prepackaged in quantities suitable for distribution to a recipient only by a pharmacist or by pharmacy technicians or pharmacy technician trainees under the direction and direct supervision of a pharmacist.

(C) The label of a prepackaged prescription drug a participating provider dispenses to a recipient shall indicate:

(i) brand name and strength of the drug; or if no brand name, then the generic name, strength, and name of the manufacturer or distributor;

(ii) participating provider's lot number;

(iii) participating provider's beyond use date; and

(iv) quantity of the drug, if the quantity is greater than one.

(D) Records of prepackaged prescription drugs dispensed to a recipient shall be maintained to show:

(i) name of the drug, strength, and dosage form;

(ii) participating provider's lot number;

(iii) manufacturer or distributor;

(iv) manufacturer's lot number;

(v) manufacturer's expiration date;

(vi) quantity per prepackaged unit;

(vii) number of prepackaged units;

(viii) date packaged;

(ix) name, initials, or electronic signature of the packer; and

(x) written or electronic signature of the responsible pharmacist.

(E) Stock packages, repackaged units, and control records shall be quarantined together until checked/released by the pharmacist.

(g) Pharmaceutical care services.

(1) The pharmacist-in-charge shall assure that at least the following pharmaceutical care services are provided to patients of the facility:

(A) Drug utilization review. A systematic ongoing process of drug utilization review shall be developed in conjunction with the medical staff to increase the probability of desired patient outcomes and decrease the probability of undesired outcomes from drug therapy.

(B) Drug regimen review.

(i) For the purpose of promoting therapeutic appropriateness, a pharmacist shall evaluate medication orders and patient medication records for:

- (I) known allergies;
- (II) rational therapy--contraindications;
- (III) reasonable dose and route of administration;
- (IV) reasonable directions for use;
- (V) duplication of therapy;
- (VI) drug-drug interactions;
- (VII) drug-food interactions;
- (VIII) drug-disease interactions;
- (IX) adverse drug reactions;
- (X) proper utilization, including overutilization or underutilization; and

(XI) clinical laboratory or clinical monitoring methods to monitor and evaluate drug effectiveness, side effects, toxicity, or adverse effects, and appropriateness to continued use of the drug in its current regimen.

(ii) The drug regimen review shall be conducted on a prospective basis when a pharmacist is on duty, except for an emergency order, and on a retrospective basis as specified in subsection (e)(1) or (e)(3) of this section when a pharmacist is not on duty.

(iii) Any questions regarding the order must be resolved with the prescriber and a written notation of these discussions made and maintained.

(iv) The drug regimen review may be conducted by remotely accessing the pharmacy's electronic data base from outside the pharmacy by an individual Texas licensed pharmacist employee of the pharmacy, provided the pharmacy establishes controls to protect the privacy of the patient and the security of confidential records.

(C) Education. The pharmacist-in-charge in cooperation with appropriate multi-disciplinary staff of the facility shall develop policies that assure that:

- (i) the patient and/or patient's caregiver receives information regarding drugs and their safe and appropriate use; and
- (ii) health care providers are provided with patient specific drug information.

(D) Patient monitoring. The pharmacist-in-charge in cooperation with appropriate multi-disciplinary staff of the facility shall develop policies to ensure that the patient's response to drug therapy is monitored and conveyed to the appropriate health care provider.

(2) Other pharmaceutical care services which may be provided by pharmacists in the facility include, but are not limited to, the following:

(A) managing drug therapy as delegated by a practitioner as allowed under the provisions of the Medical Practice Act;

(B) administering immunizations and vaccinations under written protocol of a physician;

(C) managing patient compliance programs;

(D) providing preventative health care services; and

(E) providing case management of patients who are being treated with high-risk or high-cost drugs, or who are considered "high risk" due to their age, medical condition, family history, or related concern.

(h) Emergency rooms.

(1) During the times a pharmacist is on duty in the facility any prescription drugs supplied to an outpatient, including emergency department patients, may only be dispensed by a pharmacist.

(2) When a pharmacist is not on duty in the facility, the following is applicable for supplying prescription drugs to be taken home by the patient for self-administration from the emergency room. If the patient has been admitted to the emergency room and assessed by a practitioner at the hospital, the following procedures shall be observed in supplying prescription drugs from the emergency room.

(A) Dangerous drugs and/or controlled substances may only be supplied in accordance with the system of control and accountability for dangerous drugs and/or controlled substances administered or supplied from the emergency room; such system shall be developed and supervised by the pharmacist-in-charge or staff pharmacist designated by the pharmacist-in-charge.

(B) Only dangerous drugs and/or controlled substances listed on the emergency room drug list may be supplied; such list shall be developed by the pharmacist-in-charge and the facility's emergency department committee (or like group or person responsible for policy in that department) and shall consist of dangerous drugs and/or controlled substances of the nature and type to meet the immediate needs of emergency room patients.

(C) Dangerous drugs and/or controlled substances may only be supplied in prepackaged quantities not to exceed a 72-hour supply in suitable containers and appropriately pre-labeled (including necessary auxiliary labels) by the institutional pharmacy.

(D) At the time of delivery of the dangerous drugs and/or controlled substances, the practitioner or licensed nurse under the supervision of a practitioner shall appropriately complete the label with at least the following information:

- (i) name, address, and phone number of the facility;
- (ii) date supplied;
- (iii) name of practitioner;
- (iv) name of patient;
- (v) directions for use;
- (vi) brand name and strength of the dangerous drug or controlled substance; or if no brand name, then the generic name, strength, and the name of the manufacturer or distributor of the dangerous drug or controlled substance;
- (vii) quantity supplied; and
- (viii) unique identification number.

(E) The practitioner, or a licensed nurse under the supervision of the practitioner, shall give the appropriately labeled, prepackaged drug to the patient and explain the correct use of the drug.



(F) A perpetual record of dangerous drugs and/or controlled substances supplied from the emergency room shall be maintained in the emergency room. Such record shall include the following:

- (i) date supplied;
- (ii) practitioner's name;
- (iii) patient's name;
- (iv) brand name and strength of the dangerous drug or controlled substance; or if no brand name, then the generic name, strength, and the name of the manufacturer or distributor of the dangerous drug or controlled substance;
- (v) quantity supplied; and
- (vi) unique identification number.

(G) The pharmacist-in-charge, or staff pharmacist designated by the pharmacist-in-charge, shall verify the correctness of this record at least once every seven days.

(i) Radiology departments.

(1) During the times a pharmacist is on duty, any prescription drugs dispensed to an outpatient, including radiology department patients, may only be dispensed by a pharmacist.

(2) When a pharmacist is not on duty, the following procedures shall be observed in supplying prescription drugs from the radiology department.

(A) Prescription drugs may only be supplied to patients who have been scheduled for an x-ray examination at the facility.

(B) Prescription drugs may only be supplied in accordance with the system of control and accountability for prescription drugs administered or supplied from the radiology department and supervised by the pharmacist-in-charge or staff pharmacist designated by the pharmacist-in-charge.

(C) Only prescription drugs listed on the radiology drug list may be supplied; such list shall be developed by the pharmacist-in-charge and the facility's radiology committee (or like group or persons responsible for policy in that department) and shall consist of drugs for the preparation of a patient for a radiological procedure.

(D) Prescription drugs may only be supplied in prepackaged quantities in suitable containers and prelabeled by the institutional pharmacy with the following information:

- (i) name and address of the facility;
- (ii) directions for use;
- (iii) name and strength of the prescription drug--if generic name, the name of the manufacturer or distributor of the prescription drug;
- (iv) quantity;
- (v) facility's lot number and expiration date; and
- (vi) appropriate ancillary label(s).

(E) At the time of delivery of the prescription drug, the practitioner or practitioner's agent shall complete the label with the following information:

- (i) date supplied;
- (ii) name of physician;
- (iii) name of patient; and
- (iv) unique identification number.

(F) The practitioner or practitioner's agent shall give the appropriately labeled, prepackaged prescription drug to the patient.

(G) A perpetual record of prescription drugs supplied from the radiology department shall be maintained in the radiology department. Such records shall include the following:

- (i) date supplied;
- (ii) practitioner's name;
- (iii) patient's name;
- (iv) brand name and strength of the prescription drug; or if no brand name, then the generic name, strength, dosage form, and the name of the manufacturer or distributor of the prescription drug;
- (v) quantity supplied; and
- (vi) unique identification number.

(H) The pharmacist-in-charge, or a pharmacist designated by the pharmacist-in-charge, shall verify the correctness of this record at least once every seven days.

(j) Automated devices and systems.

(1) Automated compounding or counting devices. If a pharmacy uses automated compounding or counting devices:

(A) the pharmacy shall have a method to calibrate and verify the accuracy of the automated compounding or counting device and document the calibration and verification on a routine basis;

(B) the devices may be loaded with unlabeled drugs only by a pharmacist or by pharmacy technicians or pharmacy technician trainees under the direction and direct supervision of a pharmacist;

(C) the label of an automated compounding or counting device container shall indicate the brand name and strength of the drug; or if no brand name, then the generic name, strength, and name of the manufacturer or distributor;

(D) records of loading unlabeled drugs into an automated compounding or counting device shall be maintained to show:

- (i) name of the drug, strength, and dosage form;
- (ii) manufacturer or distributor;
- (iii) manufacturer's lot number;
- (iv) expiration date;
- (v) date of loading;
- (vi) name, initials, or electronic signature of the person loading the automated compounding or counting device; and
- (vii) signature or electronic signature of the responsible pharmacist; and

(E) the automated compounding or counting device shall not be used until a pharmacist verifies that the system is properly loaded and affixes his or her signature to the record specified in subparagraph (D) of this paragraph.

(2) Automated medication supply systems.

(A) Authority to use automated medication supply systems. A pharmacy may use an automated medication supply system to fill medication orders provided that:

(i) the pharmacist-in-charge is responsible for the supervision of the operation of the system;

(ii) the automated medication supply system has been tested by the pharmacy and found to dispense accurately. The pharmacy shall make the results of such testing available to the Board upon request; and

(iii) the pharmacy will make the automated medication supply system available for inspection by the board for the purpose of validating the accuracy of the system.

(B) Quality assurance program. A pharmacy which uses an automated medication supply system to fill medication orders shall operate according to a written program for quality assurance of the automated medication supply system which:

(i) requires continuous monitoring of the automated medication supply system; and

(ii) establishes mechanisms and procedures to test the accuracy of the automated medication supply system at least every six months and whenever any upgrade or change is made to the system and documents each such activity.

(C) Policies and procedures of operation.

(i) When an automated medication supply system is used to store or distribute medications for administration pursuant to medication orders, it shall be operated according to written policies and procedures of operation. The policies and procedures of operation shall establish requirements for operation of the automated medication supply system and shall describe policies and procedures that:

(I) include a description of the policies and procedures of operation;

(II) provide for a pharmacist's review and approval of each original or new medication order prior to withdrawal from the automated medication supply system:

(-a-) before the order is filled when a pharmacist is on duty except for an emergency order;

(-b-) retrospectively within 72 hours in a facility with a full-time pharmacist when a pharmacist is not on duty at the time the order is made; or

(-c-) retrospectively within 7 days in a facility with a part-time or consultant pharmacist when a pharmacist is not on duty at the time the order is made;

(III) provide for access to the automated medication supply system for stocking and retrieval of medications which is limited to licensed healthcare professionals, pharmacy technicians, or pharmacy technician trainees acting under the supervision of a pharmacist;

(IV) provide that a pharmacist is responsible for the accuracy of the restocking of the system. The actual restocking may be performed by a pharmacy technician or pharmacy technician trainee;

(V) provide for an accountability record to be maintained which documents all transactions relative to stocking and removing medications from the automated medication supply system;

(VI) require a prospective or retrospective drug regimen review is conducted as specified in subsection (g) of this section; and

(VII) establish and make provisions for documentation of a preventative maintenance program for the automated medication supply system.

(ii) A pharmacy which uses an automated medication supply system to fill medication orders shall, at least annually, review its written policies and procedures, revise them if necessary, and document the review.

(D) Automated medication supply systems used for storage and recordkeeping of medications located outside of the pharmacy department (e.g., Pyxis). A pharmacy technician or pharmacy technician trainee may restock an automated medication supply system located outside of the pharmacy department with prescription drugs provided:

(i) prior to distribution of the prescription drugs a pharmacist verifies that the prescription drugs pulled to stock the automated supply system match the list of prescription drugs generated by the automated medication supply system except as specified in §291.73(e)(2)(C)(ii) of this title; or

(ii) all of the following occur:

(I) the prescription drugs to restock the system are labeled and verified with a machine readable product identifier, such as a barcode;

(II) either:

(-a-) the drugs are in tamper evident product packaging, packaged by an FDA registered repackager or manufacturer, that is shipped to the pharmacy; or

(-b-) if any manipulation of the product occurs in the pharmacy prior to restocking, such as repackaging or extemporaneous compounding, the product must be checked by a pharmacist; and

(III) quality assurance audits are conducted according to established policies and procedures to ensure accuracy of the process.

(E) Recovery Plan. A pharmacy which uses an automated medication supply system to store or distribute medications for administration pursuant to medication orders shall maintain a written plan for recovery from a disaster or any other situation which interrupts the ability of the automated medication supply system to provide services necessary for the operation of the pharmacy. The written plan for recovery shall include:

(i) planning and preparation for maintaining pharmacy services when an automated medication supply system is experiencing downtime;

(ii) procedures for response when an automated medication supply system is experiencing downtime;

(iii) procedures for the maintenance and testing of the written plan for recovery; and

(iv) procedures for notification of the Board and other appropriate agencies whenever an automated medication supply system experiences downtime for more than two days of operation or a period of time which significantly limits the pharmacy's ability to provide pharmacy services.

(3) Verification of medication orders prepared by the pharmacy department through the use of an automated medication supply system. A pharmacist must check drugs prepared pursuant to medication orders to ensure that the drug is prepared for distribution accurately as prescribed. This paragraph does not apply to automated medication supply systems used for storage and recordkeeping of medications located outside of the pharmacy department.

(A) This check shall be considered accomplished if:

(i) a check of the final product is conducted by a pharmacist after the automated system has completed preparation of the medication order and prior to delivery to the patient; or

(ii) the following checks are conducted by a pharmacist:

(I) if the automated medication supply system contains unlabeled stock drugs, a pharmacist verifies that those drugs have been accurately stocked; and

(II) a pharmacist checks the accuracy of the data entry of each original or new medication order entered into the automated medication supply system before the order is filled.

(B) If the final check is accomplished as specified in subparagraph (A)(ii) of this paragraph, the following additional requirements must be met.

(i) The medication order preparation process must be fully automated from the time the pharmacist releases the medication order to the automated system until a completed medication order, ready for delivery to the patient, is produced.

(ii) The pharmacy has conducted initial testing and has a continuous quality assurance program which documents that the automated medication supply system dispenses accurately as specified in paragraph (2)(A) and (B) of this subsection.

(iii) The automated medication supply system documents and maintains:

(I) the name(s), initials, or identification code(s) of each pharmacist responsible for the checks outlined in subparagraph (A)(ii) of this paragraph; and

(II) the name(s), initials, or identification code(s) and specific activity(ies) of each pharmacist or pharmacy technician or pharmacy technician trainee who performs any other portion of the medication order preparation process.

(iv) The pharmacy establishes mechanisms and procedures to test the accuracy of the automated medication supply system at least every month rather than every six months as specified in paragraph (2)(B) of this subsection.

(4) Automated checking device.

(A) For the purpose of this subsection, an automated checking device is a fully automated device which confirms, after a drug is prepared for distribution but prior to delivery to the patient, that the correct drug and strength has been labeled with the correct label for the correct patient.

(B) The final check of a drug prepared pursuant to a medication order shall be considered accomplished using an automated checking device provided:

(i) a check of the final product is conducted by a pharmacist prior to delivery to the patient or the following checks are performed by a pharmacist:

(I) the prepackaged drug used to fill the order is checked by a pharmacist who verifies that the drug is labeled and packaged accurately; and

(II) a pharmacist checks the accuracy of each original or new medication order.

(ii) the medication order is prepared, labeled, and made ready for delivery to the patient in compliance with Class C (Institutional) pharmacy rules; and

(iii) prior to delivery to the patient:

(I) the automated checking device confirms that the correct drug and strength has been labeled with the correct label for the correct patient; and

(II) a pharmacist performs all other duties required to ensure that the medication order has been prepared safely and accurately as prescribed.

(C) If the final check is accomplished as specified in subparagraph (B) of this paragraph, the following additional requirements must be met.

(i) The pharmacy has conducted initial testing of the automated checking device and has a continuous quality assurance program which documents that the automated checking device accurately confirms that the correct drug and strength has been labeled with the correct label for the correct patient.

(ii) The pharmacy documents and maintains:

(I) the name(s), initials, or identification code(s) of each pharmacist responsible for the checks outlined in subparagraph (B)(i) of this paragraph; and

(II) the name(s), initials, or identification code(s) and specific activity(ies) of each pharmacist, pharmacy technician, or pharmacy technician trainee who performs any other portion of the medication order preparation process.

(iii) The pharmacy establishes mechanisms and procedures to test the accuracy of the automated checking device at least monthly.

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 December 6, 2023.

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Daniel Carroll, Pharm.D.  
Executive Director  
Texas State Board of Pharmacy

Earliest possible date of adoption: January 21, 2024  
For further information, please call: (512) 305-8033



## CHAPTER 297. PHARMACY TECHNICIANS AND PHARMACY TECHNICIAN TRAINEES

### 22 TAC §297.10

The Texas State Board of Pharmacy proposes amendments to §297.10, concerning Registration for Military Service Members, Military Veterans, and Military Spouses. The amendments, if adopted, clarify that the requirements for obtaining an interim registration for a military service member or military spouse do not affect rights that may be provided under federal law.

Daniel Carroll, Pharm.D., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Dr. Carroll has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to provide clear regulations that

reflect the relationship between complementary rights under federal law and Board rules. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

For each year of the first five years the proposed amendments will be in effect, Dr. Carroll has determined the following:

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

Written comments on the amendments may be submitted to Eamon D. Briggs, Deputy General Counsel, Texas State Board of Pharmacy, 1801 Congress Avenue, Suite 13.100, Austin, Texas, 78701-1319, FAX (512) 305-8061. Comments must be received by 5:00 p.m., January 30, 2024.

The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

*§297.10. Registration for Military Service Members, Military Veterans, and Military Spouses.*

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

- (1) Active duty--Current full-time military service in the armed forces of the United States or active duty military service as a member of the Texas military forces, or similar military service of another state.
- (2) Armed forces of the United States--The army, navy, air force, space force, coast guard, or marine corps of the United States or a reserve unit of one of those branches of the armed forces.
- (3) Military service member--A person who is on active duty.
- (4) Military spouse--A person who is married to a military service member.

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

(b) Alternative registration procedure. For the purpose of §55.004, Occupations Code, an applicant for a pharmacy technician registration who is a military service member, military veteran, or military spouse may complete the following alternative procedures for registering as a pharmacy technician.

(1) An applicant who holds a current registration as a pharmacy technician issued by another state but does not have a current pharmacy technician certification certificate shall meet the requirements for registration as a pharmacy technician trainee as specified in §297.3 of this chapter (relating to Registration Requirements).

(2) An applicant who held a pharmacy technician registration in Texas that expired within the five years preceding the application date who meets the following requirements may be granted a pharmacy technician registration. The applicant:

(A) shall complete the Texas application for registration that includes the following:

- (i) name;
- (ii) addresses, phone numbers, date of birth, and social security number; and
- (iii) any other information requested on the application;

(B) shall provide documentation to include:

- (i) military identification indicating that the applicant is a military service member, military veteran, or military dependent, if a military spouse; and
- (ii) marriage certificate, if the applicant is a military spouse; applicant's spouse is on active duty status;

(C) be exempt from the application fees paid to the board set forth in §297.4(a) and (b)(2) of this chapter (relating to Fees);

(D) shall meet all necessary requirements in order for the board to access the criminal history records information, including submitting fingerprint information and such criminal history check does not reveal any charge or conviction for a crime that §281.64 of this title (relating to Sanctions for Criminal Offenses) indicates a sanction of denial, revocation, or suspension; and

(E) is not required to have a current pharmacy technician certification certificate.

(c) Expedited registration procedure. For the purpose of §55.005, Occupations Code, an applicant for a pharmacy technician registration who is a military service member, military veteran or military spouse and who holds a current registration as a pharmacy technician issued by another state or who held a pharmacy technician registration in Texas that expired within the five years preceding the application date may complete the following expedited procedures for registering as a pharmacy technician.

(1) The applicant shall:

(A) have a high school or equivalent diploma (e.g., GED), or be working to achieve a high school or equivalent diploma. For the purpose of this clause, an applicant for registration may be working to achieve a high school or equivalent diploma for no more than two years;

(B) have taken and passed a pharmacy technician certification examination approved by the board and have a current certification certificate;

(C) complete the Texas application for registration that includes the following information:

- (i) name;
- (ii) addresses, phone numbers, date of birth, and social security number; and
- (iii) any other information requested on the application;

(D) meet all requirements necessary in order for the Board to access the criminal history record information, including submitting fingerprint information and paying the required fees; and

(E) shall be exempt from the registration fee as specified in §297.4(b)(2) of this chapter.

(2) Once an applicant has successfully completed all requirements of registration, and the board has determined there are no grounds to refuse registration, the applicant will be notified of registration as a registered pharmacy technician and of his or her pharmacy technician registration number.

(3) All applicants for renewal of an expedited pharmacy technician registration issued to a military service member, military veteran, or military spouse shall comply with the renewal procedures as specified in §297.3 of this chapter.

(d) License renewal. As specified in §55.003, Occupations Code, a military service member who holds a pharmacy technician registration is entitled to two years of additional time to complete any requirements related to the renewal of the military service member's registration.

(1) A military service member who fails to renew their pharmacy technician registration in a timely manner because the individual was serving as a military service member shall submit to the board:

- (A) name, address, and registration number of the pharmacy technician;
- (B) military identification indicating that the individual is a military service member; and
- (C) a statement requesting up to two years of additional time to complete the renewal.

(2) A military service member specified in paragraph (1) of this subsection shall be exempt from fees specified in §297.3(d)(3) of this chapter.

(3) A military service member specified in paragraph (1) of this subsection is entitled to two additional years of time to complete the continuing education requirements specified in §297.8 of this title (relating to Continuing Education Requirements).

(e) Interim registration for military service member or military spouse. In accordance with §55.0041, Occupations Code, a military service member or military spouse who is currently registered in good standing by a jurisdiction with registration requirements that are substantially equivalent to the registration requirements in this state may be issued an interim pharmacy technician registration. The military service member or military spouse:

- (1) shall provide documentation to include:
  - (A) a notification of intent to practice form including any additional information requested;
  - (B) proof of the military service member or military spouse's residency in this state, including a copy of the permanent

change of station order for the military service member to whom the military spouse is married;

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

(D) verification from the jurisdiction in which the military service member or military spouse holds an active pharmacy technician registration that the military service member or military spouse's registration is in good standing;

(2) may not engage in pharmacy technician duties in this state until issued an interim pharmacy technician registration;

(3) may hold an interim pharmacy technician registration only for the period during which the military service member or military service member to whom the military spouse is married is stationed at a military installation in this state, but not to exceed three years from the date of issuance of the interim registration; and

(4) may not renew the interim pharmacy technician registration.

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

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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Daniel Carroll, Pharm.D.

Executive Director

Texas State Board of Pharmacy

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For further information, please call: (512) 305-8033



## TITLE 26. HEALTH AND HUMAN SERVICES

### PART 1. HEALTH AND HUMAN SERVICES COMMISSION

#### CHAPTER 553. LICENSING STANDARDS FOR ASSISTED LIVING FACILITIES

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §§553.3, 553.5, 553.7, 553.9, 553.17, 553.21, 553.23, 553.25, 553.27, 553.29, 553.31, 553.33, 553.37, 553.39, 553.47, 553.100, 553.101, 553.103, 553.104, 553.107, 553.111, 553.112, 553.113, 553.115, 553.122, 553.125, 553.131, 553.132, 553.135, 553.142, 553.211, 553.212, 553.215, 553.222, 553.225, 553.231, 553.232, 553.235, 553.241, 553.242, 553.245, 553.246, 553.253, 553.255, 553.257, 553.259, 553.301, 553.303, 553.305, 553.307, 553.309, 553.327, 553.331, 553.401, and 553.751; the repeal of §§553.43, 553.261, 553.263, 553.265, 553.267, 553.269, 553.271, 553.272, 553.273, 553.275, 553.311, 553.351, 553.353, 553.401, 553.403, 553.405, 553.407, 553.409, 553.411, 553.413, 553.415, 553.417, 553.419, 553.421,

553.423, 553.425, 553.427, 553.429, 553.431, 553.433, 553.435, 553.437, 553.439, 553.451, 553.453, 553.455, 553.457, 553.459, 553.461, 553.463, 553.465, 553.467, 553.469, 553.471, 553.473, 553.475, 553.477, 553.479, 553.481, 553.483, 553.501, 553.503, 553.551, 553.553, 553.555, 553.557, 553.559, 553.561, 553.563, 553.565, 553.567, 553.569, 553.571, 553.573, 553.575, 553.577, 553.579, 553.581, 553.583, 553.585, 553.587, 553.589, 553.591, 553.593, 553.595, 553.597, 553.601, 553.603, 553.651, 553.653, 553.655, 553.657, 553.659, 553.661, 553.701, 553.703, 553.705, 553.707, 553.709, and 553.711; and new §§553.45, 553.250, 553.261, 553.263, 553.265, 553.267, 553.269, 553.271, 553.273, 553.275, 553.277, 553.279, 553.281, 553.283, 553.285, 553.287, 553.289, 553.291, 553.292, 553.293, 553.295, 553.328, 553.351, 553.401, 553.451, 553.501, 553.551, 553.601, 553.651, and 553.701 in Title 26, Texas Administrative Code, Chapter 553, Licensing Standards for Assisted Living Facilities.

## BACKGROUND AND PURPOSE

The purpose of the proposal is to reorganize certain rules so key topics are easier to find, add more clarity or specificity to certain rules that are vague, and update references throughout the chapter.

## SECTION-BY-SECTION SUMMARY

The proposed repeal of §553.43, Disclosure of Facility Identification Number, duplicates information also located in proposed repealed §553.272, Advertisements, Solicitations, and Promotional Material, and proposed new §553.292, Advertisements, Solicitations, and Promotional Material. The proposed repeal of §553.261, Coordination of Care, will restructure each of this rule's subsections into a separate new section to make these key topics easier to find and eliminate Coordination of Care as a section name in the chapter. These topics include: §553.261(a), Medications; §553.261(b), Accident, Injury and Acute Illness; §553.261(c), Health Care Professional, §553.261(d), Activities Program; §553.261(e), Dietary Services; §553.261(f), Infection Prevention and Control; §553.261(g), Restraints and Seclusion; and §553.261(h) Wheelchair Self-Release Seat Belts.

The proposed repeals of §553.263, Health Maintenance Activities; §553.265, Resident Records and Retention; §553.267, Rights; §553.269, Access to Residents and Records by the State Long-Term Care Ombudsman Program; §553.271, Postings; §553.272, Advertisements, Solicitations, and Promotional Material; §553.273, Abuse, Neglect, or Exploitation Reportable to HHSC by Facilities; and §553.275, Emergency Preparedness and Response, make these section numbers available to allow for the relocation of all subsections under §553.261, Coordination of Care, and maintain these key topics in their same general order and location in the chapter. The proposed repeal of §553.311, Physical Plant Requirements for Alzheimer's Units, relocates these rules to new proposed §553.250, Construction Requirements for a Certified Alzheimer's Assisted Living Facility.

Proposed amendments throughout the chapter update and correct citations and references and restructure sentences to use active voice.

Proposed new §553.261, Inappropriate Placement in a Type A or Type B Facility, relocates content from proposed amended §553.259, Admission Policies and Procedures. Proposed new §553.263, Resident Transfer and Discharge, creates a new section to relocate rules for residents' rights pertaining to being transferred or discharged from proposed repealed §553.267,

Rights, so they are easier to find. Proposed new §553.265, Respite Admissions, contains new rules to provide more specific guidance concerning residents admitted for respite care.

Proposed new §553.267, Medications, relocates the rule from proposed repealed §553.261, Coordination of Care, and restructures the rules so they are easier to navigate. The proposed new rule also adds requirements for assisted living facilities to have written medication policies and procedures and a medication administration record for each resident who receives medication administration or supervision where staff must record all medication doses administered and missed. The rule proposed for repeal only requires staff to record missed doses. The requirement for monthly medication counseling for residents who self-administer medications is amended to require additional medication counseling whenever a resident has a significant change in condition that might affect the ability to self-administer medications. The option to include a medication take-back program is added to the requirement that drug disposal be carried out by a licensed pharmacist.

Proposed new §553.269, Accident, Injury, or Acute Illness, and new §553.271, Health Care Professional, relocates the rule from proposed repealed §553.261, Coordination of Care, and provides updated citations and references where needed.

Proposed new §553.273, Activities Program, relocates the rule from proposed repealed §553.261, Coordination of Care, and changes the requirement from offering residents an activity at least once a week to offering residents a daily activity.

Proposed new §553.275, Dietary Services, relocates the rule from proposed repealed §553.261, Coordination of Care, and relocates rules for food preparation and kitchen area from proposed amended sections in Subchapter D, Facility Construction, as the guidance is more relative to this section. It also adds a rule that staff who work with or handle unpackaged food must complete an accredited food handler training course, clarifies that the three daily meals must include all five basic food groups, and updates citations and references.

Proposed new §553.277, Infection Prevention and Control, relocates the rule from proposed repealed §553.261, Coordination of Care, adds a requirement that during a declared emergency residents must be permitted visits from their chosen essential caregivers, provides additional guidance for employee TB screening, and updates citations and references.

Proposed new §553.279, Restraints and Seclusion, relocates the rule from proposed repealed §553.261, Coordination of Care, and adds specific guidance pertaining to the use of bed rails.

Proposed new §553.281, Health Maintenance Activities, relocates the rule from proposed repealed §553.263, Health maintenance activities, updates citations and references, and relocates the rule relating to RN delegation to proposed new §553.283, RN Delegation of Care Tasks, to clarify that RN delegation is separate from health maintenance activities.

Proposed new §553.285, Resident Records and Retention, relocates the rule from proposed repealed §553.265, Resident Records and Retention, adds a requirement to retain resident records for five years after services end, and provides guidance pertaining to electronic records and destruction of records.

Proposed new §553.287, Rights, relocates the rule from proposed repealed §553.267, Rights; lists examples of interference, coercion, discrimination, and reprisal from which residents have the right to be free; and adds specificity and clarity to rules per-

taining to residents' rights to privacy and retaining personal property. The rule also relocates most residents' rights pertaining to being transferred or discharged into proposed new §553.263, Resident Transfer and Discharge.

Proposed new §553.289, Access to Residents and Records by the State Long-Term Care Ombudsman Program, and §553.291, Postings, relocate the rule from proposed repealed §553.261, Coordination of Care.

Proposed new §553.292, Advertisements, Solicitations, and Promotional Material, relocates the rule from proposed repealed §553.272, Advertisements, Solicitations, and Promotional Material.

Proposed new §553.293, Abuse, Neglect, or Exploitation and Incidents Reportable to HHSC by Facilities, and new §553.295, Emergency Preparedness and Response, relocate the rule from proposed repealed §553.261, Coordination of Care.

The proposed amendment to §553.3, Definitions, removes a provision from the definitions for "abuse," "exploitation," and "neglect," relating to a person under 18 years of age who is not an emancipated minor, to coincide with the proposed amendments to §553.9, General Characteristics of a Resident, and §553.259, Admission Policies and Procedures, that clarify a resident in an assisted living facility must be at least 18 years old or an emancipated minor. The proposed amendment also adds definitions for "activities of daily living," "assistive devices," "bedfast," "capacity," "durable medical equipment," "outside resources," "plan of removal," "resident evaluation," "significant change," and "skilled nursing." Definitions related to life safety code are relocated to proposed amended §553.101, Definitions, including "listed," "local code," and "NFPA 101." The proposed amendment deletes definitions not used in the chapter: "commingles," "flame spread," "personal care staff," "qualified medical personnel," "safety," and "short term-acute episode." The proposed amendment to §553.3 also makes changes to certain definitions to add more clarity or update a reference, including "attendant," "authorized electronic monitoring (AEM)," "behavioral emergency," "delegation," "health care professional," "health maintenance activity," "legally authorized representative," "license holder," "medication supervision or supervision," "personal care services," "restraints," "seclusion," and "stable and predictable."

The proposed amendment to §553.5, Types of Assisted Living Facilities, adds additional guidance related to the evacuation capability required of a resident in a Type A facility.

The proposed amendment to §553.7, Assisted Living Facility Services, updates citations and references and adds more clarity.

The proposed amendment to §553.9, General Characteristics of a Resident, adds the statement that a resident must be 18 years of age or older or an emancipated minor and updates guidance related to some general characteristics of a resident. Key updates to the list of general characteristics include a statement that a resident may have assistive devices and a list of examples of these and a statement that a resident may have a permanently placed percutaneous endoscopic gastrostomy tube, as well as specifying that this would require RN delegation or designation as a health maintenance activity.

The proposed amendment to §553.17, Criteria for Licensing, adds more specific guidance related to whether an assisted living

facility that has multiple buildings requires licensing as a small or large facility or requires multiple licenses.

Proposed amendments to §553.17, Criteria for Licensing; §553.23, Initial License Application Procedures and Requirements; §553.325, Initial License for a Type A or Type B Facility for an Applicant in Good Standing; §553.27, Certification of a Type B Facility or Unit for Persons with Alzheimer's Disease and Related Disorders; §553.29, Alzheimer's Certification of a Type B Facility for an Initial License Applicant in Good Standing; §553.31, Provisional License; §553.33, Renewal Procedures and Qualifications; §553.37, Relocation; §553.39, Increase in Capacity; §553.47, License Fees; §553.132, Space Planning and Utilization Requirements for an Existing Large Type A Assisted Living Facility; §553.142, Space Planning and Utilization Requirements for an Existing Large Type B Assisted Living Facility; §553.232, Space Planning and Utilization Requirements for a New Large Type A Assisted Living Facility; §553.242, Space Planning and Utilization Requirements for a New Large Type B Assisted Living Facility; and §553.331, Determinations and Actions (Investigation Findings), correct the hyphenation of a word.

Proposed amendments to §553.21, Time Periods for Processing All Types of License Applications; §553.23, Initial License Application Procedures and Requirements; §553.25, Initial License for a Type A or Type B Facility for an Applicant in Good Standing; §553.27, Certification of a Type B Facility or Unit for Persons with Alzheimer's Disease and Related Disorders; §553.29, Alzheimer's Certification of a Type B Facility for an Initial License Applicant in Good Standing; §553.31, Provisional License; §553.33, Renewal Procedures and Qualifications; §553.37, Relocation; §553.39, Increase in Capacity; and §553.47, License Fees, are to update citations and references and add more clarity.

The proposed amendment to §553.101, Definitions, relocates definitions specific to facility construction from §553.3, Definitions, to §553.101.

The proposed amendment to §553.103, Site and Location for all Assisted Living Facilities, clarifies what constitutes an abrupt change in level.

The proposed amendment to §553.104, Safety Operations, details when an assisted living facility must maintain onsite documentation or written records and clarifies that an assisted living facility must not permit an accumulation of waste in attic spaces.

The proposed amendment to §553.107, Building Rehabilitation, removes the requirement for an assisted living facility to notify HHSC prior to the start of building rehabilitation.

Proposed amendments to §553.111, Construction Requirements for an Existing Small Type A Assisted Living Facility, and §553.112, Space Planning and Utilization Requirements for an Existing Small Type A Assisted Living Facility, relocate requirements related to the preparation of food and operation of the kitchen to §553.275, Dietary Services.

Proposed amendments to §553.113, Means of Escape Requirements for an Existing Small Type A Assisted Living Facility, and §553.115, Fire Protection Systems Requirements for an Existing Small Type A Assisted Living Facility, update citations and references and add more clarity.

The proposed amendment to §553.122, Space Planning and Utilization Requirements for an Existing Small Type B Assisted Liv-

ing Facility, relocates requirements related to the preparation of food and operation of the kitchen to §553.275, Dietary Services.

Proposed amendments to §553.125, Fire Protection Systems Requirements for an Existing Small Type B Assisted Living Facility, and §553.131, Construction Requirements for an Existing Large Type A Assisted Living Facility, update citations and references and add more clarity where required.

The proposed amendment to §553.132, Space Planning and Utilization Requirements for an Existing Large Type A Assisted Living Facility, relocates requirements related to the preparation of food and operation of the kitchen to §553.275, Dietary Services.

The proposed amendment to §553.135, Fire Protection Systems Requirements for an Existing Large Type A Assisted Living Facility, corrects an error.

The proposed amendment to §553.142, Space Planning and Utilization Requirements for an Existing Large Type B Assisted Living Facility, §553.211, Space Planning and Utilization Requirements for a New Small Type A Assisted Living Facility, and §553.212, Space Planning and Utilization Requirements for a New Small Type A Assisted Living Facility, relocates requirements related to the preparation of food and operation of the kitchen to §553.275, Dietary Services.

The proposed amendment to §553.215, Fire Protection Systems Requirements for a New Small Type A Assisted Living Facility, adds clarity to a requirement related to electronic supervision of a fire sprinkler system.

The proposed amendment to §553.222, Space Planning and Utilization Requirements for a New Small Type B Assisted Living Facility, relocates requirements related to the preparation of food and operation of the kitchen to §553.275, Dietary Services.

The proposed amendment to §553.225, Fire Protection Systems Requirements for a New Small Type B Assisted Living Facility, adds clarity to a requirement related to electronic supervision of a fire sprinkler system.

The proposed amendment to §553.231, Construction Requirements for a New Large Type A Assisted Living Facility, adds clarity to a requirement related to electronic supervision of a fire sprinkler system.

The proposed amendment to §553.232, Space Planning and Utilization Requirements for a New Large Type A Assisted Living Facility, relocates requirements related to the preparation of food and operation of the kitchen to §553.275, Dietary Services.

The proposed amendment to §553.235, Fire Protection Systems Requirements for a New Large Type A Assisted Living Facility, corrects references.

The proposed amendment to §553.241, Construction Requirements for a New Large Type B Assisted Living Facility, clarifies that a building being structurally sound is determined and enforced by local authorities.

The proposed amendment to §553.242, Space Planning and Utilization Requirements for a New Large Type B Assisted Living Facility, relocates requirements related to the preparation of food and operation of the kitchen to §553.275, Dietary Services.

The proposed amendment to §553.245, Fire Protection Systems Requirements for a New Large Type B Assisted Living Facility, corrects an error.

The proposed amendment to §553.246, Hazardous Area Requirements for a New Large Type B Assisted Living Facility, corrects references.

The proposed amendment to §553.253, Employee Qualifications and Training, restructures manager and staff training requirements to add clarity. The amendment specifies that a facility must have dedicated staff on duty for each shift and must not share on-duty staff with another facility or provider type. It also adds details to the required posting of the facility's 24-hour staffing pattern, contains a statement that a facility must not use a companion care provider or solicit or involve family members to provide care to residents to mitigate staffing shortages, and adds infection prevention and control principles to the list of required training and continued education.

The proposed amendment to §553.255, All Staff Policy for Residents with Alzheimer's Disease or a Related Disorder, corrects a reference.

The proposed amendment to §553.257, Personnel, updates citations and references.

The proposed amendment to §553.259, Admission Policies and Procedures, adds a statement that a facility must not admit a resident under the age of 18 years unless the person is an emancipated minor. The amendment adds a rule that an assisted living facility that allows pets must have a pet policy and specifies the information the policy must include. It also changes the term "resident assessment" to "resident evaluation" and states the resident evaluation must be done annually and upon a significant change in condition and updates references and citations. The amendment also relocates information to new §553.261, Inappropriate Placement in a Type A or Type B facilities.

Proposed amendments to §553.301, Staffing, §553.303, Staff Training, §553.307, Admission Procedures, Assessment, and Service Plan, and §553.309, Activities Program, restructure some rules and clarify certain guidance to make information easier to find and understand and update citations and references.

The proposed amendment to §553.327, Inspections, Investigations, and Other Visits, clarifies that HHSC "may" inspect an assisted living facility approximately once every two years after initial inspection, as Long-Term Care Regulation does not have sufficient survey operations staff to inspect facilities at that frequency at all times.

Proposed amendments to all sections in Subchapter H, Enforcement, reformat the rules from question-and-answer format to regular rule format, except for §553.751, Administrative Penalties. The proposed amendment to §553.751, Administrative Penalties, changes the term "opportunity to correct" to "right to correct" and updates citations.

#### 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.

Throughout the proposal, there are non-substantive changes that add clarity, update definitions, and update language and terms to current usage. Monitoring compliance with the proposed rules will not require additional staff and no automation changes will be needed.

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 expand and 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 are necessary to protect the health, safety, and welfare of the residents of Texas, and the rules do not impose a cost on regulated people.

#### PUBLIC BENEFIT AND COSTS

Stephen Pahl, Deputy Executive Commissioner for Regulatory Services, has determined that for each year of the first five years the rules are in effect, the public will benefit from increased clarity in the rules and guidance concerning staff training requirements, general characteristics of residents in assisted living facilities, and residents' rights.

#### 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 Christi Carro, Program Specialist, Texas Health and Human Services Commission, Mail Code E-370, 701 W. 51st Street, Austin, Texas 78751; or by email to [hhscltrrules@hhs.texas.gov](mailto:hhscltrrules@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 post-marked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please

indicate "Comments on Proposed Rule 22R054" in the subject line.

## SUBCHAPTER A. INTRODUCTION

### 26 TAC §§553.3, 553.5, 553.7, 553.9

#### 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 rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively.

The amendments implement Texas Government Code §531.0055 and §531.033 and Texas Health and Safety Code §247.025 and §247.026.

#### §553.3. Definitions.

The following words and terms, when used in this chapter, have the following meanings [meaning], unless the context clearly indicates otherwise.

##### (1) Abuse--~~Has~~

~~{(A) For a person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes, the term has the meaning in Texas Family Code §261.001(1), which is an intentional, knowing, or reckless act or omission by an employee, volunteer, or other individual working under the auspices of a facility or program that causes or may cause emotional harm or physical injury to, or the death of, a child served by the facility or program, as further described by rule or policy; and}~~

~~{(B) [For a person other than one described in subparagraph (A) of this paragraph, the term has] the meaning in Texas Health and Safety Code §260A.001(1), which is:~~

~~(A) [(+)] the negligent or willful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical or emotional harm or pain to a resident by the resident's caregiver, family member, or other individual who has an ongoing relationship with the resident; or~~

~~(B) [(+)] sexual abuse of a resident, including any involuntary or nonconsensual sexual conduct that would constitute an offense under Texas Penal Code §21.08 (relating to Indecent Exposure), or Texas Penal Code, Chapter 22 (relating to Assaultive Offenses), committed by the resident's caregiver, family member, or other individual who has an ongoing relationship with the resident.~~

(2) Accreditation commission--Has the meaning given in Texas Health and Safety Code §247.032.

(3) Activities of daily living--Activities routinely performed in the normal course of a day, including bathing, dressing, grooming, routine hair and skin care, meal preparation, feeding, exercising, toileting, transfer/ambulation, positioning, assisting with range of motion, and assistance with self-administered medications. The term does not include health maintenance activities and tasks performed under RN delegation, which must be assessed in accordance with applicable Texas Board of Nursing rules at Texas Administrative Code (TAC), Title 22, Chapter 225 (relating to RN Delegation to Unlicensed Personnel and Tasks not Requiring Delegation in Inde-

pendent Living Environments for Clients with Stable and Predictable Conditions).

(4) [(3)] Actual harm--A negative outcome that compromises a resident's physical, mental, or emotional well-being.

(5) [(4)] Advance directive--Has the meaning given in Texas Health and Safety Code §166.002.

(6) [(5)] Affiliate--With respect to:

(A) a corporation, each officer and director, each stockholder with a disclosable interest, and any subsidiary or parent company of the corporation;

(B) a limited liability company, each officer, member, manager, or parent company;

(C) an individual:

(i) the individual's spouse, if the individual is a sole proprietor;

(ii) each partnership and each partner thereof of which the individual or any affiliate of the individual is a partner; and

(iii) each corporation in which the individual is an officer or director or a stockholder with a disclosable interest in the corporation;

(D) a partnership, each partner in the partnership, including general and limited partners (regardless of the percent of direct or indirect ownership or controlling authority) and any parent company of the partnership;

(E) a trust, each trustee of the trust; and

(F) a group of co-owners under any other business arrangement, each officer, director, or the equivalent under the specific business arrangement and any parent company of the business.

[(A) a partnership, each partner thereof;]

[(B) a corporation, each officer, director, principal stockholder, subsidiary, or person with a disclosable interest, as the term is defined in this section; and]

[(C) a natural person;]

[(i) said person's spouse;]

[(ii) each partnership and each partner thereof, of which said person or any affiliate of said person is a partner; and]

[(iii) each corporation in which said person is an officer, director, principal stockholder, or person with a disclosable interest.]

(7) [(6)] Alzheimer's Assisted Living Disclosure Statement form--The HHSC-prescribed form a facility uses to describe the nature of care or treatment of residents with Alzheimer's disease and related disorders.

(8) [(7)] Alzheimer's disease and related disorders--Alzheimer's disease and any other irreversible dementia described by the Centers for Disease Control and Prevention (CDC), or in the most current edition of the Diagnostic and Statistical Manual of Mental Disorders.

(9) [(8)] Alzheimer's facility--A Type B facility that is certified to provide specialized services to residents with Alzheimer's disease or a related condition.

(10) [(9)] Applicant--A person applying for a license to operate an assisted living facility under Texas Health and Safety Code, Chapter 247.

(11) [(10)] Assisted Living Facility Memory Care Disclosure Statement form--The HHSC-prescribed form that a facility uses when the facility advertises, markets, or otherwise promotes that it provides memory care services to residents with Alzheimer's disease and related disorders.

(12) Assistive devices--Products or devices for residents that promote independence and increase quality of life, including devices that assist a resident to perform tasks or activities of daily living and devices that make ambulation and transfer easier and safer for the resident with or without assistance from staff.

(13) [(11)] Attendant--A facility employee who provides personal [direct] care to residents. Attendants are not precluded from performing other tasks as assigned to assist with services in the facility. [This employee may serve other functions, including cook, janitor, porter, maid, laundry worker, security personnel, bookkeeper, activity director, and manager.]

(14) [(12)] Authorized electronic monitoring (AEM)--Placement [The placement of an electronic monitoring device in a resident's room] and use of an electronic monitoring [using the] device to make audio and video [tapes or] recordings after fulfilling requirements [making a request to the facility] to allow electronic monitoring.

(15) Bedfast--Refers to a resident who, because of an infirmity, requires a stretcher, bed or similar device for evacuation.

(16) [(13)] Behavioral emergency--Has the meaning given in §553.279 of this chapter (relating to Restraints and Seclusion) [§553.261(g)(2) of this chapter (relating to Coordination of Care)].

(17) Capacity--The number of residents for which a facility is licensed to provide services, regardless of census.

(18) [(14)] Certified ombudsman--Has the meaning given in §88.2 of this title (relating to Definitions).

(19) [(15)] CFR--Code of Federal Regulations.

(20) [(16)] Change of ownership--An event that results in a change to the federal taxpayer identification number of the license holder of a facility. The substitution of a personal representative for a deceased license holder is not a change of ownership.

[(17) Commingles--The laundering of apparel or linens of two or more individuals together.]

(21) [(18)] Controlling person--[A person with the ability, acting alone or with others, to directly or indirectly influence, direct, or cause the direction of the management, expenditure of money, or policies of a facility or other person. A controlling person includes:]

(A) A person is a controlling person if the person, acting alone or with others, can directly or indirectly influence, direct, or cause the direction of the management, expenditure of money, or policies of an assisted living facility or other person.

(B) For purposes of this chapter, "controlling person" includes:

(i) a management company, landlord, or other business entity that operates or contracts with others for the operation of an assisted living facility;

(ii) a person who is a controlling person of a management company or other business entity that operates an assisted liv-

ing facility or that contracts with another person for the operation of an assisted living facility; and

(iii) any other individual who, because of a personal, familial, or other relationship with the owner, manager, landlord, tenant, or provider of an assisted living facility, is in a position of actual control or authority with respect to the facility, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the facility.

(C) Notwithstanding any other provision of this section, for purposes of this chapter, a controlling person of an assisted living facility or of a management company or other business entity described in subparagraph (B)(i) of this paragraph that is a publicly traded corporation or is controlled by a publicly traded corporation means an officer or director of the corporation. The term does not include a shareholder or lender of the publicly traded corporation.

(D) A controlling person described by paragraph (B)(iii) of this definition does not include an employee, lender, secured creditor, landlord, or other person who does not exercise formal or actual influence or control over the operation of an assisted living facility.

~~[(A) a management company, landlord, or other business entity that operates or contracts with others for the operation of a facility;]~~

~~[(B) any person who is a controlling person of a management company or other business entity that operates a facility or that contracts with another person for the operation of an assisted living facility;]~~

~~[(C) an officer or director of a publicly traded corporation that is, or that controls, a facility, management company, or other business entity described in subparagraph (A) of this paragraph but does not include a shareholder or lender of the publicly traded corporation; and]~~

~~[(D) any other individual who, because of a personal, familial, or other relationship with the owner, manager, landlord, tenant, or provider of a facility, is in a position of actual control or authority with respect to the facility, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the facility, except an employee, lender, secured creditor, landlord, or other person who does not exercise formal or actual influence or control over the operation of a facility.]~~

(22) [(49)] Covert electronic monitoring--The placement and use of an electronic monitoring device that is not open and obvious, and about which the facility and HHSC have not been informed by the resident, by the person who placed the device in the room, or by a person who uses the device.

(23) [(20)] Delegation--In the assisted living facility context, written authorization by a registered nurse (RN) acting on behalf of the facility for an attendant [personal care staff] to perform a task [tasks] of nursing care in a selected situation, in which [situations, where] delegation criteria are met for the task, in accordance with Texas Board of Nursing rules at 22 TAC Chapter 225 (relating to RN Delegation to Unlicensed Personnel and Tasks not Requiring Delegation in Independent Living Environments for Clients with Stable and Predictable Conditions). [The delegation process includes nursing assessment of a resident in a specific situation, evaluation of the ability of the personal care staff, teaching the task to the personal care staff, ensuring supervision of the personal care staff in performing a delegated task, and re-evaluating the task at regular intervals.]

(24) [(21)] Dietitian--A person who currently holds a license or provisional license issued by the Texas Department of Licensing and Regulation.

(25) [(22)] Direct ownership interest--Ownership of equity in the capital, stock, or profits of, or a membership interest in, an applicant or license holder.

(26) [(23)] Disclosable interest--Five percent or more direct or indirect ownership interest in an applicant or license holder.

(27) [(24)] Disclosure statement--An HHSC form for prospective residents or their legally authorized representatives that a facility must complete. The form contains information regarding the facility's preadmission, admission, and discharge processes [processes]; resident evaluation [assessment] and service plans; staffing patterns; the physical environment of the facility; resident activities; and facility services.

(28) Durable medical equipment--Items that are ordered by a health care provider for everyday or extended use during treatment and recovery from an injury or illness or due to age related problems.

(29) [(25)] Electronic monitoring device--Video surveillance cameras and audio devices installed in a resident's room and [;] designed to capture images and record [acquire] communications or other sounds that occur in the room. An electronic, mechanical, or other device used specifically for the nonconsensual interception of wire or electronic communication is excluded from this definition.

(30) [(26)] Exploitation--Has

~~[(A) For a person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes, the term has the meaning in Texas Family Code §261.001(3), which is the illegal or improper use of a child or of the resources of a child for monetary or personal benefit, profit, or gain by an employee, volunteer, or other individual working under the auspices of a facility or program as further described by rule or policy; and]~~

~~[(B) [For a person other than one described in subparagraph (A) of this paragraph, the term has] the meaning in Texas Health and Safety Code §260A.001(4), which is the illegal or improper act or process of a caregiver, family member, or other individual who has an ongoing relationship with the resident using the resources of a resident for monetary or personal benefit, profit, or gain without the informed consent of the resident.~~

(31) [(27)] Facility--An entity required to be licensed under the Assisted Living Facility Licensing Act, Texas Health and Safety Code, Chapter 247.

(32) [(28)] Fire suppression authority--The paid or volunteer fire-fighting organization or tactical unit that is responsible for fire suppression operations and related duties once a fire incident occurs within its jurisdiction.

[(29) Flame spread--The rate of fire travel along the surface of a material. This is different than other requirements for time-rated "burn through" resistance ratings, such as one-hour rated. Flame spread ratings are Class A (0-25), Class B (26-75), and Class C (76-200).]

(33) [(30)] Functional disability--A mental, cognitive, or physical disability that precludes the physical performance of self-care tasks, including health maintenance activities and personal care.

(34) [(31)] Governmental unit--The state or any county, municipality, or other political subdivision, or any department, division, board, or other agency of any of the foregoing.

(35) [(32)] Health care professional--An individual who holds a current license or certification, [licensed, certified,] or is otherwise legally authorized to administer health care, for profit or otherwise, in the ordinary course of business or professional practice. [The term includes a physician, registered nurse, licensed vocational nurse, licensed dietitian, physical therapist, and occupational therapist.]

(A) The term includes individuals such as physicians, registered nurses, licensed vocational nurses, licensed dietitians, physical therapists, and occupational therapists.

(B) A health care professional may be employed by the facility, be employed by or contracted with an outside entity such as a home and community support services agency, or be an independent contractor.

(36) [(33)] Health maintenance activity (HMA)--Consistent with the definition in the Texas Board of Nursing rules for RN Delegation at 22 TAC §225.4 (relating to Definitions), a task that:

(A) requires a higher level of skill to perform than activities of daily living; [may be exempt from delegation based on an RN's assessment in accordance with §553.263(e) of this chapter (relating to Health Maintenance Activities); and]

(B) is exempt from delegation based on an RN's assessment in accordance with Texas Board of Nursing rules at 22 TAC Chapter 225; and [requires a higher level of skill to perform than personal care services and, in the context of an ALF, excludes the following tasks:]

(C) in the context of an assisted living facility, excludes:

(i) intermittent catheterization; and

(ii) subcutaneous, nasal, or insulin pump administration of insulin or other injectable medications prescribed in the treatment of diabetes mellitus.

(37) [(34)] HHSC--The Texas Health and Human Services Commission.

(38) [(35)] Immediate threat to the health or safety of a resident--A situation that causes, or is likely to cause, serious injury, harm, or impairment to or the death of a resident.

(39) [(36)] Immediately available--The capacity of facility staff to immediately respond to an emergency after being notified through a communication or alarm system. Staff [The staff] are to be no more than 600 feet from the farthest resident and in the facility while on duty.

(40) [(37)] Indirect ownership interest--Any ownership or membership interest in a person that has a direct ownership interest in an applicant or license holder.

(41) [(38)] Isolated--A situation in which a very limited number of residents are affected [s] and a very limited number of staff are involved, or a [the] situation that has occurred only occasionally.

(42) [(39)] Key infectious agents--Bacteria, viruses, and other microorganisms that [which] cause the most common infections and infectious diseases in long-term care facilities, and that can be mitigated by establishing, implementing, maintaining, and enforcing proper infection, prevention, and control policies and procedures.

(43) [(40)] Large facility--A facility licensed for 17 or more residents.

(44) [(41)] Legally authorized representative--A person authorized by law to act on behalf of a person with regard to a matter

described in this chapter, which [and] may include a parent, guardian, spouse, sibling, [or managing conservator of a minor,] or a resident's legal [the] guardian or agent under a power of attorney [of an adult].

(45) [(42)] License holder--A person that holds a license to operate a facility.

[(43)] Listed--Equipment, materials, or services included in a list published by an organization concerned with evaluation of products or services, that maintains periodic inspection of production of listed equipment or materials or periodic evaluation of services, and whose listing states that either the equipment, material, or service meets appropriate designated standards or has been tested and found suitable for a specified purpose. The listing organization must be acceptable to the authority having jurisdiction, including HHSC or any other state, federal, or local authority.]

[(44)] Local code--A model building code adopted by the local building authority where the facility is constructed or located.]

(46) [(45)] Management services--Services provided under contract between the owner of a facility and a person to provide for the operation of the [a] facility, including administration, staffing, maintenance, or delivery of resident services. Management services do not include contracts solely for maintenance, laundry, transportation, or food services.

(47) [(46)] Manager--The individual in charge of the day-to-day operation of the facility.

(48) [(47)] Managing local ombudsman--Has the meaning given in §88.2 of this title.

(49) [(48)] Medication--

(A) Medication is any substance:

(i) recognized as a drug in the official United States Pharmacopoeia, Official Homeopathic Pharmacopoeia of the United States, Texas Drug Code Index or official National Formulary, or any supplement to any of these official documents;

(ii) intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease;

(iii) other than food intended to affect the structure or any function of the body; and

(iv) intended for use as a component of any substance specified in this definition.

(B) Medication includes both prescription and over-the-counter medication, unless otherwise specified.

(C) Medication does not include devices or their components, parts, or accessories.

(50) [(49)] Medication administration--The direct application of a medication or drug to the body of a resident by an individual legally allowed to administer medication in the state of Texas.

(51) [(50)] Medication assistance or supervision-- The assistance or supervision of the medication regimen by facility staff. Refer to §553.267(c) [§553.264(a)] of this chapter (relating to Rights).

(52) [(51)] Medication self-administration--A resident's self-administration of [(self- or self-administration of)--The capability of a resident to administer] the resident's own medication or treatments without assistance from the facility staff.

(53) [(52)] Memory care services--Services provided by an assisted living facility that include enhanced safety measures and that

are tailored to meet the needs of residents with a memory impairment or a diagnosis of dementia.

(54) [(53)] Multidrug-resistant organisms--Bacteria and other microorganisms that have developed resistance to multiple types of medicine used to act against the microorganism.

(55) [(54)] Neglect--Has

[(A) For a person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes, the term has the meaning in Texas Family Code §261.001(4), which is a negligent act or omission by an employee, volunteer, or other individual working under the auspices of a facility or program, including failure to comply with an individual treatment plan, plan of care, or individualized service plan, that causes or may cause substantial emotional harm or physical injury to, or the death of, a child served by the facility or program as further described by rule or policy; and]

[(B)] [For a person other than one described in subparagraph (A) of this paragraph, the term has] the meaning in Texas Health and Safety Code §260A.001(6), which is the failure to provide for one's self the goods or services, including medical services, which are necessary to avoid physical or emotional harm or pain or the failure of a caregiver to provide such goods or services.

[(55) NFPA 101--The 2012 publication titled *NFPA 101 Life Safety Code* published by the National Fire Protection Association, Inc., 1 Batterymarch Park, Quincy, Massachusetts 02169.]

(56) Ombudsman intern--Has the meaning given in §88.2 of this title.

(57) Ombudsman program--Has the meaning given in §88.2 of this title.

(58) Online portal--A secure portal provided on the HHSC website for licensure activities, including for an assisted living facility applicant to submit licensure applications and information.

(59) Outside resources--Services and support applicable to the needs of a resident that cannot be provided by the facility, or that the resident declines provision of by the facility, and that are necessary to allow the resident to maintain the highest practicable level of independence and quality of life. Outside service providers include:

(A) an employee of a home and community support services agency in accordance with Texas Health and Safety Code, Chapter 142;

(B) a health care professional, as defined in this section;

(C) mental health and cognitive service support; and

(D) companion services.

(60) [(59)] Pattern of violation--Repeated, but not pervasive [widespread in scope], failures of a facility to comply with this chapter or a rule, standard, or order adopted under Texas Health and Safety Code, Chapter 247 that:

(A) result in a violation; and

(B) are found throughout the services provided by the facility or that affect or involve the same residents or facility employees.

(61) [(60)] Person--Any individual, firm, partnership, corporation, association, or joint stock association, and the legal successor thereof.

(62) [(61)] Personal care services--Assistance with activities of daily living, as defined in this section, and general supervision or oversight of the physical and mental well-being of residents in the facility [feeding, dressing, moving, bathing, or other personal needs or maintenance; or general supervision or oversight of the physical and mental well-being of a person who needs assistance to maintain a private and independent residence in the facility or who needs assistance to manage his or her personal life, regardless of whether a guardian has been appointed for the person].

[(62) Personal care staff--An attendant whose primary employment function is to provide personal care services.]

(63) Physician--A practitioner licensed by the Texas Medical Board.

(64) Plan of removal--A plan that identifies all actions an assisted living facility will take to immediately address noncompliance that has resulted in or caused serious injury, serious harm, serious impairment, or death by detailing how the facility will keep residents safe and free from serious harm or death caused by the noncompliance.

(65) [(64)] Potential for minimal harm--A violation that has the potential for causing no more than a minor negative impact on a resident.

(66) [(65)] Practitioner--An individual who is currently licensed in a state in which the individual practices as a physician, dentist, podiatrist, or physician's [a physieian] assistant; or a registered nurse approved by the Texas Board of Nursing to practice as an advanced practice registered nurse.

(67) [(66)] Private and unimpeded access--Access to enter a facility or communicate with a resident outside of the hearing and view of others, without interference or obstruction from facility employees, volunteers, or contractors.

[(67) Qualified medical personnel--An individual who is licensed, certified, or otherwise authorized to administer health care. The term includes a physician, registered nurse, and licensed vocational nurse.]

(68) Rapid influenza diagnostic test--A test administered to a person with flu-like symptoms that can detect the influenza viral nucleoprotein antigen.

(69) Resident--An individual accepted for care in a facility.

(70) Resident evaluation--The assessment of a resident to determine the care required, in accordance with Texas Health and Safety Code §247.002.

(71) [(70)] Respite--The provision by a facility of room, board, and care at the level ordinarily provided for permanent residents of the facility to a person for not more than 60 days for each stay in the facility.

(72) [(71)] Restraint hold--

(A) A manual method, except for physical guidance or prompting of brief duration, used to restrict:

(i) free movement or normal functioning of all or a portion of a resident's body; or

(ii) normal access by a resident to a portion of the resident's body.

(B) Physical guidance or prompting of brief duration becomes a restraint if the resident resists the guidance or prompting.

(73) [(72)] Restraints--

(A) Chemical restraints are psychoactive drugs administered for the purposes of discipline or convenience and [are] not required to treat the resident's medical symptoms.

(B) Physical restraints are any manual method [5] or physical or mechanical device, material, or equipment that immobilizes or reduces the ability of a resident to move his or her arms, legs, body, or head freely [attached or adjacent to the resident that restricts freedom of movement]. Physical restraints include restraint holds. This definition does not apply to wheelchairs, seating systems, or secondary supports when used to provide postural support, stability, pressure distribution, and pressure relief.

(74) [(73)] RN (registered nurse)--A person who holds a current and active license from the Texas Board of Nursing to practice professional nursing, as defined in Texas Occupations Code §301.002(2).

[(74) Safety--Protection from injury or loss of life due to such conditions as fire, electrical hazard, unsafe building or site conditions, and the hazardous presence of toxic fumes and materials.]

(75) Seclusion--The involuntary confinement of a resident alone in a room or area that the resident is physically prevented from leaving [separation of a resident from other residents and the placement of the resident alone in an area from which the resident is prevented from leaving. ]

(76) Service plan--A written description of the medical care, supervision, or nonmedical care needed by a resident.

[(77) Short-term acute episode--An illness of less than 30 days' duration.]

(77) Significant change--A sudden or major shift in the physical or behavioral status of a resident that is inconsistent with the resident's condition when admitted or last assessed, such as unplanned weight change, stroke, heart condition, hospice election, the development of a pressure sore, or the worsening of an existing pressure sore. Ordinary day-to-day fluctuations in a resident's functioning and behavior, short-term illnesses such as colds, or the gradual deterioration in a resident's ability to conduct activities of daily living that accompanies the aging process are not considered significant changes.

(78) Skilled nursing--Tasks that may only be provided by a licensed nurse and require clinical reasoning, nursing judgment, or critical decision making.

(79) [(78)] Small facility--A facility licensed for 16 or fewer residents.

(80) [(79)] Stable and predictable--A phrase describing the clinical and behavioral status of a resident that is non-fluctuating and consistent and does not require the regular presence of a registered or licensed vocational nurse.

[(A) The phrase does not include within its meaning a description of the clinical and behavioral status of a resident that is expected to change rapidly or needs continuous or continual nursing assessment and evaluation.]

[(B) The phrase does include within its meaning a description of the condition of a resident receiving hospice care within a facility where deterioration is predictable.]

(81) [(80)] Staff--Employees of an assisted living facility.

(82) [(81)] Standards--The minimum conditions, requirements, and criteria established in this chapter with which a facility must comply to be licensed under this chapter.

(83) [(82)] State Ombudsman--Has the meaning given in §88.2 of this title (relating to Definitions).

(84) [(83)] Terminal condition--A medical diagnosis, certified by a physician, of an illness that will likely result in death in six months or less.

(85) [(84)] Universal precautions--An approach to infection control in which blood, any body fluids visibly contaminated with blood, and all body fluids in situations where it is difficult or impossible to differentiate between body fluids are treated as if known to be infectious for HIV, hepatitis B, and other blood-borne pathogens.

(86) [(85)] Vaccine Preventable Diseases--The diseases included in the most current recommendations of the Advisory Committee on Immunization Practices of the CDC.

(87) [(86)] Widespread in scope--A violation of Texas Health and Safety Code, Chapter 247, or a rule, standard, or order adopted under Chapter 247 that:

(A) is pervasive throughout the services provided by the facility; or

(B) represents a systemic failure by the facility that affects or has the potential to affect a large portion of or all of the residents of the facility.

(88) [(87)] Willfully interfere--To act or not act to intentionally prevent, interfere with, impede [impeded], or to attempt to intentionally prevent, interfere with, or impede.

(89) [(88)] Working day--Any 24-hour period, Monday through Friday, excluding state and federal holidays.

#### §553.5. *Types of Assisted Living Facilities.*

(a) Basis for licensure type. A facility must be licensed as a Type A or Type B facility. A facility's licensure type is based on the capability of the residents to evacuate the facility, as described in this section.

(b) Type A. In a Type A facility, a resident:

(1) must be physically and mentally capable of evacuating the facility without physical assistance from staff, which may include an individual who is mobile, although non-ambulatory, such as an individual who uses a wheelchair or an electric cart, and has the capacity to transfer and evacuate himself or herself in an emergency;

(2) does not require routine attendance during nighttime sleeping hours;

(3) must be capable of following directions under emergency conditions; and

(4) must be able to demonstrate [to HHSC] that he or she [they] can travel from his or her own living unit to a centralized space, such as a lobby, living room, or dining room on the level of discharge, within a 13-minute period without continuous staff assistance and without using an elevator [meet the evacuation requirements described in Subchapter D of this chapter (relating to Facility Construction)].

(c) Type B. In a Type B facility, a resident may:

(1) require staff assistance to evacuate;

(2) require attendance during nighttime sleeping hours;

(3) be incapable of following directions under emergency conditions; and

(4) require assistance in transferring to and from a wheelchair; but

(5) must not be permanently bedfast.

(d) Type C.

(1) A Type C facility is a four-bed facility that was originally licensed by HHSC to provide adult foster care services as described in 40 Texas Administrative Code (TAC) [TAC] Chapter 48, Subchapter K (relating to Minimum Standards for Adult Foster Care).

(2) HHSC no longer issues Type C licenses and Type C licensure is no longer a requirement to contract with HHSC to provide adult foster care services. In accordance with 40 TAC Chapter 48, Subchapter K, in order to contract with HHSC as a provider of adult foster care services, an applicant must have a current license for a Type A or Type B assisted living facility.

§553.7. *Assisted Living Facility Services.*

(a) An assisted living facility is an entity that [must]:

(1) furnishes [furnish], in one or more facilities, food and shelter to four or more persons who are unrelated to the proprietor [of the establishment]; and

(2) provides [provide]:

(A) personal care services; or

(B) medication administration by a person licensed or otherwise authorized in this state to administer the medication.

(b) An assisted living facility [establishment] may provide:

(1) assistance with or supervision of medication administration;

(2) health maintenance activities in accordance with §553.281 [§553.263] of this chapter (relating to Health Maintenance Activities); and

(3) skilled nursing services for the following limited purposes:

(A) coordination of [coordinate] resident care with an outside home and community support services agency or other health care professional;

(B) provision or delegation of personal care services and medication administration, as described in this chapter;

(C) evaluation [assessment] of residents to determine the care required; and

(D) temporary delivery, for a period not to exceed 30 days, of [temporary] skilled nursing services for a minor illness, injury, or emergency.

(c) A facility may choose to provide services only to residents with specific healthcare conditions and diagnoses, such as brain injury, in accordance with this section and Texas Health and Safety Code, Chapter 247.

(d) As part of the facility's general supervision and oversight of the physical and mental well-being of its residents, the facility remains responsible for all care provided by the facility.

§553.9. *General Characteristics of a Resident.*

(a) A resident must be 18 years of age or older or an emancipated minor.

(b) [This section describes some general characteristics of a resident in a facility.] A resident may:

(1) exhibit symptoms of cognitive [mental] or emotional distress [disturbance], but must [is] not be considered at risk of imminent harm to self or others;

(2) require [need] assistance with activities of daily living as defined in §553.3 of this chapter (relating to Definitions) [movement];

(3) be incontinent without pressure sores [require assistance with bathing, dressing, and grooming];

(4) require toileting assistance, such as reminders to encourage routine toileting to prevent incontinence [require assistance with routine skin care, such as application of lotions or treatment of minor cuts and burns];

(5) have a variety of healthcare conditions and diagnoses that could require short-term or ongoing additional care, not provided by the facility, from outside resources, as defined in §553.3 of this chapter [need reminders to encourage toilet routine and prevent incontinence];

[(6) require temporary services by professional personnel;]

(6) [(7)] manage his or her own medication regimen and storage, or may require [need] assistance with a medication regimen [supervision of self-medication], or may require medication administration or medication storage by facility staff;

(7) [(8)] require encouragement to participate in activities such as eating, hygiene, socializing, and attending appointments [eat; or monitoring due to social or psychological reasons of temporary illness];

(8) require monitoring due to social or psychological reasons of temporary illness, such as sadness, depression, or apathy;

(9) be hearing, [impaired or] speech, or vision impaired;

[(10) be incontinent without pressure sores;]

(10) [(11)] require an established therapeutic diet;

(11) [(12)] use various assistive [require self-help] devices, as defined in §553.3 of this chapter, that increase independence, such as a Geri chair, lap tray, lift chair, low vision aid, wheelchair, scooter, or walker; [and]

(12) [(13)] require [need] assistance with meals, which may include feeding; and[-]

(13) have a permanently placed percutaneous endoscopic gastrostomy (PEG) tube for feeding and medication administration, which requires RN delegation or RN designation as a health maintenance activity, as described in 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.

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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-3161



SUBCHAPTER B. LICENSING

26 TAC §§553.17, 553.21, 553.23, 553.25, 553.27, 553.29, 553.31, 553.33, 553.37, 553.39, 553.45, 553.47

The amendments and new section are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively.

The amendments and new section implement Texas Government Code §531.0055 and §531.033 and Texas Health and Safety Code §247.025 and §247.026.

§553.17. *Criteria for Licensing.*

(a) A person must obtain a license issued by HHSC ~~[be licensed]~~ to establish or operate an assisted living facility in Texas.

(1) HHSC considers one or more facilities to be part of the same establishment and, therefore, subject to licensure as an assisted living facility, based on the following factors:

(A) common ownership;

(B) physical proximity;

(C) shared services, personnel, or equipment in any part of the facilities' operations; and

(D) any public appearance of joint operations or of a relationship between the facilities.

(2) The presence or absence of any one factor in paragraph (1) of this subsection does not determine whether one or more facilities are part of the same establishment or whether the facilities need to be licensed ~~[is not conclusive]~~.

(3) A facility's licensed capacity is based on the total capacity for residents within the entire assisted living establishment that is combined under a single license. If multiple licenses are obtained, the licensed capacity is determined per license.

(b) To obtain a license, a person must follow the application requirements in this subchapter and meet the criteria for a license.

(c) An applicant must affirmatively show that:

(1) the applicant, license holder, controlling person, and any person required to submit background and qualification information meet the criteria and eligibility for licensing, in accordance with this section;<sup>[;]</sup> and<sup>[;]</sup>

(2) ~~[(1)]~~ the building in which the facility is housed:

(A) meets local fire ordinances;

(B) is approved by the local fire authority;

(C) meets HHSC licensing standards in accordance with Subchapter D of this chapter (relating to Facility Construction) based on an onsite ~~[on-site]~~ inspection by HHSC; and

(D) if located in a county of more than 3.3 million residents for initial license applications submitted or issued on or after December 6, 2022, is not located in a 100-year floodplain.<sup>[; and]</sup>

(3) ~~[(2)]~~ Operation ~~[operation]~~ of the facility must meet one of the following: ~~[meets]~~

(A) HHSC licensing standards based on an onsite ~~[on-site]~~ health inspection by HHSC, which must include observation of the care of a resident; or

(B) ~~[(3) the facility meets]~~ the standards for accreditation based on an onsite ~~[on-site]~~ accreditation survey by the accreditation commission.

(d) An applicant who chooses the option authorized in subsection ~~(c)(3)(B)~~ of this section ~~[(c)(3) of this section]~~ must contact HHSC to determine which accreditation commissions are available to meet HHSC licensure ~~[the]~~ requirements. ~~[of that subsection.]~~ If a license holder uses an onsite ~~[on-site]~~ accreditation survey by an accreditation commission, as provided in this section ~~[subsection]~~ and §553.33(h) ~~[[§553.33(i)]]~~ of this subchapter (relating to Renewal Procedures and Qualifications), the license holder must:

(1) provide written notification to HHSC by submitting an updated application in the licensing system within five working days after the license holder receives a notice of change in accreditation status from the accreditation commission; and

(2) include a copy of the notice of change with its written notification to HHSC.

(e) HHSC issues a license to a facility meeting all requirements of this chapter. The facility must not exceed the maximum allowable number of residents specified on the license.

(f) HHSC denies an application for an initial license or a renewal of a license if:

(1) the applicant, license holder, controlling person, or any person required to be disclosed on the application for licensure has been debarred or excluded from the Medicare or Medicaid programs by the federal government or a state;

(2) a court has issued an injunction prohibiting the applicant, license holder, controlling person, or any person required to be disclosed on the application for licensure from operating a facility; or

(3) during the five years preceding the date of the application, a license to operate a health care facility, long-term care facility, assisted living facility, or similar facility in any state held by the applicant, license holder, controlling person, or any person required to be disclosed on the application for licensure has been revoked.

(g) A license holder or controlling person who operates a nursing facility or an assisted living facility for which a trustee was appointed and for which emergency assistance funds, other than funds to pay the expenses of the trustee, were used is subject to exclusion from eligibility for:

(1) the issuance of an initial license for a facility for which the person has not previously held a license; and

(2) the renewal of the license of the facility for which the trustee was appointed.

(h) HHSC may deny an application for an initial license or refuse to renew a license if an applicant, license holder, controlling person, or any person ~~[required to be]~~ disclosed on the application for licensure:

(1) violates Texas Health and Safety Code, Chapter 247; a section, standard or order adopted under Chapter 247; or a license issued under Chapter 247 in either a repeated or substantial manner;

(2) commits an act described in §553.751~~[(a)(2) - (9)]~~ of this chapter (relating to Administrative Penalties);

(3) aids, abets, or permits a substantial violation described in paragraph (1) or (2) of this subsection about which the person had or should have had knowledge;



(4) fails to provide the required information, facts, or references;

(5) engages in the following:

(A) knowingly submits false or intentionally misleading statements to HHSC;

(B) uses subterfuge or other evasive means of filing an application for licensure;

(C) engages in subterfuge or other evasive means of filing on behalf of another who is unqualified for licensure;

(D) knowingly conceals a material fact related to licensure; or

(E) is responsible for fraud;

(6) fails to pay the following fees, taxes, and assessments when due:

(A) license fees, as described in §553.47 of this subchapter (relating to License Fees); or

(B) franchise taxes, if applicable;

(7) during the five years preceding the date of the application, has a history in any state or other jurisdiction of any of the following:

(A) operation of a facility that has been decertified or has had its contract canceled under the Medicare or Medicaid program;

(B) federal or state long-term care facility, assisted living facility, or similar facility sanctions or penalties, including monetary penalties, involuntary downgrading of the status of a facility license, proposals to decertify, directed plans of correction, or the denial of payment for new Medicaid admissions;

(C) unsatisfied final judgments, excluding judgments wholly unrelated to the provision of care rendered in long-term care facilities;

(D) eviction involving any property or space used as a facility; or

(E) suspension of a license to operate a health care facility, long-term care facility, assisted living facility, or a similar facility;

(8) violates Texas Health and Safety Code §247.021 by operating a facility without a license; [ø]

(9) is subject to denial or refusal as described in Chapter 560 of this title (relating to Denial or Refusal of License) during the time frames described in that chapter; or[-]

(10) chooses to surrender the license in lieu of enforcement action.

(i) Without limitation, HHSC reviews all information provided by an applicant, a license holder, a person required to be disclosed on the application for licensure, or a manager when considering grounds for denial of an initial license application or a renewal application in accordance with subsection (h) of this section. HHSC may grant a license if HHSC finds the applicant, license holder, person required to be disclosed on the application for licensure, affiliate, or manager is able to comply with the rules in this chapter.

(j) HHSC reviews final actions when considering the grounds for denial of an initial license application or renewal application in accordance with subsections (f) and (h) of this section. An action is final when routine administrative and judicial remedies are exhausted. An applicant must disclose all actions, whether pending or final.

(k) If an applicant owns multiple facilities, HHSC examines the overall record of compliance in all of the applicant's facilities. An overall record poor enough to deny issuance of a new license does not preclude the renewal of a license of a facility with a satisfactory record.

§553.21. Time Periods for Processing All Types of License Applications.

(a) HHSC reviews an application for a license within 30 days after the date HHSC Licensing and Credentialing Section, Long-term Care Regulation, receives the application and the associated payment of fees and notifies the applicant if additional information is needed to complete the application.

(b) HHSC denies an application that remains incomplete 120 days after the date that HHSC Licensing and Credentialing Section, Long-term Care Regulation receives the application and the associated payment of fees.

(c) HHSC issues a license within 30 days after HHSC determines that the applicant and the facility have met all licensure requirements referenced in §553.23 of this subchapter (relating to Initial License Application Procedures and Requirements) or §553.33 of this subchapter (relating to Renewal Procedures and Qualifications), as applicable.

(d) If HHSC does not process an application in the time period stated, the applicant has a right to make a request to the program director for reimbursement of the license fees paid with the application.

(1) If the program director does not agree that the established time period has been violated or finds that good cause existed for exceeding the established time period, the program director denies the request.

(2) Good cause for exceeding the established time period exists if:

(A) the number of applications to be processed exceeds by 15 percent or more the number processed in the same calendar quarter of the preceding year;

(B) HHSC must rely on another public or private entity to process all or a part of the application received by HHSC, and the delay is caused by that entity; or

(C) other conditions existed giving good cause for exceeding the established time period.

(3) If the request for reimbursement is denied, the applicant may appeal to the HHSC Executive Commissioner for resolution of the dispute. The applicant must send a written statement to the HHSC Executive Commissioner describing the request for reimbursement and the reason for the request. The HHSC Executive Commissioner will make a timely decision concerning the appeal and notify the applicant in writing of the decision.

§553.23. Initial License Application Procedures and Requirements.

(a) An applicant must complete the HHSC pre-licensure training course before submitting an application for an initial license. An applicant that is currently licensed under Texas Health and Safety Code, Chapter 247, is exempt from this requirement.

(b) An applicant for an initial license must submit an application in accordance with §553.19 of this subchapter (relating to General Application Requirements) and include full payment of the fees required in §553.47 of this subchapter (relating to License Fees).

(c) HHSC reviews an application for an initial license within 30 days after the date HHSC Licensing and Credentialing Section, Long-term Care Regulation receives the application and associated fees

and notifies the applicant if additional information is needed to complete the application.

(d) The applicant must notify HHSC via the online portal indicating that the facility is ready for a life safety code [Life Safety Code] (LSC) inspection. The notice must be submitted with the application or within 120 days after the HHSC Licensing and Credentialing Section, Long-term Care Regulation receives the application and associated fees. After the applicant has satisfied the application submission requirements in §553.17 of this subchapter (relating to Criteria for Licensing) and §553.19 of this subchapter, HHSC staff conduct an onsite [on-site] LSC inspection of the facility to determine if the facility meets the applicable [NFPA 101 and other] physical plant requirements in Subchapter D of this chapter (relating to Facility Construction).

(e) If the facility fails to meet the licensure requirements within 120 days after the initial LSC inspection, HHSC denies the application for a license.

(f) After a facility has met the licensure requirements in Subchapter D of this chapter and has admitted at least one but no more than three residents, the applicant must notify HHSC via the online portal that the facility is ready for a health inspection.

(1) HHSC staff conduct an onsite [on-site] health inspection to determine if the facility meets the licensure requirements for standards of operation and resident care in Subchapter E of this chapter (relating to Standards for Licensure).

(2) If the facility fails to meet the licensure requirements for standards of operation and resident care within 120 days after the initial health inspection, HHSC denies the application for a license.

(g) HHSC issues a license within 30 days after HHSC determines that the applicant and the facility have met the licensure requirements of this section. The issuance of a license constitutes HHSC's official written notice to the facility of the approval of the application.

(h) HHSC may deny an application for an initial license if the applicant, controlling person, or any person required to submit background and qualification information fails to meet the criteria for a license established in §553.17 of this subchapter.

(i) If HHSC denies an application for an initial license, HHSC sends the applicant a written notice of the denial and informs the applicant of the applicant's right to request an administrative hearing to appeal the denial. The administrative hearing is held in accordance with Texas Health and Human Services Commission rules at Texas Administrative Code, Title 1, Part 15, Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act).

§553.25. *Initial License for a Type A or Type B Facility for an Applicant in Good Standing.*

(a) An applicant may request that HHSC issue, before conducting an onsite [on-site] health inspection, an initial license for a Type A or Type B facility. The applicant must request the license by submitting a form prescribed by HHSC via the online portal.

(b) If an applicant makes a request in accordance with subsection (a) of this section, HHSC determines the applicant is in good standing, and the applicant complies with subsection (d) of this section, the applicant is not required to admit a resident to the facility or have the onsite [on-site] health inspection described in §553.23(f) of this subchapter (relating to Initial License Application Procedures and Requirements) before HHSC issues an initial license.

(c) For purposes of this section, an applicant is in good standing if:

(1) a condition in this paragraph [one of the following conditions] is met:

(A) the applicant has operated or been a controlling person of a licensed Type A or Type B facility in Texas for at least six consecutive years; or

(B) the applicant has not held a license for a Type A or Type B facility, but a controlling person of the applicant has operated or been a controlling person of a licensed Type A or Type B facility in Texas for at least six consecutive years; and

(2) each licensed facility operated by the applicant or the controlling person described in paragraph (1)(A) or (B) of this subsection:

(A) has not had a violation of a licensing rule:

(i) that:

(I) resulted in actual harm to a resident, which is defined as a negative outcome that compromises the resident's physical, mental, or emotional well-being; or

(II) posed an immediate threat of harm causing or likely to cause serious injury, impairment, or death to a resident; and

(ii) that:

(I) the facility did not challenge;

(II) was affirmed; or

(III) is pending a final determination; and

(B) has not had a sanction imposed by HHSC against the facility during the six years before the date an application is submitted that resulted in:

(i) a civil penalty;

(ii) an administrative penalty;

(iii) an injunction;

(iv) the denial, suspension, or revocation of a license; or

(v) an emergency closure.

(d) An applicant that makes a request in accordance with subsection (a) of this section must:

(1) submit to HHSC via the online portal:

(A) the applicant's policies and procedures;

(B) evidence that the applicant has complied with §553.257[(b)] of this chapter (relating to Personnel [Human Resources]); and

(C) documentation that the applicant's employees have the credentials described in §553.253 of this chapter (relating to Employee Qualifications and Training); and

(2) comply with §553.23(d) of this subchapter and §553.17 of this subchapter (relating to Criteria for Licensing).

(e) HHSC issues an initial license to an applicant that makes a request in accordance with subsection (a) of this section if HHSC determines that an applicant:

(1) is in good standing;

(2) has submitted information in accordance with subsection (d)(1) of this section that complies with this chapter; and

(3) is in compliance with applicable [NFPA 401 and other physical plant] requirements of Subchapter D of this chapter (relating to Facility Construction), including meeting the requirements of a life safety code [Life Safety Code] (LSC) inspection within 120 days after the date HHSC staff conduct the initial LSC inspection.

(f) HHSC staff conduct an onsite [on-site] health inspection within 90 days after the date HHSC issues a license in accordance with subsection (e) of this section. The onsite [on-site] health inspection includes HHSC observation of the facility's provision of care to at least one resident.

(g) Until a facility that is issued an initial license under this section meets the requirements of the onsite [on-site] health inspection described in subsection (f) of this section, the facility must attach a written addendum to the disclosure statement required by §553.259(c)(4) of this chapter (relating to Admission Policies and Procedures) as notice to a resident or a prospective resident that the facility has not met the requirements of the onsite [on-site] health inspection. At a minimum, the addendum must state that:

(1) the facility has not met the requirements of an initial onsite [on-site] health inspection for a license; and

(2) HHSC staff conduct an onsite [on-site] health inspection for licensure within 90 days after the date the license is issued.

*§553.27. Certification of a Type B Facility or Unit for Persons with Alzheimer's Disease and Related Disorders.*

(a) A facility that advertises, markets, or otherwise promotes that the facility or a distinct unit of the facility provides specialized care for persons with Alzheimer's disease or related disorders must be certified or have the unit certified under subsection (d) of this section or §553.29 of this subchapter (relating to Alzheimer's Certification of a Type B Facility for an Initial License Applicant in Good Standing). Certification under this section is not required for a facility to use advertising terms such as "medication reminders or assistance," "meal and activity reminders," "escort service," or "short-term memory loss, confusion, or forgetfulness."

(b) To be certified under subsection (d) of this section, a facility must be licensed as a Type B facility.

(c) A license holder must request certification of a facility or unit under subsection (d) of this section by submitting the forms prescribed by HHSC via the online portal and include full payment of applicable fees described in §553.47(c) of this subchapter (relating to License Fees).

(d) After HHSC receives a request for certification in accordance with subsection (c) of this section, HHSC certifies a licensed Type B facility as a certified Alzheimer's facility or a unit of a licensed Type B facility as a certified Alzheimer's unit, if HHSC determines:

(1) that the facility or unit is in compliance with §553.250 [§553.314] of this chapter (relating to Construction Requirements for a Certified Alzheimer's Assisted Living Facility [Physical Plant Requirements for Alzheimer's Units]) and other applicable requirements of Subchapter D of this chapter [(relating to Facility Construction), including meeting the requirements of a Life Safety Code (LSC) inspection] within 120 days after the date HHSC staff conduct an initial life safety code [LSC] inspection; and

(2) that the facility or unit meets the requirements of Subchapter F of this chapter (relating to Additional Licensing Standards for Certified Alzheimer's Assisted Living Facilities) based on an onsite [on-site] health inspection, during which HHSC observes the facility's or unit's provision of care to at least one resident who has been admitted to the Alzheimer's facility or unit.

(e) A facility or unit may not exceed the maximum number of residents specified on the Alzheimer's certificate issued to the facility by HHSC.

(f) A facility must post the facility's or unit's Alzheimer's certificate in a prominent location for public view.

(g) An Alzheimer's certificate is valid for three years from the effective date of approval by HHSC.

(h) HHSC cancels an Alzheimer's certificate if:

(1) a certified facility, or the facility in which a certified unit is located, undergoes a change of ownership; [or]

(2) HHSC determines that a certified facility or unit is not in compliance with applicable laws and rules; or[-]

(3) the legal entity or individual for which the certification is issued voluntarily closes the certification.

(i) A facility must remove a cancelled certificate from display and advertising and surrender the certificate to HHSC.

*§553.29. Alzheimer's Certification of a Type B Facility for an Initial License Applicant in Good Standing.*

(a) An applicant may request that HHSC, before conducting an onsite [on-site] health inspection, issue an initial license for a Type B facility and an Alzheimer's certification for the facility or a distinct unit of the facility. The applicant must meet the requirements of §553.25 of this subchapter (relating to Initial License for a Type A or Type B Facility for an Applicant in Good Standing) for the initial license and the requirements of this section for certification of the facility or unit.

(b) An applicant must request certification by submitting forms prescribed by HHSC via the online portal and include full payment of applicable fees described in §553.47 of this subchapter (relating to License Fees).

(c) An applicant that makes a request in accordance with subsection (a) of this section is not required to admit a resident to the facility or unit or have the onsite [on-site] health inspection described in §553.23(f) of this subchapter (relating to Initial License Application Procedures and Requirements) before HHSC certifies the facility or unit if HHSC determines that the applicant is in good standing:

(1) for the issuance of an initial license of the facility in accordance with §553.25(c) of this subchapter; and

(2) for certification of the facility or unit in accordance with subsection (d) of this section.

(d) An applicant is in good standing to obtain certification of a facility or unit if:

(1) for at least six consecutive years before applying for certification:

(A) the applicant has been:

(i) the license holder for an Alzheimer's certified facility in Texas or a facility in Texas that has an Alzheimer's certified unit; or

(ii) a controlling person of the license holder for an Alzheimer's certified facility in Texas or a facility in Texas that has an Alzheimer's certified unit; or

(B) a controlling person of the applicant has been:

(i) the license holder for an Alzheimer's certified facility in Texas or a facility in Texas that has an Alzheimer's certified unit; or

(ii) a controlling person of the license holder for an Alzheimer's certified facility in Texas or a facility in Texas that has an Alzheimer's certified unit;

(2) each licensed facility operated by the applicant or the controlling person has not had a violation or sanction described in §553.25(c)(2) of this subchapter; and

(3) each licensed facility operated by the applicant or the controlling person has had no more than two violations listed in §553.287 [§553.267(a)] of this chapter (relating to Rights) during the six-year period immediately before the applicant applied for certification.

(e) For purposes of subsection (d)(3) of this section, a facility has a violation if:

(1) the applicant or controlling person operating the facility did not challenge the violation;

(2) a final determination on the violation is pending; or

(3) the violation was upheld.

(f) An applicant that makes a request in accordance with subsection (a) of this section must submit to HHSC for approval via the online portal:

(1) the applicant's policies and procedures required by Subchapter F of this chapter [(relating to Additional Licensing Standards for Certified Alzheimer's Assisted Living Facilities)]; and

(2) documentation demonstrating that the applicant is complying with Subchapter F of this chapter and §553.257[(b)] of this chapter [(relating to Human Resources)].

(g) HHSC certifies a facility or unit after an applicant makes a request in accordance with subsection (a) of this section if HHSC determines that the applicant:

(1) meets the good standing requirements described in §553.25(c) of this subchapter and subsection (d) of this section;

(2) has submitted information in accordance with subsection (f) of this section; and

(3) is in compliance with:

(A) §553.27 of this subchapter (relating to Certification of a Type B Facility or Unit for Persons with Alzheimer's Disease and Related Disorders); and

(B) §553.250 [§553.311] of this chapter (relating to Construction Requirements for a Certified Alzheimer's Assisted Living Facility [Physical Plant Requirements for Alzheimer's Units]).

(h) HHSC conducts an onsite [on-site] health inspection to determine if the facility or unit meets the requirements of Subchapter F of this chapter within 90 days after the date HHSC certifies a facility or unit in accordance with subsection (g) of this section. During each onsite [on-site] health inspection, HHSC observes the provision of care to at least one resident who has been admitted to the facility or unit.

(i) Until a facility or unit that is issued a certification under this section meets the requirements of the onsite [on-site] health inspection described in subsection (h) of this section, the facility must attach a written addendum to the disclosure statement required by §553.307(a) of this chapter (relating to Admission Procedures, Evaluation [Assessment], and Service Plan) to notify a resident or a prospective resident that the facility or unit has not met the requirements of the onsite [on-site] health inspection. At a minimum, the addendum must state that:

(1) the facility or unit has not met the requirements of an initial onsite [on-site] health inspection for Alzheimer's certification; and

(2) HHSC conducts an onsite [on-site] health inspection for Alzheimer's certification within 90 days after the date of certification.

(j) To obtain certification of a unit in a Type B facility that is already licensed, a license holder must comply with §553.27 of this subchapter.

#### §553.31. Provisional License.

[(a)] HHSC may issue a six-month provisional license in the case of a corporate change of ownership.}]

(a) [(b)] HHSC may issue [issues] a six-month provisional license for a newly constructed facility without conducting a life safety code [an NFPA 101 and physical plant] inspection to verify that the facility is in compliance with the applicable requirements of [under] Subchapter D of this chapter (relating to Facility Construction), [and, as applicable §553.311, of this chapter (relating to Physical Plant Requirements for Alzheimer's Units).] if:

(1) an applicant requests in writing a provisional license by submitting the appropriate application in the online portal;

(2) the applicant submits working drawings and specifications to HHSC for review in accordance with applicable procedures for plan review, approval, and construction in Subchapter D of this chapter, before facility construction begins;

(3) the applicant obtains all approvals, including a certificate of occupancy in a jurisdiction that requires one, from local authorities having jurisdiction in the area in which the facility is located, such as the fire marshal, health department, and building inspector;

(4) the applicant submits a complete license application within 30 days after receipt of all local approvals described in paragraph (3) of this subsection;

(5) the applicant pays in full the license fees required by §553.47 of this subchapter (relating to License Fees);

(6) the applicant, or a person who is a controlling person and an owner of the applicant, has constructed another facility in this state that complies with applicable [NFPA 101 and physical plant] requirements in Subchapter D of this chapter[, and, as applicable, §553.311 of this chapter]; and

(7) the applicant is in compliance with resident-care standards for licensure required by Subchapter E of this chapter (relating to Standards for Licensure) based on an onsite [on-site] inspection conducted in accordance with §553.327 of this chapter (relating to Inspections, Investigations, and Other Visits).

(b) [(e)] HHSC considers the date facility construction begins to be the date the building construction permit for the facility was approved by local authorities.

(c) [(d)] A provisional license expires on the earlier of:

(1) the 180th day after the effective date of the provisional license or the end of any extension period granted by HHSC; or

(2) the date a three-year license is issued to the provisional license holder.

(d) [(e)] HHSC conducts a life safety code [an NFPA 101 and physical plant] inspection of a facility as soon as reasonably possible after HHSC issues a provisional license to the facility.

(e) [(f)] After conducting a life safety code [an NFPA 101 and physical plant] inspection, HHSC issues a license in accordance

with Texas Health and Safety Code §247.023 to the provisional license holder if the facility passes the inspection and the applicant meets all requirements for a license.

§553.33. *Renewal Procedures and Qualifications.*

(a) The facility is responsible for submitting an application for license renewal via the online portal before the expiration date printed on the license. A license issued under this chapter:

- (1) expires three years after the date issued;
- (2) must be renewed before the license expiration date; and
- (3) is not automatically renewed.

(b) An application for renewal must comply with the requirements of §553.19 of this subchapter (relating to General Application Requirements), and, as applicable, §553.21 of this subchapter (relating to Time Periods for Processing All Types of License Applications). The submission of a license fee alone does not constitute an application for renewal.

(c) To renew a license, a license holder must submit an application for renewal with HHSC via the online portal before the expiration date of the license. For purposes of Texas Government Code §2001.054, HHSC considers a license holder to have submitted a timely and sufficient application for the renewal of a license, which continues the license in effect and permits the facility to continue operations while HHSC is processing the renewal application, if the license holder submits to HHSC the basic fee described in §553.47(a)(1) or (2) of this subchapter (relating to License Fees); and

- (1) a complete application for renewal no later than 45 days before the expiration of the current license;
- (2) an incomplete application for renewal, with a letter explaining the circumstances that prevented the inclusion of the missing information no later than 45 days before the expiration of the current license; or
- (3) a complete application or an incomplete application, with a letter explaining the circumstances that prevented the inclusion of the missing information, and the late fee described in §553.47(b) of this chapter during the 45-day period ending on the date the current license expires.

(d) HHSC may propose to deny, in accordance with subsection (m) of this section, a timely and sufficient, but incomplete, renewal application submitted in accordance with subsection (c) of this section if the license holder fails to complete the application by paying in full all fees due beyond the basic fee and late fee paid in accordance with §553.47(b) of this chapter, and by submitting all information and documentation required to complete the license holder's renewal application before the date that the current license expires. HHSC does not grant a license unless a renewal application is complete. It is the license holder's responsibility to ensure that the application is timely submitted to HHSC.

(e) A license expires if the license holder fails to submit a timely and sufficient application in accordance with subsection (c) of this section before the expiration date of the license.

(f) A person whose license has expired may not operate a facility without obtaining a license in accordance with the application requirements for an initial license in §553.23 of this subchapter (relating to Initial License Application Procedures and Requirements). Operating a facility without a license is subject to civil and administrative penalties and other authorized civil remedies.

(g) HHSC reviews an application for a renewal license within 30 days after the date HHSC Licensing and Credentialing Section,

Long-term Care Regulation, receives the application and notifies the applicant if additional information is needed to complete the application.

~~[(h) A license holder applying for a renewal license must show that the facility meets HHSC licensing standards based on an on-site inspection by HHSC. The on-site inspection must include an observation of the care of a resident.]~~

~~(h) [(+)]~~ If an applicant is relying on meeting standards for accreditation in accordance with §553.17(c)(3)(B) [~~§553.17(2)~~] of this subchapter (relating to Criteria for Licensing) to show that it meets the requirements for licensure, the application for a renewal license must include a copy of the license holder's accreditation report from the accreditation commission with its application for renewal.

~~(i) [(j)]~~ HHSC may pend action on an application for the renewal of a license for up to six months if the facility does not meet licensure requirements during an onsite [~~on-site~~] inspection.

~~(j) [(k)]~~ The issuance of a license constitutes official written notice from HHSC to the facility that its application is approved.

~~(k) [(l)]~~ HHSC may deny an application for the renewal of a license if the applicant, controlling person, or any person required to submit background and qualification information fails to meet the criteria for a license established in §553.17 of this subchapter.

~~(l) [(m)]~~ Before denying an application for renewal of a license, HHSC gives the license holder:

- (1) notice by registered or certified mail of the facts or conduct alleged to warrant the proposed action; and
- (2) an opportunity to show compliance with all requirements of law for the retention of the license.

~~(m) [(n)]~~ To request an opportunity to show compliance, the license holder must send its written request to the Associate Commissioner of Long-term Care Regulation. The request must:

(1) be postmarked no later than 10 days after the date of HHSC notice and be received in the office of the Associate Commissioner of Long-term Care Regulation no later than 10 days after the date of the postmark; and

(2) contain specific documentation refuting HHSC allegations.

~~(n) [(o)]~~ The opportunity to show compliance is limited to a review of documentation submitted by the license holder and information HHSC used as the basis for its proposed action and is not conducted as an adversary hearing. HHSC gives the license holder a written affirmation or reversal of the proposed action.

~~(o) [(p)]~~ If HHSC denies an application for the renewal of a license, the applicant may request:

- (1) an informal reconsideration by HHSC; and
- (2) an administrative hearing or binding arbitration to appeal the denial, as described in §553.801 of this chapter (relating to Arbitration).

§553.37. *Relocation.*

(a) Relocation is the closing of a facility and the movement of its residents to another location for which the license holder does not hold a current license. This section does not apply to relocations conducted as part of a facility's emergency response activities under §553.295 of this chapter (relating to Emergency Preparedness and Response).

(b) A license holder must not relocate a facility without a license from HHSC for the facility at the new location.

(c) To apply for relocation, the license holder for the current location must submit an application via the online portal for an initial license for the new location in accordance with §553.23 of this subchapter (relating to Initial Application Procedures and Requirements) and full payment of the fees required in §553.47 of this subchapter (relating to License Fees). The applicant must enter the proposed date of relocation on the application, subject to issuance of a license.

(d) Residents must not be relocated until the new building has been inspected and approved as meeting the life safety code [Life Safety Code] licensure requirements in Subchapter D of this chapter (relating to Facility Construction).

(e) Following life safety code [Life Safety Code] approval by HHSC, the license holder must notify HHSC via the online portal of the date the residents will be relocated.

(f) After a facility has met standards of operations in subsection (d) of this section, HHSC staff conduct an onsite [on-site] health inspection if one was not conducted within the last survey [licensure] period, to determine if the facility meets the licensure requirements for standards of operation and resident care in Subchapter E of this chapter (relating to Standards for Licensure).

(g) HHSC issues a license for the new facility if the new facility meets the standards of operations in subsections (d) and (e) of this section.

(h) The license holder must continue to maintain the license at the current location and must continue to meet all requirements for operation of the facility until HHSC has approved the relocation. The issuance of a license constitutes HHSC approval of the relocation. The license for the current location becomes invalid upon issuance of the new license for the new location. The license from the other location must be returned to HHSC.

#### §553.39. Increase in Capacity.

(a) A license holder must not increase a facility's licensed capacity without approval from HHSC.

(b) The license holder must submit an application for an increase in capacity in accordance with §553.19 of this subchapter (relating to General Application Requirements) and the fee required in §553.47 of this subchapter (relating to License Fees).

(c) The license holder must arrange for an inspection of the facility by the local fire marshal and provide the signed fire marshal approval to HHSC.

(d) After HHSC's review of an application and after the applicant notifies HHSC via the online portal that the facility is ready for a life safety code [Life Safety Code] (LSC) inspection, HHSC staff conduct an onsite [on-site] LSC inspection of the facility to determine if the facility meets the [LSC] licensure requirements in Subchapter D of this chapter (relating to Facility Construction).

(e) If the facility fails to meet the LSC licensure requirements within 120 days after the LSC inspection, HHSC denies the application for an increase in capacity.

(f) After a facility has met LSC licensure requirements, HHSC staff conduct an onsite [on-site] health inspection, if one was not conducted within the last survey [licensure] period, to determine if the facility meets the licensure requirements for standards of operation and resident care in Subchapter E of this chapter (relating to Standards for Licensure).

(g) HHSC issues a new license with an increased capacity within 30 days after HHSC determines that all licensure requirements have been met. HHSC may grant approval to occupy the increased capacity once HHSC determines that all licensure requirements have been met.

(h) In order to meet the residents' health and safety needs in the event of a fire, natural disaster, or catastrophic event, HHSC may grant approval to temporarily exceed a facility's licensed capacity provided the health and safety of residents are not compromised and the facility can meet the required health care service needs of all residents. A facility may exceed its licensed capacity under this circumstance, monitored by HHSC Survey Operations, until residents can be transferred to a permanent location. HHSC issues authorization for the temporary increase in the facility's licensed capacity. The authorization to temporarily increase the capacity ends when the facility receives written notice from HHSC ending the authorization.

#### §553.45. Voluntary Closure.

(a) A license holder that intends to voluntarily close an assisted living facility must send, at least 30 days before the facility closes, a written notice of the intent to close the facility, including the anticipated date of the closure, to HHSC Licensing, the facility's designated regional office, the State Ombudsman, and the residents of the facility and their legally authorized representatives.

(b) If, for reasons beyond the license holder's control, the license holder is not able to provide at least 30 days' notice in advance of the anticipated closure date, the license holder must, within two days before closing the facility;

(1) notify HHSC Licensing, the facility's designated regional office, and the State Ombudsman and the residents of the facility and their legally authorized representatives of the decision to close the facility; and

(2) provide the State Ombudsman with a list of residents who may need assistance to relocate.

(c) The facility must assist a resident to find placement at another facility upon request.

#### §553.47. License Fees.

(a) Basic fees.

(1) Type A and Type B. The license fee is \$300, plus \$15 for each bed for which a license is sought, with a maximum of \$2,250 for a three-year license. The fee must be paid with an initial application, change of ownership application, or renewal application.

(2) Increase in capacity. An approved increase in capacity is subject to an additional fee of \$15 for each bed. HHSC does not assess the fee for temporary capacity increases in response to an emergency.

(b) Late renewal fee. An applicant that submits an application for license renewal later than the 45th day before the expiration date of the license must pay a late fee of an amount equal to one-half of the basic fee required in accordance with subsection (a)(1) and (2) of this section.

(c) Alzheimer's certification. In addition to the basic license fee described in subsection (a) of this section, a facility that applies for certification as an Alzheimer's facility under Subchapter E of this chapter (relating to Standards for Licensure) must pay an additional license fee. For a three-year license issued in accordance with subsection (a)(1) of this section or §553.33(a)(1) of this subchapter, the additional fee is \$300.

(d) Trust fund fee.

(1) If the amount in the facility trust fund, established under Texas Health and Safety Code, Chapter 242, Subchapter D, and ~~Chapter 247~~ §247.003(b), is less than \$500,000, HHSC collects an annual fee from each facility. The fee is based on a monetary amount specified for each licensed unit of capacity or bed space and is in an amount sufficient to provide not more than \$500,000 in the trust fund. When the trust fund fee is collected, HHSC sends written notice to each facility stating the amount of the fee and the date the fee is due. A facility must pay the amount of the fee within 90 days after the date the fee is due.

(2) HHSC may charge and collect a trust fund fee more than once a year if necessary to ensure that the amount in the facility trust fund is sufficient to make the disbursements required under Texas Health and Safety Code §242.0965. When this subsequent trust fund fee is collected, HHSC sends written notice to each facility stating the amount of the fee and the date the fee is due. A facility must pay the amount of the fee within 90 days after the date the fee is due.

(3) Failure to pay the trust fund fee within 90 days after the date the fee is due as stated on the written notice described in paragraphs (1) and (2) of this subsection may result in an assessment of an administrative penalty under the administrative penalties described in §553.751 ~~[Subchapter H, Division 9]~~ of this chapter (relating to Administrative Penalties).

(e) Plan review fee. An applicant may submit building plans for a new building, an addition, the conversion of a building not licensed, or for the remodeling of an existing licensed facility for review by HHSC architectural staff. If the applicant chooses to submit building plans for review, the applicant must pay a fee for the plan review according to the following schedule:

Figure: 26 TAC §553.47(e) (No change.)

(f) Payment of fees. A facility or applicant must pay fees in a method allowable by [check, cashier's check, money order, or credit card, made payable to] HHSC. All fees are nonrefundable, except as provided in Texas Government Code, Chapter 2005, and in §553.21(d) of this chapter (relating to Time Periods for Processing All Types of License Applications).

(g) Optional expedited inspection and associated fee.

(1) An applicant for an assisted living facility license may obtain an expedited inspection described in subparagraph (A) or (B) of this paragraph if the applicant meets the requirements in both clauses of the applicable subparagraph.

(A) A life safety code [Life Safety Code] (LSC) inspection conducted no later than the 15th calendar day after the date HHSC receives a request for an expedited inspection, if the applicant:

(i) indicates that the facility is ready for a LSC inspection [meets the application requirements under this subchapter for the applicable license]; and

(ii) submits the applicable expedited LSC inspection fee in accordance with the fee schedule in paragraph (2) of this subsection; or

(B) an onsite [on-site] health inspection conducted no later than the 21st calendar day after the date HHSC receives a request for an expedited inspection, if the applicant[;]

(i) indicates that it is they are ready for a health inspection [meets the application requirements under this subchapter for the applicable license]; and

(ii) submits the applicable expedited onsite [on-site] health inspection fee in accordance with the fee schedule in paragraph (2) of this subsection.

(2) An applicant requesting an expedited inspection must include the applicable fee from the following fee schedule with a request for an expedited inspection submitted in accordance with paragraph (1) of this subsection.

Figure: 26 TAC §553.47(g)(2) (No change.)

(h) If, after HHSC conducts two LSC inspections for a given application, the applicant requests an additional inspection, then the applicant must pay a fee of \$25 per bed, with a minimum payment of \$1,000 for the third and each subsequent inspection pertaining to the same application.

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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### 26 TAC §553.43

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 rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively.

The repeal implements Texas Government Code §531.0055 and §531.033 and Texas Health and Safety Code §247.025 and §247.026.

§553.43. *Disclosure of Facility Identification Number.*

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. FACILITY CONSTRUCTION

## DIVISION 1. GENERAL PROVISIONS

### 26 TAC §553.100, §553.101

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 rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively.

The amendments implements Texas Government Code §531.0055 and §531.033 and Texas Health and Safety Code §247.025 and §247.026.

#### §553.100. General Requirements.

(a) A building or structure used as a licensed assisted living facility, whether new or existing, must comply with these standards.

(b) All assisted living facilities must comply with NFPA 101 [National Fire Protection Association Life Safety Code (NFPA 101)] and any applicable Tentative Interim Amendment (TIA) issued by NFPA, except as otherwise stated in these standards.

(c) All assisted living facilities must comply with other chapters, sections, subsections, and paragraphs of NFPA 101, as they relate to: Chapter 18, New Health Care Occupancies; Chapter 19, Existing Health Care Occupancies; Chapter 32, New Residential Board and Care Occupancies; and Chapter 33, Existing Residential Board and Care Occupancies, including:

- (1) Chapter 1, Administration;
- (2) Chapter 2, Referenced Publications;
- (3) Chapter 3, Definitions;
- (4) Chapter 4, General;
- (5) Chapter 5, Performance-Based Option;
- (6) Chapter 6, Classification of Occupancy and Hazard of Contents;
- (7) Chapter 7, Means of Egress;
- (8) Chapter 8, Features of Fire Protection;
- (9) Chapter 9, Building Service and Fire Protection Equipment;
- (10) Chapter 10, Interior Finish, Contents, and Furnishings;
- (11) Chapter 11, Special Structures and High-Rise Buildings; and
- (12) Chapter 43, Building Rehabilitation.

(d) An assisted living facility that wishes to be reclassified from a small facility to a large facility, from a Type A facility to a Type B facility, or both, must meet the requirements for a new facility of the type and size specified in this subchapter to be reclassified.

(e) The requirements of this subchapter apply to an assisted living facility as follows.[:]

(1) All assisted living facilities must comply with Division 1 of this subchapter (relating to General Provisions) and Division 2 of this subchapter (relating to Provisions Applicable to All Facilities).

(2) An assisted living facility initially licensed before August 31, 2021, and continually operated under an assisted living license without interruption since then, is considered an existing assisted living facility and must comply with the following, as applicable.[:]

(A) An existing small Type A assisted living facility must comply with Division 4 of this subchapter (relating to Existing Small Type A Assisted Living Facilities).

(B) An existing small Type B assisted living facility must comply with Division 5 of this subchapter (relating to Existing Small Type B Assisted Living Facilities).

(C) An existing large Type A assisted living facility must comply with Division 6 of this subchapter (relating to Existing Large Type A Assisted Living Facilities).

(D) An existing large Type B assisted living facility must comply with Division 7 of this subchapter (relating to Existing Large Type B Assisted Living Facilities).

(3) An assisted living facility initially licensed on or after August 31, 2021, or any new building or building addition to a currently licensed assisted living facility constructed on or after August 31, 2021, is considered a new assisted living facility and must comply with the following.[:]

(A) A new small Type A assisted living facility must comply with Division 8 of this subchapter (relating to New Small Type A Assisted Living Facilities).

(B) A new small Type B assisted living facility must comply with Division 9 of this subchapter (relating to New Small Type B Assisted Living Facilities).

(C) A new large Type A assisted living facility must comply with Division 10 of this subchapter (relating to New Large Type A Assisted Living Facilities).

(D) A new large Type B assisted living facility must comply with Division 11 of this subchapter (relating to New Large Type B Assisted Living Facilities).

(f) An assisted living facility must comply with local codes and ordinances as follows.[:]

(1) An assisted living facility located within the jurisdiction of a local organization, office, or individual responsible for enforcing the requirements of a code or standard, or for approving equipment, materials, an installation, or a procedure that adopts codes or ordinances governing building construction or fire safety (authority having jurisdiction [Authority Having Jurisdiction] or AHJ) must comply with applicable local codes and ordinances adopted by the AHJ, as interpreted and enforced by the AHJ. The description of the occupancy may vary with local codes.

(2) An assisted living facility located where there is no local AHJ must be designed and constructed to meet a nationally recognized [nationally-recognized] building code and its referenced codes.

(3) An existing building, either occupied as an assisted living facility at the time of initial inspection by HHSC or converted to occupancy as an assisted living facility prior to the initial inspection by HHSC, must meet all local requirements pertaining to that building for that occupancy as administered by the local AHJ for the adopted code or ordinance.

(4) An assisted living facility must submit documentation from the local AHJ that local requirements are satisfied.

(g) When local laws, codes, or ordinances are different from the standards for assisted living facilities set forth in this Subchapter



D, an assisted living facility must comply with both local and HHSC requirements.

(h) An assisted living facility must ensure building rehabilitation on existing buildings is classified according to NFPA 101 and that any rehabilitation complies with NFPA 101 and §553.107 of this subchapter (relating to Building Rehabilitation).

(i) An assisted living facility must ensure buildings, or portions of buildings, are not occupied during construction, repair, alterations, or additions, except when required means of egress, required means of escape, and required fire protection features are in place and continuously maintained for the portion occupied. Alternative life safety measures may be put in place if prior approval is obtained from HHSC.

(j) An assisted living facility must ensure no existing life safety feature is removed or reduced when the feature is a requirement for a new facility. Life safety features, and equipment not required by NFPA 101, that have been installed in existing buildings must continue to be maintained or be completely removed, if prior approval is obtained from HHSC.

(k) An assisted living facility must comply with the plan review and inspection requirements of the Texas Accessibility Standards (TAS) adopted by the Texas Department of Licensing and Regulation (TDLR) rules in Texas Administrative Code, Title 16, Chapter 68, and must provide documentation demonstrating it has registered the facility with TDLR and obtained a plan review from a Registered Accessibility Specialist, if TDLR requires the facility to be registered and reviewed.

(l) An assisted living facility must not segregate any area housing residents from other parts of the assisted living facility housing residents, except as permitted by §553.27 [~~§553.54~~] of this chapter (relating to Certification of a Type B Facility or Unit for Persons with Alzheimer's Disease and Related Disorders) and §553.29 of this chapter (relating to Alzheimer's Certification of a Type B Facility for an Initial License Applicant in Good Standing).

#### §553.101. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise. The definitions in §553.3 of this chapter (relating to Definitions) also apply to this subchapter.

(1) Approved--Acceptable to the Texas Health and Human Services Commission.

(2) Authority having jurisdiction (AHJ)--An organization, office, or individual responsible for enforcing the requirements of a code or standard, or for approving equipment, materials, an installation, or a procedure.

(3) Auxiliary serving kitchen--An area that is not contiguous to a food preparation or serving area and that is for serving food but is not used for cooking or meal preparation.

(4) Bedroom usable floor space--The floor area of a resident bedroom that may be considered toward meeting minimum requirements for a resident bedroom floor area.

(5) Building rehabilitation--Any construction activity involving repair, modernization, reconfiguration, renovation, changes in occupancy or use, or installation of new fixed equipment, including:

(A) the replacement of finishes, such as new flooring or wall finishes or the painting of walls and ceilings;

(B) the construction, removal, or relocation of walls, partitions, floors, ceilings, doors, or windows;

(C) the replacement of doors, windows, or roofing;

(D) changes to the appearance of the exterior of a building, including new finish materials;

(E) the installation, repair, replacement, or extension of fire protection systems, including fire sprinkler systems, fire alarm system, and fire suppression systems, at cooking operations;

(F) the replacement of door hardware, plumbing fixtures, handrails in corridors, or grab rails in bathrooms and restrooms;

(G) the repair, replacement, or extension of required communication systems;

(H) the repair or replacement of emergency electrical system equipment and components, including generator sets, transfer switches, distribution panel boards, receptacles, switches, and light fixtures;

(I) the change of a wing or area to a certified [~~Certified~~] Alzheimer's assisted living facility [~~Disease Assisted Living Facility~~] or unit;

(J) the change of a certified [~~Certified~~] Alzheimer's assisted living facility [~~Disease Assisted Living Facility~~] or unit to ordinary resident use [~~resident-use~~];

(K) a change in the use of space, including the change of resident bedrooms to other uses, such as offices, storage, or living or dining spaces; and

(L) changes in locking arrangements, such as the installation of access control systems or the installation or removal of electronic locking devices, including electromagnetic locks, and other delayed-egress locking devices.

(6) Co-mingles--The laundering of apparel or linens of two or more individuals together.

(7) Conversion--Change of occupancy from an existing residential or health care occupancy to a residential board and care occupancy, including an assisted living facility located in a building that had been used as a residence or a health care facility such as a hospital or a nursing home.

(8) Direct telephone--A telephone that automatically dials and connects to a fixed location when the caller takes the handset off-hook without requiring the caller to input a receiving telephone number. A direct telephone must ring at a location staffed 24-hours a day and may not be answered by an answering machine or voicemail system. A direct telephone may also function as a regular telephone when a receiving telephone number is entered.

(9) Factory Mutual (FM)--An organization that certifies products and services for compliance with loss prevention standards. Also known as FM Approvals.

(10) Finished ground level--The level of the finished ground (earth or other surface on ground).

(11) Fuel-fired heating device--Any equipment, device, or apparatus, or any part thereof, which is installed for the purpose of combustion of fuel, including natural gas, liquid petroleum gas (propane), or solid fuel, to produce heat or energy used as a component of a heating system providing heat for any interior space or water source. Free-standing solid fuel- or pellet-fuel burning appliances such as freestanding wood-burning or pellet-burning stoves do not meet this definition.

(12) Independent cooking equipment--An electric or gas stove or range with one or more burners, with or without an oven.

(13) Living unit--A portion of a facility arranged as a separate unit providing one or more bedrooms, toilet and bathing facilities, and living or dining spaces, with or without facilities for cooking, exclusively for the use of the residents residing in the bedrooms.

(14) Listed--Equipment, materials, or services included in a list published by an organization concerned with evaluation of products or services that maintains periodic inspection of production of listed equipment or materials or periodic evaluation of services, and whose listing states that either the equipment, material, or service meets appropriate designated standards or has been tested and found suitable for a specified purpose. The listing organization must be acceptable to the authority having jurisdiction, including HHSC or any other state, federal, or local authority.

(15) Local code--A model building code adopted by the local building authority where the facility is constructed or located.

(16) [(44)] Neighborhood or household--A portion of a large facility arranged as a unit providing bedrooms, toilet and bathing facilities, resident living areas, and kitchen facilities serving up to 16 residents.

(17) [(45)] NFPA--National Fire Protection Association.

(18) [(46)] NFPA 10--Standard for Portable Fire Extinguishers, 2010 edition.

(19) [(47)] NFPA 13--Standard for the Installation of Sprinkler Systems, 2010 edition.

(20) [(48)] NFPA 13D--Standard for the Installation of Sprinkler Systems in One-and Two-Family Dwellings and Manufactured Homes, 2010 edition.

(21) [(49)] NFPA 13R--Standard for the Installation of Sprinkler Systems in Residential Occupancies Up to and Including Four Stories in Height, 2010 edition.

(22) [(20)] NFPA 25--Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems, 2011 edition.

(23) [(21)] NFPA 54--National Fuel Gas Code, 2012 edition.

(24) [(22)] NFPA 70--National Electrical Code, 2011 edition.

(25) [(23)] NFPA 72--National Fire Alarm and Signaling Code, 2010 edition.

(26) [(24)] NFPA 96--Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations, 2011 edition.

(27) NFPA 101--Life Safety Code, 2012 edition.

(28) [(25)] NFPA 110--Standard for Emergency and Standby Power Systems, 2010 edition.

(29) [(26)] NFPA 211--Standard for Chimneys, Fireplaces, Vents, and Solid Fuel-Burning Appliances, 2010 edition.

(30) [(27)] NFPA 720--Standard for Installation of Carbon Monoxide (CO) Detection and Warning Equipment, 2012 edition.

(31) [(28)] Special Waste from Health Care-Related Facilities--Special waste from health care-related facilities as defined in Texas Administrative Code, Title 25, Part 1, Chapter 1, Subchapter K (relating to Definition, Treatment, and Disposition of Special Waste from Health Care-Related Facilities).

(32) [(29)] TCEQ--Texas Commission on Environmental Quality.

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Chief Counsel

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## DIVISION 2. PROVISIONS APPLICABLE TO ALL FACILITIES

### 26 TAC §553.103, §553.104

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 rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively.

The amendments implements Texas Government Code §531.0055 and §531.033 and Texas Health and Safety Code §247.025 and §247.026.

§553.103. *Site and Location for all Assisted Living Facilities.*

(a) Firefighting unit. An assisted living facility must be served by a professional or volunteer firefighting unit and must have a water supply that meets the firefighting unit's requirements and approval.

(b) Correction of hazards. An assisted living facility must correct a site or building condition that HHSC staff identifies to be a fire, health, or physical hazard.

(c) Parking.

(1) An assisted living facility must provide or arrange for nearby parking spaces for the private vehicles of residents and visitors.

(2) An assisted living facility must provide a minimum of one parking space for every four residents in its licensed capacity, and for any fraction thereof, or per local requirements, whichever is more stringent.

(d) Ramps.

(1) An assisted living facility must ensure a ramp, walk, or step is of slip-resistive texture and is uniform, without irregularities.

(2) An assisted living facility must ensure a ramp does not exceed a slope of one foot in 12 feet.

(3) An assisted living facility must ensure any new ramp has a clear width of at least 36 inches. A new ramp is one that was installed or constructed on or after August 31, 2021.

(e) Site conditions. An assisted living facility must provide a guardrail, fence, or handrail where a grade:

(1) makes a [an abrupt] change in level of more than 30 inches vertically in less than 12 inches horizontally; or [ ]

(2) has a slope of 45 degrees or more (12 inches of rise in 12 inches of run).

(f) Outside grounds. An assisted living facility must ensure that each outside area, grounds, and any adjacent buildings are maintained in good condition and kept free of rubbish, garbage, and untended growth that may constitute a fire or health hazard.

(g) Drainage. An assisted living facility must ensure site grades provide for water drainage away from structures to prevent ponding or standing water at or near a building, unless the ponding or standing water is part of an approved drainage system intended to hold water for a period of time.

(h) 100-year Floodplain. An assisted living facility located in a county of more than 3.3 million residents that applies for an initial license or is initially licensed on or after December 6, 2022, must not be located in a 100-year floodplain[; if the facility is located in a county of more than 3.3 million residents].

§553.104. *Safety Operations.*

(a) Local fire marshal inspection.

(1) An assisted living facility must obtain an inspection at least once every 12 months[;] by the local fire marshal, or the Texas State Fire Marshal's Office in locations where there is no local fire marshal, and must correct any items cited by the local fire marshal, or the Texas State Fire Marshal's Office, to the satisfaction of those authorities.

(2) An assisted living facility must maintain documentation at the facility reflecting the outcome of the most recent annual inspection.

(b) Emergency evacuation floor plan. An assisted living facility, other than a one-story small Type A or a one-story small Type B assisted living facility, must post an emergency evacuation floor plan in a location visible to residents.

(c) Fire safety plan. An assisted living facility must establish a fire safety plan for the protection of all persons in the facility in the event of fire.

(1) The [An] assisted living facility must ensure the fire safety plan is in effect at all times.

(2) The [An] assisted living facility must make written copies of the fire safety plan [are] available to all supervisory personnel.

(3) The [An] assisted living facility must ensure the fire safety plan addresses:

- (A) evacuation to an area of refuge;
- (B) evacuation from the building when necessary; and
- (C) special staff actions, including fire protection procedures necessary to ensure the safety of any resident.

(4) If the facility is a large Type B assisted living facility the following provisions apply.[;]

(A) An existing large Type B assisted living facility must ensure the fire safety plan includes the provisions described in 19.7.2, Procedure in Case of Fire, in NFPA 101, Chapter 19, Existing Health Care Occupancies.

(B) A new large Type B assisted living facility must ensure the fire safety plan includes the provisions described in 18.7.2,

Procedure in Case of Fire, in NFPA 101, Chapter 18, New Health Care Occupancies.

(5) The [An] assisted living facility must ensure the fire safety plan is reviewed at least annually and revised, as needed, to address the changing needs of residents. The facility must retain an onsite written record of the date and reason for a review or change to the fire safety plan.

(6) The [An] assisted living facility must instruct and inform all employees of their duties and responsibilities under the fire safety plan at least annually[;] and when the fire safety plan is revised. The facility must retain an onsite written record of when each employee was instructed of his or her duties and responsibilities under the fire safety plan.

(7) The [An] assisted living facility must keep a copy of the fire safety plan readily available at all times within the facility.

(8) The [An] assisted living facility must ensure the fire safety plan reflects the current evacuation capabilities of the residents.

(d) Fire drills. An assisted living facility must conduct at least one quarterly fire drill on each shift with at least one drill each month. Each drill must meet the following [these] requirements.[;]

(1) The [An] assisted living facility must ensure staff take part in fire drills according to the assisted living facility's fire safety plan.

(2) The [An] assisted living facility must inform residents of evacuation procedures and locations of exits.

(3) The [An] assisted living facility must document every fire drill using the most current version of the required Texas Health and Human Services (HHSC) form titled "Fire Drill Report" available on the HHSC website.

(4) If it is a [A] large Type B assisted living facility, the facility must activate the fire alarm signal during a fire drill conducted between 6:00 a.m. and 9:00 p.m.

(5) The [An] assisted living facility may announce a fire drill to residents in advance.

(e) Reporting fires.

(1) The [An] assisted living facility must immediately report a fire causing injury or death to a resident.

(2) An assisted living facility must report a fire causing damage to the facility or facility equipment to HHSC within 72 hours after the fire is extinguished.

(3) After making a report by telephone or email, an assisted living facility must file a written report using the most current version of the required HHSC form titled "Fire Report for Long Term Care Facilities" available on the HHSC website.

(f) Smoking policies. An assisted living facility must establish and enforce policies regarding smoking, even if the policy is that smoking will not be permitted. The policy must also address the use of e-cigarettes and vaping devices. If smoking will be permitted, the smoking policies must:

- (1) designate smoking areas for residents and staff; and
- (2) provide ashtrays of noncombustible material and safe design in smoking areas.

(g) Fire alarm system. An assisted living facility must establish a program to inspect, test, and maintain the fire alarm system according to the requirements of NFPA 72, and according to the require-

ments of NFPA 720 where carbon monoxide detection is provided, and must execute the program at least once every six months.

(1) An assisted living facility must contract with a company that holds an Alarm Certificate of Registration from the State Fire Marshal's Office to execute the program.

(2) An assisted living facility must ensure a company that performs a service under the contract required under paragraph (1) of this subsection completes, signs, and dates an inspection form substantially similar to [like] the inspection and testing form in NFPA 72 for a service provided under the contract.

(3) If a task required by NFPA 72 or NFPA 720 must occur at intervals other than during the contracted visits in this subsection, an assisted living facility must ensure the task is performed and documented by a knowledgeable individual.

(4) An assisted living facility must ensure:

(A) a fire alarm system component that requires visual inspection is visually inspected in accordance with NFPA 72;

(B) a fire alarm system component that requires testing is tested in accordance with NFPA 72; and

(C) a fire alarm system component that requires maintenance is maintained in accordance with NFPA 72.

(5) An assisted living facility that provides carbon monoxide detection must ensure:

(A) a carbon monoxide detection component that requires visual inspection is visually inspected in accordance with NFPA 720;

(B) a carbon monoxide detection component that requires testing is tested in accordance with NFPA 720;

(C) a carbon monoxide detection component that requires maintenance is maintained in accordance with NFPA 720; and

(D) a facility with a carbon monoxide detection component installed before August 31, 2021, must perform visual inspection, testing, and maintenance of that component beginning no later than August 31, 2022.

(6) A large assisted living facility containing smoke compartments must ensure each required smoke damper is inspected and tested in accordance with NFPA 101.

(7) An assisted living facility must ensure smoke detector sensitivity is checked within one year after installation and every two years thereafter in accordance with test methods in NFPA 72.

(8) An assisted living facility must maintain onsite documentation of compliance with the inspection, testing, and maintenance program to inspect, test, and maintain the fire alarm system described in this subsection and must maintain record copies of documents regarding the installation of a fire alarm system, including as-built installation drawings, operation and maintenance manuals, the installation certificate for the system, and written sequences for its operation.

(9) An assisted living facility must make documentation described in paragraph (8) of this subsection available to HHSC on request.

(h) Fire sprinkler system. An assisted living facility that is equipped with a fire sprinkler system, including a fire sprinkler system meeting NFPA 13D, must establish a program to inspect, test, and maintain the fire sprinkler system according to the requirements of NFPA 25, and must execute the program at least once every six months.

(1) An assisted living facility must contract with a company that holds an appropriate Sprinkler Certificate of Registration from the State Fire Marshal's Office to execute the program.

(2) An assisted living facility must ensure a company that performs a service under the contract required under paragraph (1) of this subsection completes, signs, and dates an inspection form like the inspection and testing form in NFPA 25 for a service provided under the contract.

(3) If a task required by NFPA 25 must occur at intervals other than during the contracted visits in this subsection, an assisted living facility must ensure the task is performed and documented by knowledgeable individuals.

(4) An assisted living facility must ensure that a sprinkler system component that requires visual inspection is visually inspected in accordance with NFPA 25.

(5) An assisted living facility must ensure that a sprinkler system component that requires testing is tested in accordance with NFPA 25.

(6) An assisted living facility must ensure that a sprinkler system component that requires maintenance is maintained in accordance with NFPA 25.

(7) An assisted living facility must ensure that an individual sprinkler head is inspected and maintained in accordance with NFPA 25.

(8) An assisted living facility must maintain onsite documentation of compliance with the inspection, testing, and maintenance program to inspect, test, and maintain the fire sprinkler system described in this subsection and must maintain record copies of documents regarding the installation of a fire sprinkler system, including as-built installation drawings, hydraulic calculations, proof of adequate fire sprinkler water supply, and installation certificates for the system.

(9) An assisted living facility must make documentation described in paragraph (8) of this subsection available to HHSC on request.

(i) Portable fire extinguishers.

(1) An assisted living facility must ensure staff are appropriately trained in the use of each type of extinguisher in the facility.

(2) An assisted living facility must inspect and maintain portable fire extinguishers; and[:]

(A) ensure that its staff perform regular monthly inspections or "quick checks" to ensure extinguishers are located in the designated place, extinguisher locations are not obstructed to access or visibility, and the pressure gauge reading or indicator on the extinguisher is in the operable range or position;

(B) ensure annual maintenance and inspection or "thorough checks" are performed according to NFPA 10 by an individual employed by a company holding an appropriate Extinguisher Certificate of Registration from the State Fire Marshal's Office to perform inspection, testing, and maintenance of portable fire extinguishers;

(C) maintain onsite[:] a record of all fire extinguisher inspections and maintenance performed; and

(D) replace unserviceable fire extinguishers.

(j) General facility condition and safety features.

(1) An assisted living facility must ensure staff utilize procedures to avoid cross-contamination between clean and soiled processes, including the handling of linens and cooking utensils.

(2) An assisted living facility must keep all buildings in good repair.

(A) An assisted living facility must maintain electrical, heating, and cooling systems so these systems operate in a safe manner. As evidence that these systems operate in a safe manner, HHSC may require the facility to submit a report prepared by ~~one of the following~~:

- (i) the fire marshal;
- (ii) the city or county building official having jurisdiction over the location of the facility;
- (iii) a licensed electrician; or
- (iv) a registered professional engineer.

(B) An assisted living facility must ensure electrical appliances, devices, and lamps do not overload circuits or use extension cords of excessive length.

(3) An assisted living facility must keep all buildings free of accumulations of dirt, rubbish, dust, and hazards.

(4) An assisted living facility must maintain floors in good condition and clean floors regularly.

(5) An assisted living facility must ~~structurally~~ maintain walls and ceilings and must repair, repaint, or clean walls and ceilings whenever needed.

(6) An assisted living facility must keep storage areas and cellars organized and free from obstructions.

(7) An assisted living facility must not store any items or allow the accumulation of waste in attic spaces.

(8) An assisted living facility must ensure all equipment requiring periodic maintenance, testing, and servicing is accessible.

(A) An assisted living facility must ensure equipment that is necessary to conduct maintenance, testing, and services, including ladders, specific tools, and keys, is readily available to staff or maintenance personnel on site.

(B) An assisted living facility must provide access panels, at least 20 inches wide by 20 inches long, for building maintenance and must ensure access panels are located for reasonable access to equipment and fire or smoke barrier walls installed in the attic or other concealed spaces.

(k) Waste and storage containers.

(1) An assisted living facility must provide metal waste baskets of substantial gauge or any UL- or FM-approved container in each area where smoking is permitted, if applicable, in accordance with the facility's smoking policies required in subsection (f) of this section.

(2) An assisted living facility must provide one or more garbage, waste, or trash containers with close-fitting covers, made of metal or of any UL- or FM-approved material, for use in:

- (A) kitchens;<sub>;</sub>
- (B) janitor closets;<sub>;</sub>
- (C) laundry rooms;<sub>;</sub>
- (D) mechanical rooms; ~~or~~
- (E) boiler rooms; and<sub>;</sub>
- (F) rooms used for [general] storage [rooms, and similar places].

(3) A facility may use disposable plastic liners in the containers for sanitation.

(4) ~~[(3)]~~ An assisted living facility must ensure waste, including waste classified as Special Waste from Health Care-Related Facilities, trash, and garbage are disposed of from the premises at regular intervals according to state and local requirements. The facility may not permit or allow an accumulation of waste on the facility premises, either inside or outside of facility buildings.

(l) Pest control.

(1) An assisted living facility must have an ongoing and effective pest control program executed by facility staff or by contract with a licensed pest control company.

(2) An assisted living facility must ensure the chemicals used to control pests are the least toxic and least flammable chemicals that are effective.

(3) An assisted living facility must ensure each operable window is provided with an insect screen.

(m) Flammable or combustible liquids. An assisted living facility must not store flammable or combustible liquids, such as gasoline, oil-based paint, charcoal lighter fluid, or similar products, in a building that houses residents.

(n) Storage of oxygen. An assisted living facility must ensure sanitary use and storage of oxygen for the safety of all residents.

(1) An assisted living facility must ensure oxygen cylinders in the possession and under the control of the facility are:

- (A) identified by attached labels or stencils naming the contents;
- (B) not stored with flammable or combustible materials;
- (C) protected from abnormal mechanical shock that ~~which~~ is liable to damage the cylinder, valve, or safety device;
- (D) protected from tamper by unauthorized individuals;
- (E) if not supported in a proper cart or stand, properly chained or supported;
- (F) stored so the cylinders can be used in the order received from the supplier;
- (G) if empty and full cylinders are stored in the same enclosure or room, stored so that empty cylinders are separated from full cylinders; and
- (H) if empty, marked to avoid confusion and delay if a full cylinder is needed in a rapid manner.

(2) An assisted living facility must adopt, implement, and enforce procedures for resident use, storage, and handling of oxygen cylinders and liquid oxygen containers in the possession and under the control of residents<sub>;</sub> to ensure the safety of all residents.

(o) Gas pressure test.

(1) An assisted living facility must obtain an initial pressure test of facility gas lines from the gas meter or propane storage tank to all gas-fired appliances and equipment.

(2) An assisted living facility must obtain an additional gas pressure test when the facility performs major renovations or additions to the gas piping or gas-fired equipment that interrupt gas service or replace gas-fired equipment.

(p) Annual gas heating check.

(1) An assisted living facility must ensure all gas heating systems are checked at least once per year, prior to the heating season for proper operation and safety by persons who are licensed or approved by the State of Texas to inspect the equipment.

(2) An assisted living facility must maintain records [of the testing] of the annual gas heating check [gas heating system].

(3) An assisted living facility must correct [unsatisfactory] conditions that prevent gas heating equipment from operating safely and ensure gas heating equipment will operate as intended.

(q) Emergency generator. A large assisted living facility that uses an emergency generator to provide power to emergency lighting systems must ensure the generator is tested and maintained according to Chapter 8, Routine Maintenance and Operational Testing, in NFPA 110. Routine maintenance and operational testing required by NFPA 110 includes the following procedures:

- (1) a readily available record of inspections, test, exercising, operation, and repairs;
- (2) monthly testing of cranking batteries;
- (3) weekly inspection of the generator set and other components that make up the emergency power system;
- (4) monthly exercise of the generator under load;
- (5) monthly test of transfer switches; and
- (6) a continuous operational test for at least 1-1/2 hours every three years.

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-3161



## DIVISION 3. BUILDING REHABILITATION

### 26 TAC §553.107

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively.

The amendment implements Texas Government Code §531.0055 and §531.033 and Texas Health and Safety Code §247.025 and §247.026.

### §553.107. *Building Rehabilitation.*

~~[(a) Prior to the start of building rehabilitation, other than that classified as repair in subsection (b) of this section, a facility must notify the Texas Health and Human Services Commission (HHSC) in Austin, Texas, in writing.]~~

~~(a) [(b)]~~ Upon completion of building rehabilitation, other than that classified as repair or renovation in this section, a final construction inspection of the facility must be performed by HHSC prior to occupancy. The facility is responsible for being aware of requirements for approval of the completed construction by ~~[must have the written approval of]~~ the local authority having jurisdiction, including the fire marshal and building official. When construction or building rehabilitation does not alter the licensed capacity of a facility, based on submitted documentation and the scope of the performed building rehabilitation, HHSC may permit a facility to use the rehabilitated portion of a facility pending a final construction inspection or may determine a final construction inspection is not required.

~~(b) [(e)]~~ An assisted living facility undergoing any building rehabilitation must meet the requirements of this section.

(1) An assisted living facility must ensure the patching, restoration, or painting of materials, elements, equipment, or fixtures for maintaining such materials, elements, equipment, or fixtures in good or sound condition is classified as repair and must ensure the repair:

(A) meets the applicable requirements of §553.100(e) of this subchapter (relating to General Requirements);

(B) uses like materials, unless such materials are prohibited by NFPA 101, as modified by this subchapter; and

(C) does not make a building less conforming with NFPA 101, as modified by this subchapter, with the applicable sections of this subchapter, or with any alternative arrangements previously approved by HHSC, than it was before the repair was undertaken.

(2) An assisted living facility must ensure the replacement in kind, strengthening, or upgrading of building elements, materials, equipment, or fixtures that does not result in a reconfiguration of the building spaces within is classified as renovation and must ensure:

(A) any new work that is part of a renovation meets the applicable requirements of §553.100(e) of this subchapter;

(B) any new interior or exterior finishes meet the applicable requirements of §553.100(e)(3) of this subchapter; and

(C) does not make a building less conforming with NFPA 101, as modified by this subchapter, with the applicable sections of this subchapter, or with any alternative arrangements previously approved by HHSC, than it was before the renovation was undertaken.

(3) An assisted living facility must ensure the reconfiguration of any space; addition, relocation, or elimination of any door or window; addition or elimination of load-bearing elements; reconfiguration or extension of any system; installation of any additional equipment; or changes in locking arrangements as defined in §553.101(5)(L) [~~§553.101(6)(L)~~] of this subchapter (relating to Definitions), is classified as modification and must ensure:

(A) a newly constructed element, component, or system meets the applicable requirements of §553.100(e)(3) of this subchapter;

(B) all other work in a modification meets, at a minimum, the requirements for a renovation according to paragraph (2) of this subsection; and

(C) where the total rehabilitation work area classified as modification exceeds 50 percent of the total building area, the work is classified as reconstruction subject to paragraph (4) of this subsection.

(4) An assisted living facility must ensure the reconfiguration of a space that affects an exit or a corridor shared by more than one occupant space, or the reconfiguration of a space such that the rehabilitation work area is not permitted to be occupied because existing means of egress or fire protection systems are not in place or continuously maintained, is classified as reconstruction and must ensure:

(A) reconstruction of components of the means of egress meets the applicable requirements of §553.100(e) of this subchapter, except for the following components, which must meet the specific requirements of §553.100(e)(3) of this subchapter:

- (i) illumination of means of egress;
- (ii) emergency lighting of means of egress; and
- (iii) marking of means of egress, including exit signs;

(B) if the total rehabilitation work area classified as reconstruction on any one floor exceeds 50 percent of the total area of the floor, all means of egress components identified in paragraph (4)(A)(i) - (iii) of this subsection and located on that floor meet the specific requirements of §553.100(e)(3) of this subchapter;

(C) if the total rehabilitation work area classified as reconstruction exceeds 50 percent of the total building area, all means of egress components identified in paragraph (4)(A)(i) - (iii) of this subsection and located in the building meet the specific requirements of §553.100(e)(3) of this subchapter; and

(D) all other work classified as reconstruction meets, at a minimum, the requirements for modification according to paragraph (3) of this subsection and renovation according to paragraph (2) of this subsection.

(5) An assisted living facility must ensure a change in the purpose or level of activity within a facility that involves a change in application of the requirements of this subchapter, including a change of a wing or area to a certified [Certified] Alzheimer's assisted living facility [Disease Assisted Living Facility] or unit, or a change of a certified [Certified] Alzheimer's assisted living facility [Disease Assisted Living Facility] or unit to ordinary resident-use, is classified as a change of use and meets the specific requirements of §553.100(e)(3) of this subchapter.

(6) An assisted living facility must ensure a change in the use of a structure or portion of a structure is classified as a change of occupancy and meets the specific requirements of §553.100(e)(3) of this subchapter.

(7) An assisted living facility must ensure an increase in the building area, aggregate floor area, building height, or number of stories of a structure is classified as an addition and meets the specific requirements of §553.100(e)(3) of this subchapter.

(c) ~~[(d)]~~ An assisted living facility undergoing rehabilitation must comply with the requirements of NFPA 101, as modified by this subchapter in accordance with the requirements of NFPA 101, Chapter 43, Building Rehabilitation.

(d) ~~[(e)]~~ An assisted living facility undergoing rehabilitation to an occupied building that involves means of escape, exit-ways, or exit doors must be accomplished without compromising the means of escape, means of egress, or exits or creating a dead-end situation at any time. HHSC may approve temporary exits or the facility must relocate residents until construction blocking the exit is completed. The

facility must maintain other basic safety features, including fire alarm systems and fire sprinkler systems, in compliance with their relevant standards and must maintain required emergency power at all times during construction.

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

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Karen Ray  
Chief Counsel

Health and Human Services Commission

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## DIVISION 4. EXISTING SMALL TYPE A ASSISTED LIVING FACILITIES

### 26 TAC §§553.111 - 553.113, 553.115

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 rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively.

The amendments implement Texas Government Code §531.0055 and §531.033 and Texas Health and Safety Code §247.025 and §247.026.

*§553.111. Construction Requirements for an Existing Small Type A Assisted Living Facility.*

(a) Structurally sound. An existing small Type A assisted living facility must ensure any building is structurally sound regarding actual or expected dead, live, and wind loads in accordance with applicable building codes, as determined and enforced by local authorities.

(b) Separation of occupancies. An existing small Type A assisted living facility must be separated from other occupancies by a fire barrier having at least a 2-hour fire resistance rating constructed according to the requirements of NFPA 101 and its referenced standards, unless otherwise permitted by paragraph (2) of this subsection.

(1) An existing small Type A assisted living facility must be separated from other assisted living facilities, hospitals, or nursing facilities. Beginning August 31, 2021, an existing small Type A assisted living facility must be separated from any new occupancy or new use subject to ~~[the]~~ Texas Health and Human Services ~~Commission~~ ~~[ommission]~~ (HHSC) licensing.

(2) An existing small Type A assisted living facility is not required to be separated from another occupancy not subject to HHSC licensing standards if the two occupancies are so intermingled that construction of a fire barrier having a 2-hour fire resistance rating is impractical and the following conditions are met.

(A) The means of escape, construction, protection, and other safeguards for the entire building must comply with the NFPA 101 requirements for an existing small Type A assisted living facility.

(B) HHSC must be given unrestricted and unannounced access at any reasonable time to inspect the other occupancy type for compliance with the NFPA 101 requirements for an existing small Type A assisted living facility.

(c) Sheathing.

(1) Except as provided in paragraph (3) of this subsection, an existing small Type A assisted living facility must ensure all buildings used by residents are sheathed with materials providing a fire resistance rating and ensure:

(A) interior wall and ceiling surfaces have finished surfaces, substrates, or sheathing with a fire resistance rating of not less than 20 minutes; and

(B) columns, beams, girders, or trusses that are not enclosed within walls or ceilings are encased in materials having a fire resistance rating of not less than 20 minutes.

(2) A sprinkler system does not substitute for the minimum sheathing requirements under paragraph (1) of this subsection.

(3) A building constructed to meet the minimum building construction type requirements of 19.1.6, Minimum Construction Requirements, in NFPA 101, Chapter 19, Existing Health Care Occupancies, is not also required to be sheathed.

(d) Interior finish. An existing small Type A assisted living facility must ensure interior wall and ceiling finish materials meet the requirements of 33.2.3.3.2, Interior Wall and Ceiling Finish, in NFPA 101, Chapter 33, Existing Residential Board and Care Occupancies.

(e) Vertical openings. An existing small Type A assisted living facility must ensure vertical openings are protected according to the requirements of 33.2.3.1, Protection of Vertical Openings, in NFPA 101, Chapter 33, Existing Residential Board and Care Occupancies.

§553.112. *Space Planning and Utilization Requirements for an Existing Small Type A Assisted Living Facility.*

(a) Resident bedrooms.

(1) An existing small Type A assisted living facility must ensure a resident bedroom or living unit is not located on a floor that is below finished ground level.

(2) An existing small Type A assisted living facility must ensure bedroom-usable floor space is not less than 80 square feet for a bedroom housing one resident and not less than 60 square feet per resident for a bedroom housing multiple residents, unless otherwise permitted by paragraphs (3) and (4) of this subsection. Portions of a bedroom that are less than eight feet in the smallest dimension cannot be included in the measurement of bedroom usable floor space, unless approved by HHSC.

(3) An existing small Type A assisted living facility containing individual living units that include living space for the residents in addition to their bedrooms may reduce the bedroom usable floor space for a bedroom housing multiple residents within a living unit by up to 10 percent of the required bedroom usable floor space, as long as the minimum dimensional criteria are maintained. An existing small Type A assisted living facility may not use this provision in conjunction with the provision permitting the reduction of common social-diversional areas or common dining areas found in subsection (g)(5) of this section.

(4) An existing small Type A assisted living facility may house no more than 50 percent of its licensed resident capacity in bedrooms housing three or more residents. A bedroom must not house more than four residents.

(b) Bedroom windows. An existing small Type A assisted living facility must ensure each bedroom has at least one operable window with outside exposure and meeting the following requirements.

(1) The windowsill [~~window sill~~] must be no higher than 44 inches above the floor.

(2) The window must be operable from the inside by all residents occupying the bedroom, [~~from the inside,~~] without the use of tools or special devices.

(3) The total area of all windows in a bedroom must not be less than eight percent of the minimum bedroom usable floor space required by subsection (a)(2) of this section.

(4) An existing bedroom window not meeting these requirements may be continued in service subject to approval by HHSC.

(5) An existing small Type A assisted living facility that is not equipped with a fire sprinkler system meeting the requirements of §553.115 of this division (relating to Fire Protection Systems Requirements for an Existing Small Type A Assisted Living Facility) must provide at least one window in each bedroom in the facility that, in addition to meeting the requirements of paragraphs (1) - (4) of this subsection, meets the following requirements:

(A) The bedroom window must meet the requirements of §553.113 of this division (relating to Means of Escape Requirements for an Existing Small Type A Assisted Living Facility) for use as a secondary means of escape from a resident sleeping room.

(B) The bedroom window must not be blocked by bars, shrubs, or any obstacle that could impede evacuation.

(C) The bedroom window must provide an operable section with a clear opening of not less than 5.7 square feet with a minimum width of 20 inches and a minimum height of 24 inches.

(6) An existing small Type A assisted living facility that is protected by an automatic sprinkler system meeting the requirements of §553.115 of this division must provide an operable window in a bedroom. The window opening size may be smaller than the minimum size listed in paragraph (5) of this subsection but must be operable according to the requirements of paragraph (2) of this subsection.

(c) Bedroom furnishings. When a resident does not provide their own furnishings, an existing small Type A assisted living facility must provide the following furnishings for each resident, which must be maintained in good repair:

(1) a bed, including a mattress;

(2) a chair;

(3) a table or dresser; and

(4) private clothes storage space, which must have closable doors, and drawer space for clothing and personal belongings.

(d) Arrangement of resident living units or rooms.

(1) An existing small Type A assisted living facility must ensure all resident rooms open on an exit, corridor, living area, or public area.

(2) An existing small Type A assisted living facility must ensure all resident rooms are arranged for convenient resident access to dining and recreation areas.



(e) Staff area. An existing small Type A assisted living facility must provide a staff area on each floor of an existing small Type A assisted living facility and in each separate building containing resident sleeping rooms, except as permitted under paragraph (1) of this subsection.

(1) An existing small Type A assisted living facility that is not more than two-stories in height and is composed of separate buildings grouped together and connected by covered walks[;] is not required to provide a staff area on each floor or in each building, provided that a staff area is located not more than 200 feet walking distance from the farthest resident living unit.

(2) An existing small Type A assisted living facility must provide the following at each staff area:

(A) a desk or writing surface;

(B) a telephone; and

(C) a fire alarm control unit or a fire alarm annunciator panel meeting the requirements of §553.115 of this division (relating to Fire Protection Systems Requirements for an Existing Small Type A Assisted Living Facility).

(f) Resident toilet and bathing facilities. An existing small Type A assisted living facility must ensure each resident bedroom is served by a separate, private toilet room, a connecting toilet room, or a general toilet room.

(1) An existing small Type A assisted living facility that houses individuals of more than one gender must provide toilet rooms for each gender, or individual single-occupant toilet rooms for use by any gender.

(2) An existing small Type A assisted living facility must ensure a general toilet room or bathing room is accessible from a corridor or public space.

(3) An existing small Type A assisted living facility must ensure resident toilet and bathing facilities comply with the requirements for resident-use plumbing fixtures according to §553.117 of this division (relating to Mechanical Requirements for an Existing Small Type A Assisted Living Facility).

(g) Resident living areas.

(1) An existing small Type A assisted living facility must provide, in a common area of the facility, social-diversional spaces with appropriate furniture. Examples of social-diversional spaces include living rooms, day rooms, lounges, dens, game rooms, and sunrooms.

(A) An existing small Type A assisted living facility must provide a social-diversional space with a minimum area of 120 square feet in at least one space within a common area of the facility, regardless of the number of residents or other provisions of this section permitting a reduction in the total minimum social-diversional space.

(B) An existing small Type A assisted living facility must ensure a social-diversional space has one or more exterior windows providing a view of the outside.

(C) An existing small Type A assisted living facility must ensure the total space for social-diversional area provides an area of at least 15 square feet for each resident in the licensed capacity of the facility. No space smaller than 120 square feet in area can be counted toward meeting this requirement.

(2) An existing small Type A assisted living facility must provide a dining area with appropriate furniture.

(A) An existing small Type A assisted living facility must provide a dining space with a minimum area of 120 square feet in at least one space within a common area of the facility, regardless of the number of residents or other provisions of this section permitting a reduction in the total minimum dining space.

(B) An existing small Type A assisted living facility must ensure a dining space has one or more exterior windows providing a view of the outside.

(C) An existing small Type A assisted living facility must ensure a dining area is accessible from resident living units or bedrooms via a covered path.

(D) An existing small Type A assisted living facility must ensure the total space for dining areas provides an area of at least 15 square feet for each resident in the licensed capacity of the facility. No space smaller than 120 square feet in area can be counted toward meeting this requirement.

(3) An existing small Type A assisted living facility may provide a total living and dining area combined in a single or interconnecting space where the minimum area of the combined space is at least 240 square feet.

(4) An existing small Type A assisted living facility must ensure an escape route through a resident living or dining area is kept clear of obstructions.

(5) Subject to the limitations of paragraphs (1)(A) and (2)(A) of this subsection and subparagraphs (A) and (B) of this paragraph, an existing small Type A assisted living facility containing individual living units may reduce the minimum square footage required by paragraphs (1)(C) and (2)(D) of this subsection for total common social diversional or common dining areas, respectively, by including up to 10 percent of the individual living unit area in the calculation of the total social-diversional area or total dining area.

(A) The individual living unit area contributed toward total social-diversional space or total dining space must not be counted more than once per living unit but may be split between social-diversional and dining space calculations.

(B) An existing small Type A assisted living facility must not utilize both this paragraph and subsection (a)(3) of this section to reduce both the minimum square footage otherwise required for its common social-diversional or dining areas and the minimum square footage of usable floor space otherwise required in bedrooms housing multiple residents within a living unit.

(h) Storage areas. An existing small Type A assisted living facility must provide sufficient separate storage spaces or areas for at least:

(1) administrative records, office supplies, and other storage needs related to administration;

(2) medications and medical supplies;

(3) equipment supplied by the facility for resident needs, including wheelchairs, walkers, beds, and mattresses;

(4) cleaning supplies, including for janitorial needs;

(5) food;

(6) clean linens and towels, if the facility furnishes linen;

(7) soiled linen, if the facility furnishes linen; and

(8) lawn and maintenance equipment.

(i) Kitchen.

{(1) An existing small Type A assisted living facility that prepares food off-site or in a separate building must ensure food is served at the proper temperature and transported in a sanitary manner.}

{(2) An existing small Type A assisted living facility that prepares food on-site must provide a kitchen or dietary area meeting the general food service needs of the residents and must ensure that the kitchen:}

{(A) is equipped to store, refrigerate, prepare, and serve food;}

{(B) is equipped to clean and sterilize;}

{(C) provides for refuse storage and removal; and}

{(D) meets the requirements of the local fire, building, and health codes.}

{(3)} An existing small Type A assisted living facility must ensure a kitchen uses only residential cooking equipment or, if the kitchen uses commercial cooking equipment, that the facility protects the kitchen's cooking operations as required in §553.116 of this division (relating to Hazardous Area Requirements for an Existing Small Type A Assisted Living Facility).

*§553.113. Means of Escape Requirements for an Existing Small Type A Assisted Living Facility.*

(a) The provisions of NFPA 101, Chapter 7, Means of Egress, do not apply to an existing small Type A assisted living facility unless explicitly referenced by this section or by NFPA 101, Chapter 33, Existing Residential Board and Care Occupancies.

(b) An existing small Type A assisted living facility must meet the requirements of 33.2.2, Means of Escape, in NFPA 101, Chapter 33, Existing Residential Board and Care Occupancies, except as described in this section.

(c) An existing small Type A assisted living facility must ensure doors meet the requirements of 33.2.2.5, Doors, in NFPA 101, Chapter 33, Existing Residential Board and Care Occupancies, and the additional requirements of this section.

(1) A resident room door in an existing small Type A assisted living facility not protected throughout by an approved automatic fire sprinkler system complying with the requirements of §553.115 of this division (relating to Fire Protection Systems Requirements for an Existing Small Type A Assisted Living Facility) must meet the requirements of this paragraph, as applicable [one of the following options]. A resident room door is not otherwise required to meet the requirements for doors in 33.2.3.6, Construction of Corridor Walls, in NFPA 101, Chapter 33, Existing Residential Board and Care Occupancies.

(A) The door must be a solid core wood door at least 1-3/4 inches thick or have a 20-minute opening protection rating and must latch in its frame to resist the passage of smoke; or

(B) The door must be self-closing or automatic-closing and must latch in its frame to resist the passage of smoke.

(2) A resident room door in an existing small Type A assisted living facility protected throughout by an approved automatic fire sprinkler system complying with the requirements of §553.115 of this division must latch in its frame to resist the passage of smoke.

(3) In an existing small Type A assisted living facility comprised of buildings that contain living units with independent cooking equipment within the living unit, a door between the living unit and a corridor or hallway must:

(A) be self-closing or automatic-closing; and

(B) latch in its frame to resist the passage of smoke.

(4) A resident room door or living unit door must not be arranged to prevent the occupant from closing the door.

(d) An existing small Type A assisted living facility providing a bedroom window used as a secondary means of escape must ensure the window meets the requirements for a bedroom window used as a secondary means of escape in §553.112 of this division (relating to Space Planning and Utilization Requirements for an Existing Small Type A Assisted Living Facility).

(e) An existing small Type A assisted living facility providing spaces for use by residents on floors other than the ground floor must provide at least two separate approved stairs.

(1) An existing stair may be continued in service, subject to approval by HHSC.

(2) A stair used as means of escape must meet the requirements of 33.2.2.6, Stairs, in NFPA 101, Chapter 33, Existing Residential Board and Care Occupancies.

(3) Each stair must be arranged and located so that it is not necessary to go through another room, including a bedroom or bathroom, to reach the stair.

(4) Each stair must be provided with handrails.

(5) Each stair must be provided with normal lighting according to the requirements of §553.118 of this division (relating to Electrical Requirements for an Existing Small Type A Assisted Living Facility).

(6) A stair in an existing building that became an assisted living through conversion must meet the dimensional criteria for existing stairs in 7.2.2.2, Dimensional Criteria, in NFPA 101, Chapter 7, Means of Egress.

(7) An existing stair, previously approved by HHSC, may be rebuilt to the same dimensions but must meet all other requirements for stairs in NFPA 101.

*§553.115. Fire Protection Systems Requirements for an Existing Small Type A Assisted Living Facility.*

(a) Fire alarm and smoke detection system. An existing small Type A assisted living facility must provide a manual fire alarm system meeting the requirements of section 9.6, Fire Detection, Alarm, and Communication Systems, in NFPA 101, Chapter 9, Building Service and Fire Protection Equipment, as modified by this section.

(1) General. An existing small Type A assisted living facility must ensure the operation of any alarm initiating device automatically activates an audible or a visual alarm at the site.

(2) Smoke detectors.

(A) An existing small Type A assisted living facility must install smoke detectors in resident bedrooms, corridors, hallways, living rooms, dining rooms, offices, kitchens, laundries, attached garages used for car parking, and public or common areas, except as permitted in subparagraphs (B) and (C) of this paragraph.

(B) An existing small Type A assisted living facility may install heat detectors in lieu of smoke detectors in kitchens, laundries, and attached garages used for car parking.

(C) An existing small Type A assisted living facility located in a building constructed to meet the requirements of NFPA 101, Chapter 19, Existing Health Care Occupancies, may install a smoke detection system meeting the requirements of 19.3.4.5.1, Corridors, in

NFPA 101, Chapter 19, Existing Health Care Occupancies, in lieu of the requirements in subparagraph (A) of this paragraph.

(3) Alarm control panel.

(A) An existing small Type A assisted living facility must provide a fire alarm control unit, or a fire alarm annunciator providing annunciation of all fire alarm, supervisory, and trouble signals by audible and visible indicators, in a location visible to staff at or near the staff area that is attended 24 hours a day.

(B) An existing small Type A assisted living facility is not required to ensure a fire alarm control unit or fire alarm annunciator is visible to staff if the fire alarm is monitored by devices carried by all staff.

(4) Fire alarm power source.

(A) An existing small Type A assisted living facility must ensure a fire alarm system is powered by a permanently-wired, dedicated branch circuit that is powered from a commercial power source in accordance with NFPA 70.

(B) An existing small Type A assisted living facility must provide a secondary, emergency power source meeting the requirements of NFPA 72.

(b) Fire sprinkler system. In accordance with requirements of 33.2.3.5, Extinguishment Requirements, in NFPA 101, Chapter 33, Existing Residential Board and Care Occupancies, an existing small Type A assisted living facility may provide:

~~{(1) An existing small Type A assisted living facility may provide one of the following fire sprinkler systems according to the requirements of 33.2.3.5, Extinguishment Requirements, in NFPA 101, Chapter 33, Existing Residential Board and Care Occupancies.}~~

~~(1) [(A)] a [A] fire sprinkler system meeting the requirements of NFPA 13 in accordance with 33.2.3.5.3.3;~~

~~(2) [(B)] a [A] fire sprinkler system meeting the requirements of NFPA 13R in accordance with 33.2.3.5.3.4; or~~

~~(3) [(C)] a [A] fire sprinkler system meeting the requirements of NFPA 13D in accordance with 33.2.3.5.3.2.~~

~~{(2) An existing small Type A assisted living facility must provide supervision of any fire sprinkler system where required by 33.2.3.5, Extinguishment Requirements, in NFPA 101, Chapter 33, Existing Residential Board and Care Occupancies.}~~

(c) Protection of attics. An existing small Type A assisted living facility equipped with a fire sprinkler system must ensure an attic is protected according to the requirements of 33.2.3.5.7, in NFPA 101, Chapter 33, Existing Residential Board and Care Occupancies, not later than August 31, 2024.

(d) Portable fire extinguishers. An existing small Type A assisted living facility must provide and maintain portable fire extinguishers according to the requirements of NFPA 10.

(1) An existing small Type A assisted living facility must ensure all requirements of NFPA 10 are followed for all extinguisher types, including requirements for location, spacing, mounting heights, monthly inspections by staff, yearly inspections by a licensed agent, any necessary servicing, and hydrostatic testing as recommended by the manufacturer.

(2) An existing small Type A assisted living facility must ensure portable fire extinguishers are located so the travel distance from any point in the facility to an extinguisher is no more than 75 feet.

(3) An existing small Type A assisted living facility must ensure the actual size of any portable fire extinguisher meets the requirements of NFPA 10 for maximum floor area per unit covered, but an extinguisher must be no smaller than the following.

(A) A water-type portable fire extinguisher must have a rating of at least 1-A according to NFPA 10.

(B) All other portable fire extinguishers must have a rating of at least 2-A:5-B:C according to NFPA 10.

(4) An existing small Type A assisted living facility must ensure portable fire extinguishers are installed on hangers or brackets supplied with the extinguisher or mounted in an approved cabinet.

(5) An existing small Type A assisted living facility must ensure a portable fire extinguisher is protected from impact or dislodgement.

(6) An existing small Type A assisted living facility must ensure a portable fire extinguisher is installed at an appropriate height.

(A) A portable fire extinguisher having a gross weight of up to 40 pounds must be installed so the top of the extinguisher is not more than five feet above the floor.

(B) A portable fire extinguisher having a gross weight greater than 40 pounds must be installed so the top of the extinguisher is not more than three and a half feet above the floor.

(C) A portable fire extinguisher must be installed so the clearance between the bottom of the extinguisher and the floor is at least four inches.

(7) A portable extinguisher provided in a hazardous room must be located as close as possible to the door leading from the room and on the latch or knob side of the door.

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-3161



## DIVISION 5. EXISTING SMALL TYPE B ASSISTED LIVING FACILITIES

### 26 TAC §553.122, §553.125

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 rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively.

The amendments implement Texas Government Code §531.0055 and §531.033 and Texas Health and Safety Code §247.025 and §247.026.

§553.122. *Space Planning and Utilization Requirements for an Existing Small Type B Assisted Living Facility.*

(a) Resident bedrooms.

(1) An existing small Type B assisted living facility must ensure a resident bedroom or living unit is not located on a floor that is below finished ground level.

(2) An existing small Type B assisted living facility must ensure bedroom-usable floor space is not less than 100 square feet for a bedroom housing one resident and not less than 80 square feet per resident for a bedroom housing multiple residents, unless otherwise permitted by paragraphs (3) and (4) of this subsection. Portions of a bedroom that are less than 10 feet in the smallest dimension cannot be included in the measurement of bedroom usable floor space, unless approved by the Texas Health and Human Services Commission (HHSC).

(3) An existing small Type B assisted living facility containing individual living units that include living space for the residents, in addition to their bedroom, may reduce the bedroom usable floor space for a bedroom housing multiple residents within a living unit by up to 10 percent of the required bedroom usable floor space, as long as the minimum dimensional criteria are maintained. An existing small Type B assisted living facility must not use this provision in conjunction with the provision permitting the reduction of common social-diversional areas or common dining areas found in subsection (g)(5) of this section.

(4) An existing small Type B assisted living facility must house no more than 50 percent of its licensed resident capacity in bedrooms housing three or more residents. A bedroom must not house more than four residents.

(b) Bedroom windows. An existing small Type B assisted living facility must ensure each bedroom has at least one operable window with outside exposure and meeting the following requirements.

(1) The windowsill [~~window sill~~] must be no higher than 44 inches above the floor.

(2) The window must be operable from the inside by all residents occupying the bedroom, [~~from the inside,~~] without the use of tools or special devices.

(3) The total area of all windows in a bedroom must not be less than eight percent of the minimum bedroom usable floor space required by subsection (a)(2) of this section.

(4) An existing bedroom window not meeting these requirements may be continued in service subject to approval by HHSC.

(c) Bedroom furnishings. When a resident does not provide their own furnishings, an existing small Type B assisted living facility must provide the following furnishings for each resident, which must be maintained in good repair:

- (1) a bed, including a mattress;
- (2) a chair;
- (3) a table or dresser; and

(4) private clothes storage space, which must include closable door, and drawer space for clothing and personal belongings.

(d) Arrangement of resident living units or rooms.

(1) An existing small Type B assisted living facility must ensure all resident rooms open on an exit, corridor, living area, or public area.

(2) An existing small Type B assisted living facility must ensure all resident rooms are arranged for convenient resident access to dining and recreation areas.

(e) Staff area. An existing small Type B assisted living facility must provide a staff area on each floor of an existing small Type B assisted living facility and in each separate building containing resident sleeping rooms. An existing small Type B assisted living facility must provide the following at each staff area:

- (1) a desk or writing surface;
- (2) a telephone; and

(3) a fire alarm control unit or a fire alarm annunciator panel meeting the requirements of §553.125 of this division (relating to Fire Protection Systems Requirements for an Existing Small Type B Assisted Living Facility).

(f) Resident toilet and bathing facilities. An existing small Type B assisted living facility must ensure each resident bedroom is served by a separate, private toilet room, a connecting toilet room, or a general toilet room.

(1) An existing small Type B assisted living facility that houses individuals of more than one gender must provide toilet rooms for each gender, or individual single-occupant toilet rooms for use by any gender.

(2) An existing small Type B assisted living facility must ensure a general toilet room or bathing room is accessible from a corridor or public space.

(3) An existing small Type B assisted living facility must ensure resident toilet and bathing facilities comply with the requirements for resident-use plumbing fixtures according to §553.127 of this division (relating to Mechanical Requirements for an Existing Small Type B Assisted Living Facility).

(g) Resident living areas.

(1) An existing small Type B assisted living facility must provide, in a common area of the facility, social-diversional spaces with appropriate furniture. Examples of social-diversional spaces include living rooms, day rooms, lounges, dens, game rooms, and sunrooms.

(A) An existing small Type B assisted living facility must provide a social-diversional space with a minimum area of 120 square feet in at least one space within a common area of the facility, regardless of the number of residents or other provisions of this section permitting a reduction in the total minimum social-diversional space.

(B) An existing small Type B assisted living facility must ensure a social-diversional space has one or more exterior windows providing a view of the outside.

(C) An existing small Type B assisted living facility must ensure the total space for social-diversional area provides an area of at least 15 square feet for each resident in the licensed capacity of the facility. No space smaller than 120 square feet in area can be counted toward meeting this requirement.

(2) An existing small Type B assisted living facility must provide a dining area with appropriate furniture.

(A) An existing small Type B assisted living facility must provide a dining space with a minimum area of 120 square feet in at least one space within a common area of the facility, regardless of

the number of residents or other provisions of this section permitting a reduction in the total minimum dining space.

(B) An existing small Type B assisted living facility must ensure a dining space has one or more exterior windows providing a view of the outside.

(C) An existing small Type B assisted living facility must ensure a dining area is accessible from resident living units or bedrooms via a covered path.

(D) An existing small Type B assisted living facility must ensure the total space for dining areas provides an area of at least 15 square feet for each resident in the licensed capacity of the facility. No space smaller than 120 square feet in area can be counted toward meeting this requirement.

(3) An existing small Type B assisted living facility may provide a total living and dining area combined in a single or interconnecting space where the minimum area of the combined space is at least 240 square feet.

(4) An existing small Type B assisted living facility must ensure an escape route through a resident living or dining area is kept clear of obstructions.

(5) Subject to the limitations of paragraphs (1)(A) and (2)(A) of this subsection and subparagraphs (A) and (B) of this paragraph, an existing small Type B assisted living facility containing individual living units may reduce the minimum square footage required by paragraphs (1)(C) and (2)(D) of this subsection for total common social diversional or common dining areas, respectively, by including up to 10 percent of the individual living unit area in the calculation of the total social-diversional area or total dining area.

(A) The individual living unit area contributed toward total social-diversional space or total dining space must not be counted more than once per living unit but may be split between social-diversional and dining space calculations.

(B) An existing small Type B assisted living facility must not utilize both this paragraph and subsection (a)(3) of this section to reduce both the minimum square footage otherwise required for its common social-diversional or dining areas and the minimum square footage of usable floor space otherwise required in bedrooms housing multiple residents within a living unit.

(h) Storage areas. An existing small Type B assisted living facility must provide sufficient separate storage spaces or areas for at least:

- (1) administrative records, office supplies, and other storage needs related to administration;
- (2) medications and medical supplies;
- (3) equipment supplied by the facility for resident needs, including wheelchairs, walkers, beds, and mattresses;
- (4) cleaning supplies, including for janitorial needs;
- (5) food;
- (6) clean linens and towels, if the facility furnishes linen;
- (7) soiled linen, if the facility furnishes linen; and
- (8) lawn and maintenance equipment.

(i) Kitchen.

~~[(1) An existing small Type B assisted living facility that prepares food off-site or in a separate building must ensure food is served at the proper temperature and transported in a sanitary manner.]~~

~~[(2) An existing small Type B assisted living facility that prepares food on-site must provide a kitchen or dietary area meeting the general food service needs of the residents and must ensure that the kitchen:]~~

~~[(A) is equipped to store, refrigerate, prepare, and serve food;]~~

~~[(B) is equipped to clean and sterilize;]~~

~~[(C) provides for refuse storage and removal; and]~~

~~[(D) meets the requirements of the local fire, building, and health codes.]~~

~~[(3) ] An existing small Type B assisted living facility must ensure a kitchen uses only residential cooking equipment or, if the kitchen uses commercial cooking equipment, that the facility protects the kitchen's cooking operations as required in §553.126 of this division (relating to Hazardous Area Requirements for an Existing Small Type B Assisted Living Facility).]~~

*§553.125. Fire Protection Systems Requirements for an Existing Small Type B Assisted Living Facility.*

(a) Fire alarm and smoke detection system. An existing small Type B assisted living facility must provide a manual fire alarm system meeting the requirements of section 9.6, Fire Detection, Alarm, and Communication Systems, in NFPA 101, Chapter 9, Building Service and Fire Protection Equipment, as modified by this section.

(1) General. An existing small Type B assisted living facility must ensure the operation of any alarm initiating device automatically activates an audible or a visual alarm at the site.

(2) Smoke detectors.

(A) An existing small Type B assisted living facility must install smoke detectors in resident bedrooms, corridors, hallways, living rooms, dining rooms, offices, kitchens, laundries, attached garages used for car parking, and public or common areas, except as permitted in subparagraphs (B) and (C) of this paragraph.

(B) An existing small Type B assisted living facility may install heat detectors in lieu of smoke detectors in kitchens, laundries, and attached garages used for car parking.

(C) An existing small Type B assisted living facility located in a building constructed to meet the requirements of NFPA 101, Chapter 19, Existing Health Care Occupancies, may install a smoke detection system meeting the requirements of 19.3.4.5.1, Corridors, in NFPA 101, Chapter 19, Existing Health Care Occupancies, in lieu of the requirements in subparagraph (A) of this paragraph.

(3) Alarm control panel.

(A) An existing small Type B assisted living facility must provide a fire alarm control unit, or a fire alarm annunciator providing annunciation of all fire alarm, supervisory, and trouble signals by audible and visible indicators, in a location visible to staff at or near the staff area that is attended 24 hours a day.

(B) An existing small Type B assisted living facility is not required to ensure a fire alarm control unit or fire alarm annunciator is visible to staff if the fire alarm is monitored by devices carried by all staff.

(4) Fire alarm power source.

(A) An existing small Type B assisted living facility must ensure a fire alarm system is powered by a permanently-wired, dedicated branch circuit that is powered from a commercial power source in accordance with NFPA 70.

(B) An existing small Type B assisted living facility must provide a secondary, emergency power source meeting the requirements of NFPA 72.

(b) Fire sprinkler system.

(1) In accordance with requirements of 33.2.3.5, Extinguishment Requirements, in NFPA 101, Chapter 33, Existing Residential Board and Care Occupancies, an existing small Type B assisted living facility must provide: [An existing small Type B assisted living facility must provide one of the following fire sprinkler systems according to the requirements of 33.2.3.5, Extinguishment Requirements, in NFPA 101, Chapter 33, Existing Residential Board and Care Occupancies.]

(A) a [A] fire sprinkler system meeting the requirements of NFPA 13 in accordance with 33.2.3.5.3.3;

(B) a [A] fire sprinkler system meeting the requirements of NFPA 13R in accordance with 33.2.3.5.3.4; or

(C) a [A] fire sprinkler system meeting the requirements of NFPA 13D in accordance with 33.2.3.5.3.2.

(2) An existing small Type B assisted living facility must ensure a fire sprinkler system is supervised according to 9.7.2, Supervision, in NFPA 101, Chapter 9, Building Service and Fire Protection Equipment.

(c) Protection of attics. An existing small Type B assisted living facility equipped with a fire sprinkler system must ensure an attic is protected according to the requirements of 33.2.3.5.7, in NFPA 101, Chapter 33, Existing Residential Board and Care Occupancies, not later than August 31, 2024.

(d) Portable fire extinguishers. An existing small Type B assisted living facility must provide and maintain portable fire extinguishers according to the requirements of NFPA 10.

(1) An existing small Type B assisted living facility must ensure all requirements of NFPA 10 are followed for all extinguisher types, including requirements for location, spacing, mounting heights, monthly inspections by staff, yearly inspections by a licensed agent, any necessary servicing, and hydrostatic testing as recommended by the manufacturer.

(2) An existing small Type B assisted living facility must ensure portable fire extinguishers are located so the travel distance from any point in the facility to an extinguisher is no more than 75 feet.

(3) An existing small Type B assisted living facility must ensure the actual size of any portable fire extinguisher meets the requirements of NFPA 10 for maximum floor area per unit covered, but an extinguisher must be no smaller than the following.

(A) A water-type portable fire extinguisher must have a rating of at least 1-A according to NFPA 10; or

(B) Other portable fire extinguishers must have a rating of at least 2-A:5-B:C according to NFPA 10.

(4) An existing small Type B assisted living facility must ensure portable fire extinguishers are installed on hangers or brackets supplied with the extinguisher or mounted in an approved cabinet.

(5) An existing small Type B assisted living facility must ensure a portable fire extinguisher is protected from impact or dislodgement.

(6) An existing small Type B assisted living facility must ensure a portable fire extinguisher is installed at an appropriate height.

(A) A portable fire extinguisher having a gross weight of up to 40 pounds must be installed so the top of the extinguisher is not more than five feet above the floor.

(B) A portable fire extinguisher having a gross weight greater than 40 pounds must be installed so the top of the extinguisher is not more than three and a half feet above the floor.

(C) A portable fire extinguisher must be installed so the clearance between the bottom of the extinguisher and the floor is at least four inches.

(7) A portable extinguisher provided in a hazardous room must be located as close as possible to the door leading from the room and on the latch or knob side of the door.

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-3161



## DIVISION 6. EXISTING LARGE TYPE A ASSISTED LIVING FACILITIES

### 26 TAC §§553.131, 553.132, 553.135

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 rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively.

The amendments implement Texas Government Code §531.0055 and §531.033 and Texas Health and Safety Code §247.025 and §247.026.

§553.131. *Construction Requirements for an Existing Large Type A Assisted Living Facility.*

(a) Structurally sound. An existing large Type A assisted living facility must ensure any building is structurally sound regarding actual or expected dead, live, and wind loads in accordance with applicable building codes, as determined and enforced by local authorities.

(b) Separation of occupancies. An existing large Type A assisted living facility must be separated from other occupancies by a fire barrier having at least a 2-hour fire resistance rating constructed according to the requirements of NFPA 101 and its referenced standards, unless otherwise permitted by paragraphs (1) or (2) of this subsection.

(1) An existing large Type A assisted living facility must be separated from other assisted living facilities, hospitals or nursing facilities. Beginning August 31, 2021, an existing large Type A assisted

living facility must be separated from any new occupancy or new use subject to HHSC licensing.

(2) An existing large Type A assisted living facility is not required to be separated from another occupancy not subject to HHSC licensing standards if the two occupancies are so intermingled that construction of a fire barrier having a 2-hour fire resistance rating is impractical and the following conditions are met.

(A) The means of egress, construction, protection, and other safeguards for the entire building must comply with the NFPA 101 requirements for an existing large Type A assisted living facility.

(B) HHSC must be given unrestricted and unannounced access at any reasonable time to inspect the other occupancy type for compliance with the NFPA 101 requirements for an existing large Type A assisted living facility.

(c) Sheathing.

(1) Except as provided in paragraph (3) of this subsection, an existing large Type A assisted living facility must ensure all buildings used by residents are sheathed with materials providing the following fire resistance ratings.

(A) Interior wall and ceiling surfaces must have finished surfaces, substrates, or sheathing with a fire resistance rating of not less than 20 minutes.

(B) Columns, beams, girders, or trusses that are not enclosed within walls or ceilings must be encased in materials having a fire resistance rating of not less than 20 minutes.

(2) A sprinkler system does not substitute for this minimum sheathing requirement under paragraph (1) of this subsection.

(3) A building constructed to meet the minimum building construction type requirements of 19.1.6, Minimum Construction Requirements, in NFPA 101, Chapter 19, Existing Health Care Occupancies, is not also required to be sheathed.

(d) Interior finish. An existing large Type A assisted living facility must ensure interior wall and ceiling finish materials meet the requirements of 33.3.3.3.2, Interior Wall and Ceiling Finish, in NFPA 101, Chapter 33, Existing Residential Board and Care Occupancies.

(e) Vertical openings. An existing large Type A assisted living facility must ensure vertical openings are protected according to the requirements of 33.3.3.1, Protection of Vertical Openings, in NFPA 101, Chapter 33, Existing Residential Board and Care Occupancies.

*§553.132. Space Planning and Utilization Requirements for an Existing Large Type A Assisted Living Facility.*

(a) Resident bedrooms.

(1) An existing large Type A assisted living facility must ensure a resident bedroom or living unit is not located on a floor that is below finished ground level.

(2) An existing large Type A assisted living facility must ensure bedroom usable floor space is not less than 80 square feet for a bedroom housing one resident and not less than 60 square feet per resident for a bedroom housing multiple residents, unless otherwise permitted by paragraphs (3) and (4) of this subsection. Portions of a bedroom that are less than eight feet in the smallest dimension cannot be included in the measurement of bedroom usable floor space, unless approved by the Texas Health and Human Services Commission (HHSC).

(3) An existing large Type A assisted living facility containing individual living units that include living space for the residents, in addition to their bedroom, may reduce the bedroom usable

floor space for a bedroom housing multiple residents within a living unit by up to 10 percent of the required bedroom usable floor space, as long as the minimum dimensional criteria are maintained. An existing large Type A assisted living facility must not use this provision in conjunction with the provision permitting the reduction of common social-diversional areas or common dining areas found in subsection (g)(6) of this section.

(4) An existing large Type A assisted living facility must house no more than 50 percent of its licensed resident capacity in bedrooms housing three or more residents. A bedroom must not house more than four residents.

(b) Bedroom windows. An existing large Type A assisted living facility must ensure each bedroom has at least one operable window with outside exposure and meeting the following requirements.

(1) The windowsill [window sill] must be no higher than 44 inches above the floor.

(2) The window must be operable from the inside by a resident occupying the bedroom, [~~from the inside,~~] without the use of tools or special devices.

(3) The total area of all windows in a bedroom must not be less than eight percent of the minimum bedroom usable floor space according to the requirements of subsection (a)(2) of this section.

(4) An existing bedroom window not meeting these requirements may be continued in service, subject to approval by HHSC.

(c) Bedroom furnishings. When a resident does not provide their own furnishings, an existing large Type A assisted living facility must provide the following furnishings for each resident, which must be maintained in good repair:

(1) a bed, including a mattress;

(2) a chair;

(3) a table or dresser; and

(4) private clothes storage space, which must have closable doors, and drawer space for clothing and personal belongings.

(d) Arrangement of resident living units or rooms.

(1) An existing large Type A assisted living facility must ensure all resident rooms open on an exit, corridor, living area, or public area.

(2) An existing large Type A assisted living facility must ensure a resident room is arranged for convenient resident access to dining and recreation areas.

(e) Staff area. An existing large Type A assisted living facility must provide a staff area on each floor of an existing large Type A assisted living facility and in each separate building containing resident sleeping rooms, except as permitted under paragraph (1) of this subsection.

(1) An existing large Type A assisted living facility that is not more than two stories in height and is composed of separate buildings grouped together and connected by covered walks, is not required to provide a staff area on each floor or in each building, provided that a staff area is located not more than 200 feet walking distance from the farthest resident living unit.

(2) An existing large Type A assisted living facility must provide the following at each staff area:

(A) a desk or writing surface;

(B) a telephone; and

(C) a fire alarm control unit or a fire alarm annunciator panel meeting the requirements of §553.135 of this division (relating to Fire Protection Systems Requirements for an Existing Large Type A Assisted Living Facility).

(f) Resident toilet and bathing facilities. An existing large Type A assisted living facility must ensure each resident bedroom is served by a separate private toilet room, a connecting toilet room, or a general toilet room.

(1) An existing large Type A assisted living facility that houses individuals of more than one gender must provide toilet rooms for each gender, or individual single-occupant toilet rooms for use by any gender.

(2) An existing large Type A assisted living facility must ensure a general toilet room or bathing room is accessible from a corridor or public space.

(3) An existing large Type A assisted living facility must ensure resident toilet and bathing facilities comply with the requirements for resident-use plumbing fixtures according to §553.137 of this division (relating to Mechanical Requirements for an Existing Large Type A Assisted Living Facility).

(g) Resident living areas.

(1) An existing large Type A assisted living facility must provide, in a common area of the facility, social-diversional spaces with appropriate furniture. Examples of social-diversional spaces include living rooms, day rooms, lounges, dens, game rooms, and sunrooms.

(A) An existing large Type A assisted living facility must provide a social-diversional space with a minimum area of 120 square feet in at least one space within a common area of the facility, regardless of the number of residents or other provisions of this section permitting a reduction in the total minimum social-diversional space.

(B) An existing large Type A assisted living facility must ensure a social-diversional space has one or more exterior windows providing a view of the outside.

(C) An existing large Type A assisted living facility must ensure the total space for social-diversional areas is provided on a sliding scale according to the following table. No space smaller than 120 square feet in area can be counted toward meeting this requirement.

Figure: 26 TAC §553.132(g)(1)(C) (No change.)

(2) An existing large Type A assisted living facility must provide a dining area with appropriate furniture.

(A) An existing large Type A assisted living facility must provide a dining space with a minimum area of 120 square feet in at least one space within a common area of the facility, regardless of the number of residents or other provisions of this section permitting a reduction in the total minimum dining space.

(B) An existing large Type A assisted living facility must ensure a dining space has one or more exterior windows providing a view of the outside.

(C) An existing large Type A assisted living facility must ensure a dining area is accessible from resident living units or bedrooms via a covered path.

(D) An existing large Type A assisted living facility must ensure the total space for dining areas is provided on a sliding scale according to the following table. No space smaller than 120 square feet in area can be counted toward meeting this requirement.

Figure: 26 TAC §553.132(g)(2)(D) (No change.)

(3) An existing large Type A assisted living facility may provide a total living and dining area combined in a single or interconnecting space where the minimum area of the combined space is at least 240 square feet.

(4) For calculation purposes, where a means of egress passes through a living or dining area, an existing large Type A assisted living facility must deduct a pathway, equal to the minimum corridor width, according to §553.133 of this division (relating to Means of Egress Requirements for an Existing Large Type A Assisted Living Facility), from the measured area of the space.

(5) An existing large Type A assisted living facility must ensure a means of egress through a resident living or dining area is kept clear of obstructions, except as permitted by NFPA 101.

(6) Subject to the limitations of paragraphs (1)(A) and (2)(A) of this subsection and subparagraphs (A) and (B) of this paragraph, an existing large Type A assisted living facility containing individual living units may reduce the minimum square footage required by paragraphs (1)(C) and (2)(D) of this subsection for total common social-diversional or common dining areas, respectively, by including up to 10 percent of the individual living unit area in the calculation of the total social-diversional area or total dining area.

(A) The individual living unit area contributed toward total social-diversional space or total dining space must not be counted more than once per living unit but may be split between social-diversional and dining space calculations.

(B) An existing large Type A assisted living facility must not utilize both this paragraph and subsection (a)(3) of this section to reduce both the minimum square footage otherwise required for its common social-diversional or dining areas and the minimum square footage of usable floor space otherwise required in bedrooms housing multiple residents within a living unit.

(h) Storage areas. An existing large Type A assisted living facility must provide sufficient separate storage spaces or areas for at least:

- (1) administrative records, office supplies, and other storage needs related to administration;
- (2) medications and medical supplies;
- (3) equipment supplied by the facility for resident needs, including wheelchairs, walkers, beds, and mattresses;
- (4) cleaning supplies, including for janitorial needs;
- (5) food;
- (6) clean linens and towels, if the facility furnishes linen;
- (7) soiled linen, if the facility furnishes linen; and
- (8) lawn and maintenance equipment.

(i) General kitchen.

~~[(1) An existing large Type A assisted living facility that prepares food off-site or in a separate building must ensure food is served at the proper temperature and transported in a sanitary manner.]~~

~~[(2) An existing large Type A assisted living facility must ensure a kitchen meets the requirements of the local fire, building, and health codes.]~~

~~[(3)] An existing large Type A assisted living facility that prepares food onsite [on-site] must provide a kitchen or dietary area that includes [to meet the general food service needs of the residents and must include] space for [the following]:~~



(A) storage, refrigeration, preparation, and serving food;

(B) dish and utensil cleaning, which includes:

(i) a three-compartment sink large enough to immerse pots and pans; and

(ii) a mechanical dishwasher for washing and sanitizing dishes;

(C) a food preparation sink;

(D) a handwashing station in every food preparation area with a supply of hot and cold water, soap, a towel dispenser and a waste receptacle;

(E) a handwashing lavatory that is readily accessible to every dish room area;

(F) refuse storage and removal;

(G) floor drains in the kitchen and dishwashing areas, unless the facility was licensed before January 6, 2014, and the facility can keep the floor clean. ~~and~~

~~(H) a grease trap, if required by local authorities.]~~

~~(2) [(4)]~~ An existing large Type A assisted living facility must ensure a kitchen is designed so that room temperature, at peak load or in the summer, does not exceed 85 degrees Fahrenheit measured throughout the room at five feet above the floor.

~~(3) [(5)]~~ An existing large Type A assisted living facility must ensure the volume of supply air provided takes into account the large quantities of air that may be exhausted at the range hood and dishwashing area.

~~(4) [(6)]~~ An existing large Type A assisted living facility must provide a supply of hot and cold water.

(A) Hot water for sanitizing purposes must be 180 degrees Fahrenheit.

(B) When chemical sanitizers are used, hot water must meet the manufacturer's suggested temperature.

~~(5) [(7)]~~ An existing large Type A assisted living facility must maintain a separation between soiled and clean dish areas.

~~(6) [(8)]~~ An existing large Type A assisted living facility must maintain a separation of air flow between soiled and clean dish areas.

(j) Kitchen restrooms.

(1) An existing large Type A assisted living facility must provide a restroom facility for kitchen staff, including a lavatory, except as described in paragraph (2) of this subsection.

(A) The restroom facility must be directly accessible to kitchen staff without traversing resident-use areas.

(B) The restroom must open into a service corridor or vestibule and not open directly into the kitchen.

(2) An existing large Type A assisted living facility licensed before January 6, 2014, may provide a staff restroom that may be located outside the kitchen area.

(k) Kitchen janitorial facility.

(1) An existing large Type A assisted living facility must provide janitorial facilities exclusively for the kitchen and located in the kitchen area, except as described in paragraph (2) of this subsection.

(2) An existing large Type A assisted living facility licensed before January 6, 2014, must provide a janitorial facility for the kitchen. The janitorial facility may be located outside the kitchen if sanitary procedures are used to reduce the possibility of cross-contamination.

(3) An existing large Type A assisted living facility must provide a garbage can or cart washing area with a floor drain and a supply of hot water. The garbage can or cart washing area may be in the interior or on the exterior of the facility.

(4) An existing large Type A assisted living facility must provide floor drains in the kitchen and dishwashing areas unless the facility was licensed before January 6, 2014, and the facility can keep the floors clean.

~~[(5) If required by local authorities, an existing large Type A assisted living facility must provide a grease trap.]~~

(l) Finishes.

(1) An existing large Type A assisted living facility must provide non-absorbent, smooth finishes or surfaces on all kitchen floors, walls and ceilings.

(2) An existing large Type A assisted living facility must provide non-absorbent, smooth, cleanable finishes on counter surfaces and all cabinet surfaces.

(3) An existing large Type A assisted living facility must ensure surfaces are capable of being routinely cleaned and sanitized to maintain a healthful environment.

(m) Vision panels in communicating doors.

(1) An existing large Type A assisted living facility must ensure a door between a kitchen and a dining area, serving area, or resident-use area, is provided with a vision panel with fixed safety glass. Where the door is a required fire door or is located in a fire barrier or other fire resistance-rated enclosure, the vision panel, including the glazing and the frame, must meet the requirements of NFPA 101.

(2) Existing doors between kitchens and adjacent spaces that are not provided with vision panels may be continued in service, subject to approval by HHSC.

(n) Auxiliary serving kitchens.

(1) An existing large Type A assisted living facility must ensure an auxiliary serving kitchen is equipped to maintain required food temperatures.

(2) An existing large Type A assisted living facility must ensure an auxiliary serving kitchen is equipped with a handwashing lavatory meeting the requirements of this section.

(3) An existing large Type A assisted living facility must ensure all surfaces in an auxiliary serving kitchen meet the requirements for finishes in this section.

(o) Protection of cooking operations.

(1) An existing large Type A assisted living facility must protect cooking facilities using commercial or residential cooking equipment for meal preparation as commercial cooking operations, according to the requirements for commercial cooking equipment in §553.136 of this division (relating to Hazardous Area Requirements for an Existing Large Type A Assisted Living Facility).

(2) The following commercial or residential cooking equipment used only for reheating, and not for meal preparation, is not required to comply with the requirements of §553.136 of this division:

- (A) microwave ovens;
- (B) hot plates; or
- (C) toasters.

(p) Food storage areas.

(1) An existing large Type A assisted living facility must provide a food storage area large enough to consistently maintain a four-day minimum supply of non-perishable food. A food storage area may be located away from the food preparation area as long as there is space adjacent to the kitchen for necessary daily usage.

(2) An existing large Type A assisted living facility must provide dollies, racks, pallets, wheeled containers, or shelving, so that food is not stored on the floor.

(A) An existing large Type A assisted living facility must ensure shelves are adjustable wire type shelving.

(B) An existing large Type A assisted living facility licensed before January 6, 2014, may use wood shelves provided the shelves are sealed and clean.

(3) An existing large Type A assisted living facility must provide non-absorbent finishes or surfaces on all floors and walls in food storage areas.

(4) An existing large Type A assisted living facility must provide effective ventilation in dry food storage areas to ensure positive air circulation.

(5) An existing large Type A assisted living facility must ensure the maximum room temperature in a food storage area does not exceed 85 degrees Fahrenheit at any time, when measured at the highest food storage level, but not less than five feet above the floor.

(q) Laundry and linen services.

(1) An existing large Type A assisted living facility that co-mingles and processes laundry ~~onsite~~ ~~[on-site]~~ in a central location, regardless of the type of laundry equipment used, must ensure a laundry area:

(A) is separated from the assisted living building by a fire barrier having a one-hour fire resistance rating, and this separation must extend from the floor to the floor or roof above;

(B) is protected throughout by a fire sprinkler system;

(C) has access doors that open to the exterior or to an interior non-resident use area, such as a vestibule or service corridor; and

(D) is provided with:

(i) a soiled linen receiving, holding, and sorting room with a floor drain and forced exhaust to the exterior that;

(I) must always operate when soiled linen is held in this area; and

(II) may be combined with the washer section;

(ii) a general laundry work area that is separated by partitioning a washer section and a dryer section;

(iii) a storage area for laundry supplies;

(iv) a folding area;

(v) an adequate air supply and ventilation for staff comfort without having to rely on opening a door that is part of the fire barrier separation required by subparagraph (1)(A) of this subsection; and

(vi) provisions to exhaust heat from dryers and to separate dryer make-up air from the habitable work areas of the laundry.

(2) If linen is processed off site, the facility must provide:

(A) a soiled linen holding room with adequate forced exhaust ducted to the exterior; and

(B) a clean linen receiving, holding, inspection, sorting or folding, and storage room.

(3) An existing large Type A assisted living facility must ensure a laundry area for resident-use meets the following requirements.

(A) An existing large Type A assisted living facility must ensure only residential type washers and dryers are provided in a laundry area for resident-use.

(B) When more than three washers and three dryers are provided in one laundry area for resident use, the area must be:

(i) protected throughout by a fire sprinkler system;

or  
(ii) separated from the facility by a fire barrier having a one-hour fire resistance rating.

*§553.135. Fire Protection Systems Requirements for an Existing Large Type A Assisted Living Facility.*

(a) Fire alarm and smoke detection system. An existing large Type A assisted living facility must provide a manual fire alarm system meeting the requirements of 9.6, Fire Detection, Alarm, and Communication Systems, in NFPA 101, Chapter 9, Building Service and Fire Protection Equipment, as modified by this section.

(1) General. An existing large Type A assisted living facility must ensure the operation of any alarm initiating device automatically activates an audible or a visual alarm at the site.

(2) Smoke detectors.

(A) An existing large Type A assisted living facility must install smoke detectors in resident bedrooms, corridors, hallways, living rooms, dining rooms, offices, kitchens, laundries, attached garages used for car parking, and public or common areas, except as permitted in subparagraphs (B) - (D) of this paragraph.

(B) An existing large Type A assisted living facility may install heat detectors in lieu of smoke detectors in kitchens, laundries, and attached garages used for car parking.

(C) An existing large Type A assisted living facility located in a building constructed to meet the requirements of NFPA 101, Chapter 19, Existing Health Care Occupancies, may install a smoke detection system meeting the requirements of 19.3.4.5.1, Corridors, in NFPA 101, Chapter 19, Existing Health Care Occupancies, in lieu of the requirements found in subparagraphs (A) and (B) of this paragraph.

(D) An existing large Type A assisted living facility comprised of buildings containing living units with independent cooking equipment must additionally have:

(i) a smoke detector installed in all ~~[in]~~ resident bedrooms, corridors, hallways, living rooms, dining rooms, offices, kitchens and laundries within the living unit, that sounds an alarm only within the living unit; and

(ii) a heat detector installed in the kitchen within the living unit that activates the general alarm.

(3) Alarm control panel.

(A) An existing large Type A assisted living facility must provide a fire alarm control unit, or a fire alarm annunciator providing annunciation of all fire alarm, supervisory, and trouble signals by audible and visible indicators, in a location visible to staff at or near the staff area that is attended 24 hours a day.

(B) An existing large Type A assisted living facility is not required to ensure a fire alarm control unit or fire alarm annunciator is visible to staff if the fire alarm is monitored by devices carried by all staff.

(C) An existing large Type A assisted living facility must ensure a fire alarm panel indicates each floor and smoke compartment, as applicable, as a separate zone. Each zone must provide an alarm and trouble indication. When all alarm initiating devices are addressable and the status of each device is identified on the fire alarm panel, zone indication is not required.

(4) Fire alarm power source.

(A) An existing large Type A assisted living facility must ensure a fire alarm system is powered by a permanently-wired, dedicated branch circuit that is powered from a commercial power source in accordance with NFPA 70.

(B) An existing large Type A assisted living facility must provide a secondary, emergency power source meeting the requirements of NFPA 72.

(5) Emergency forces notification. An existing large Type A assisted living facility not equipped with a fire alarm system that automatically notifies emergency forces must immediately notify the fire department by telephone or other means.

(b) Fire sprinkler system.

(1) An existing large Type A assisted living facility may provide a fire sprinkler system meeting the requirements of NFPA 13 in accordance with 33.3.3.5.1, in NFPA 101, Chapter 33, Existing Residential Board and Care Occupancies.

(2) An existing large Type A assisted living facility located in a building that is four or fewer stories in height may provide a fire sprinkler system meeting the requirements of NFPA 13R in accordance with 33.3.3.5.1.1, in NFPA 101, Chapter 33, Existing Residential Board and Care Occupancies.

(3) An existing large Type A assisted living facility located in a high-rise building must be protected throughout by an approved, supervised automatic fire sprinkler system meeting the requirements of NFPA 13 according to 33.3.3.5.3, in NFPA 101, Chapter 33, Existing Residential Board and Care Occupancies.

(c) Protection of attics. An existing large Type A assisted living facility equipped with a fire sprinkler system must ensure an attic is protected according to the requirements of 33.3.3.5.4, in NFPA 101, Chapter 33, Existing Residential Board and Care Occupancies, not later than August 31, 2024.

(d) Portable fire extinguishers. An existing large Type A assisted living facility must provide and maintain portable fire extinguishers according to the requirements of NFPA 10.

(1) An existing large Type A assisted living facility must ensure all requirements of NFPA 10 are followed for all extinguisher types, including requirements for location, spacing, mounting heights, monthly inspections by staff, yearly inspections by a licensed agent, any necessary servicing, and hydrostatic testing as recommended by the manufacturer.

(2) An existing large Type A assisted living facility must ensure portable fire extinguishers are located in resident corridors so the travel distance from any point in the facility to an extinguisher is no more than 75 feet.

(3) An existing large Type A assisted living facility must ensure the actual size of any portable fire extinguisher meets the requirements of NFPA 10 for maximum floor area per unit covered, but an extinguisher must be no smaller than the following.

(A) A water-type portable fire extinguisher must have a rating of at least 1-A according to NFPA 10.

(B) All other portable fire extinguishers must have a rating of at least 2-A:5-B:C according to NFPA 10.

(C) A facility must provide at least one approved 20-B:C portable fire extinguisher in each laundry, kitchen and walk-in mechanical room.

(4) An existing large Type A assisted living facility must ensure portable fire extinguishers are installed on hangers or brackets supplied with the extinguisher or mounted in an approved cabinet.

(5) An existing large Type A assisted living facility must ensure a portable fire extinguisher is protected from impact or dislodgement.

(6) An existing large Type A assisted living facility must ensure a portable fire extinguisher is installed at an appropriate height.

(A) A portable fire extinguisher having a gross weight of up to 40 pounds must be installed so the top of the extinguisher is not more than five feet above the floor.

(B) A portable fire extinguisher having a gross weight greater than 40 pounds must be installed so the top of the extinguisher is not more than three and a half feet above the floor.

(C) A portable fire extinguisher must be installed so the clearance between the bottom of the extinguisher and the floor is at least four inches.

(7) A portable extinguisher provided in a hazardous room must be located as close as possible to the exit access door leading from the room and on the latch or knob side of the door.

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-3161



## DIVISION 7. EXISTING LARGE TYPE B ASSISTED LIVING FACILITIES

### 26 TAC §553.142

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of

services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively.

The amendment implements Texas Government Code §531.0055 and §531.033 and Texas Health and Safety Code §247.025 and §247.026.

§553.142. *Space Planning and Utilization Requirements for an Existing Large Type B Assisted Living Facility.*

(a) Resident bedrooms.

(1) An existing large Type B assisted living facility must ensure a resident bedroom or living unit is not located on a floor that is below finished ground level.

(2) An existing large Type B assisted living facility must ensure bedroom usable floor space is not less than 100 square feet for a bedroom housing one resident and not less than 80 square feet per resident for a bedroom housing multiple residents, unless otherwise permitted by paragraphs (3) and (4) of this subsection. Portions of a bedroom that are less than 10 feet in the smallest dimension cannot be included in the measurement of bedroom usable floor space, unless approved by the Texas Health and Human Services Commission (HHSC).

(3) An existing large Type B assisted living facility containing individual living units that include living space for the residents, in addition to their bedroom, may reduce the bedroom usable floor space for a bedroom housing multiple residents within a living unit by up to 10 percent of the required bedroom usable floor space, as long as the minimum dimensional criteria are maintained. An existing large Type B assisted living facility must not use this provision in conjunction with the provision permitting the reduction of common social-diversional areas or common dining areas found in subsection (g)(6) of this section.

(4) An existing large Type B assisted living facility must house no more than 50 percent of its licensed resident capacity in bedrooms housing three or more residents. A bedroom must not house more than four residents.

(b) Bedroom windows. An existing large Type B assisted living facility must ensure each bedroom has at least one operable window, with outside exposure, that meets the following requirements.

(1) The window sill [~~window sill~~] must be no higher than 44 inches above the floor.

(2) The window must be operable from the inside by a resident occupying the bedroom, [~~from the inside,~~] without the use of tools or special devices.

(3) The total area of all windows in a bedroom must not be less than eight percent of the minimum bedroom usable floor space required by subsection (a)(2) of this section.

(4) An existing bedroom window that does not meet these requirements may be continued in service, subject to approval by HHSC.

(c) Bedroom furnishings. When a resident does not provide their own furnishings, an existing large Type B assisted living facility must provide the following furnishings for each resident, which must be maintained in good repair:

- (1) a bed, including a mattress;

- (2) a chair;

- (3) a table or dresser; and

(4) private clothes storage space, which must have closable doors, and drawer space for clothing and personal belongings.

- (d) Arrangement of resident living units or rooms.

(1) An existing large Type B assisted living facility must ensure all resident rooms open on an exit, corridor, living area, or public area.

(2) An existing large Type B assisted living facility must ensure all resident rooms are arranged for convenient resident access to dining and recreation areas.

(e) Staff area. An existing large Type B assisted living facility must provide a staff area on each floor of an existing large Type B assisted living facility and in each separate building containing resident sleeping rooms. An existing large Type B assisted living facility must provide the following at each staff area:

- (1) a desk or writing surface;

- (2) a telephone; and

(3) a fire alarm control unit or a fire alarm annunciator panel meeting the requirements of §553.145 of this division (relating to Fire Protection Systems Requirements for an Existing Large Type B Assisted Living Facility).

(f) Resident toilet and bathing facilities. An existing large Type B assisted living facility must ensure each resident bedroom is served by a separate private toilet room, a connecting toilet room, or a general toilet room.

(1) An existing large Type B assisted living facility that houses individuals of more than one gender must provide toilet rooms for each gender, or individual single-occupant toilet rooms for use by any gender.

(2) An existing large Type B assisted living facility must ensure a general toilet room or bathing room is accessible from a corridor or public space.

(3) An existing large Type B assisted living facility must ensure resident toilet and bathing facilities comply with the requirements for resident-use plumbing fixtures according to §553.147 of this division (relating to Mechanical Requirements for an Existing Large Type B Assisted Living Facility).

- (g) Resident living areas.

(1) An existing large Type B assisted living facility must provide, in a common area of the facility, social-diversional spaces with appropriate furniture. Examples of social-diversional spaces include living rooms, day rooms, lounges, dens, game rooms, and sunrooms.

(A) An existing large Type B assisted living facility must provide a social-diversional space with a minimum area of 120 square feet in at least one space within a common area of the facility, regardless of number of residents or other provisions of this section permitting a reduction in the total minimum social-diversional space.

(B) An existing large Type B assisted living facility must ensure a social-diversional space has one or more exterior windows providing a view of the outside.

(C) An existing large Type B assisted living facility must ensure the total space for social-diversional areas is provided on a sliding scale according to the following table. No space smaller

than 120 square feet in area can be counted toward meeting this requirement.

Figure: 26 TAC §553.142(g)(1)(C) (No change.)

(2) An existing large Type B assisted living facility must provide a dining area with appropriate furniture.

(A) An existing large Type B assisted living facility must provide a dining space with a minimum area of 120 square feet in at least one space within a common area of the facility, regardless of the number of residents or other provisions of this section permitting a reduction in the total minimum dining space.

(B) An existing large Type B assisted living facility must ensure a dining space has one or more exterior windows providing a view of the outside.

(C) An existing large Type B assisted living facility must ensure a dining area is accessible from resident living units or bedrooms via a covered path.

(D) An existing large Type B assisted living facility must ensure the total space for dining areas is provided on a sliding scale according to the following table. No space smaller than 120 square feet in area can be counted toward meeting this requirement. Figure: 26 TAC §553.142(g)(2)(D) (No change.)

(3) An existing large Type B assisted living facility may provide a total living and dining area combined in a single or interconnecting space where the minimum area of the combined space is at least 240 square feet.

(4) For calculation purposes, where a means of egress passes through a living or dining area, an existing large Type B assisted living facility must deduct a pathway, equal to the minimum corridor width, according to §553.143 of this division (relating to Means of Egress Requirements for an Existing Large Type B Assisted Living Facility), from the measured area of the space.

(5) An existing large Type B assisted living facility must ensure a means of egress through a resident living or dining area is kept clear of obstructions, except as permitted by NFPA 101.

(6) Subject to the limitations of paragraphs (1)(A) and (2)(A) of this subsection and subparagraphs (A) and (B) of this paragraph, an existing large Type B assisted living facility containing individual living units may reduce the minimum square footage required by paragraphs (1)(C) and (2)(D) of this subsection for total common social-diversional or common dining areas, respectively, by including up to 10 percent of the individual living unit area in the calculation of the total social-diversional area or total dining area.

(A) The individual living unit area contributed toward total social-diversional space or total dining space must not be counted more than once per living unit but may be split between social-diversional and dining space calculations.

(B) An existing large Type B assisted living facility must not utilize both this paragraph and subsection (a)(3) of this section to reduce both the minimum square footage otherwise required for its common social-diversional or dining areas and the minimum square footage of usable floor space otherwise required in bedrooms housing multiple residents within a living unit.

(h) Storage areas. An existing large Type B assisted living facility must provide sufficient separate storage spaces or areas for at least:

(1) administrative records, office supplies, and other storage needs related to administration;

(2) medications and medical supplies;

(3) equipment supplied by the facility for resident needs, including wheelchairs, walkers, beds, and mattresses;

(4) cleaning supplies, including for janitorial needs;

(5) food;

(6) clean linens and towels, if the facility furnishes linen;

(7) soiled linen, if the facility furnishes linen; and

(8) lawn and maintenance equipment.

(i) General kitchen.

~~[(1) An existing large Type B assisted living facility that prepares food off-site or in a separate building must ensure food is served at the proper temperature and transported in a sanitary manner.]~~

~~[(2) An existing large Type B assisted living facility must ensure a kitchen meets the requirements of the local fire, building, and health codes.]~~

~~(1) [(3)] An existing large Type B assisted living facility that prepares food onsite [on-site] must provide a kitchen or dietary area that includes [to meet the general food service needs of the residents and must include] space for:~~

~~(A) storage, refrigeration, preparation, and serving of food;~~

~~(B) dish and utensil cleaning, which includes:~~

~~(i) a three compartment sink large enough to immerse pots and pans; and~~

~~(ii) a mechanical dishwasher for washing and sanitizing dishes;~~

~~(C) a food preparation sink;~~

~~(D) a handwashing station in every food preparation area with a supply of hot and cold water, soap, a towel dispenser, and a waste receptacle;~~

~~(E) a handwashing lavatory that is readily accessible to every dish room area;~~

~~(F) refuse storage and removal; and~~

~~(G) floor drains in the kitchen and dishwashing areas, unless the facility was licensed before January 6, 2014, and the facility can keep the floor clean. [; and]~~

~~[(H) a grease trap, if required by local authorities.]~~

~~(2) [(4)] An existing large Type B assisted living facility must ensure a kitchen is designed so that room temperature, at peak load or in the summer, does not exceed 85 degrees Fahrenheit, measured throughout the room at five feet above the floor.~~

~~(3) [(5)] An existing large Type B assisted living facility must ensure the volume of supply air provided takes into account the large quantities of air that may be exhausted at the range hood and dishwashing area.~~

~~(4) [(6)] An existing large Type B assisted living facility must provide a supply of hot and cold water.~~

~~(A) Hot water for sanitizing purposes must be 180 degrees Fahrenheit.~~

~~(B) When chemical sanitizers are used, hot water must meet the manufacturer's suggested temperature.~~

(5) [(7)] An existing large Type B assisted living facility must maintain a separation between soiled and clean dish areas.

(6) [(8)] An existing large Type B assisted living facility must maintain a separation of air flow between soiled and clean dish areas.

(j) Kitchen restrooms.

(1) An existing large Type B assisted living facility must provide a restroom facility for kitchen staff, including a lavatory, except as described in paragraphs (2) and (3) of this subsection.

(A) The restroom facility must be directly accessible to kitchen staff without traversing resident-use areas.

(B) The restroom must open into a service corridor or vestibule and not open directly into the kitchen.

(2) An existing large Type B assisted living facility licensed before January 6, 2014, may provide a staff restroom located outside the kitchen area.

(3) An existing large Type B assisted living facility must ensure a kitchen serving a neighborhood or household provides a restroom accessible to kitchen staff that is in close proximity to the kitchen.

(k) Kitchen janitorial facility.

(1) An existing large Type B assisted living facility must provide janitorial facilities exclusively for the kitchen and located in the kitchen area, except as described in paragraphs (2) and (3) of this subsection.

(2) An existing large Type B assisted living facility licensed before January 6, 2014, must provide a janitorial facility for the kitchen. The janitorial facility may be located outside the kitchen if sanitary procedures are used to reduce the possibility of cross-contamination.

(3) An existing large Type B assisted living facility must ensure a kitchen serving a neighborhood or household provides a janitorial facility exclusively for the kitchen that is close to the kitchen.

(4) An existing large Type B assisted living facility must provide a garbage can or cart washing area with a floor drain and a supply of hot water. The garbage can or cart washing area may be in the interior or on the exterior of the facility.

(5) An existing large Type B assisted living facility must provide floor drains in the kitchen and dishwashing areas, unless the facility was licensed before January 6, 2014, and the facility can keep the floors clean.

[(6) If required by local authorities, an existing large Type B assisted living facility must provide a grease trap.]

(l) Finishes.

(1) An existing large Type B assisted living facility must provide non-absorbent, smooth finishes or surfaces on all kitchen floors, walls, and ceilings.

(2) An existing large Type B assisted living facility must provide non-absorbent, smooth, cleanable finishes on counter surfaces and all cabinet surfaces.

(3) An existing large Type B assisted living facility must ensure surfaces are capable of being routinely cleaned and sanitized to maintain a healthful environment.

(m) Vision panels in communicating doors.

(1) An existing large Type B assisted living facility must ensure a door between a kitchen and a dining, serving, or resident-use area is provided with a vision panel with fixed safety glass. Where the door is a required fire door or is in a fire barrier or other fire resistance-rated enclosure, the vision panel, including the glazing and the frame, must meet the requirements of NFPA 101.

(2) Existing doors between kitchens and adjacent spaces that are not provided with vision panels may be continued in service subject to approval by HHSC.

(n) Auxiliary serving kitchens.

(1) An existing large Type B assisted living facility must ensure an auxiliary serving kitchen is equipped to maintain required food temperatures.

(2) An existing large Type B assisted living facility must ensure an auxiliary serving kitchen is equipped with a handwashing lavatory meeting the requirements of this section.

(3) An existing large Type B assisted living facility must ensure all surfaces in an auxiliary serving kitchen meet the requirements for finishes in this section.

(o) Protection of cooking operations.

(1) An existing large Type B assisted living facility must protect cooking facilities according to the requirements in §553.146 of this division (relating to Hazardous Area Requirements for an Existing Large Type B Assisted Living Facility) except as provided for in paragraph (3) of this subsection.

(2) The following commercial or residential cooking equipment used only for reheating, and not for meal preparation, is not required to comply with the requirements of §553.146 of this division:

(A) microwave ovens;

(B) hot plates; or

(C) toasters.

(3) A facility providing a kitchen serving a neighborhood or household may continue to operate the kitchen without modification subject to approval by HHSC.

(p) Food storage areas.

(1) An existing large Type B assisted living facility must provide a food storage area large enough to consistently maintain a four-day minimum supply of non-perishable food. A food storage area may be located away from the food preparation area as long as there is space adjacent to the kitchen for necessary daily usage.

(2) An existing large Type B assisted living facility must provide dollies, racks, pallets, wheeled containers, or shelving so that food is not stored on the floor.

(A) An existing large Type B assisted living facility must ensure shelves are adjustable wire type shelving.

(B) An existing large Type B assisted living facility licensed before January 6, 2014, may use wood shelves provided the shelves are sealed and clean.

(3) An existing large Type B assisted living facility must provide non-absorbent finishes or surfaces on all floors and walls in food storage areas.

(4) An existing large Type B assisted living facility must provide effective ventilation in dry food storage areas to ensure positive air circulation.

(5) An existing large Type B assisted living facility must ensure the maximum room temperature in a food storage area does not exceed 85 degrees Fahrenheit at any time when measured at the highest food storage level, but not less than five feet above the floor.

(q) Laundry and linen services.

(1) An existing large Type B assisted living facility that co-mingles and processes laundry onsite [on-site] in a central location, regardless of the type of laundry equipment used, must ensure a laundry area:

(A) is separated from the assisted living building by a fire barrier having a one-hour fire resistance rating, which must extend from the floor to the floor or roof above;

(B) is protected throughout by a fire sprinkler system;

(C) has access doors that open to the exterior or to an interior non-resident use area, such as a vestibule or service corridor; and

(D) is provided with:

(i) a soiled linen receiving, holding, and sorting room with a floor drain and forced exhaust to the exterior which;

(I) must always operate when soiled linen is held in this area; and

(II) may be combined with the washer section;

(ii) a general laundry work area that is separated by partitioning a washer section and a dryer section with;

(iii) a storage area for laundry supplies;

(iv) a folding area;

(v) an adequate air supply and ventilation for staff comfort without having to rely on opening a door that is part of the fire barrier separation required by paragraph (1)(A) of this subsection; and

(vi) provisions to exhaust heat from dryers and to separate dryer make-up air from the habitable work areas of the laundry.

(2) If linen is processed off site, the facility must provide:

(A) a soiled linen holding room with adequate forced exhaust ducted to the exterior; and

(B) a clean linen receiving, holding, inspection, sorting or folding, and storage room.

(3) An existing large Type B assisted living facility must ensure a laundry area for resident-use meets the following requirements.

(A) An existing large Type B assisted living facility must ensure only residential type washers and dryers are provided in a laundry area for resident-use.

(B) When more than three washers and three dryers are provided in one laundry area for resident-use, the area must be:

(i) protected throughout by a fire sprinkler system; or

(ii) separated from the facility by a fire barrier having a one-hour fire resistance rating.

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-3161



## DIVISION 8. NEW SMALL TYPE A ASSISTED LIVING FACILITIES

### 26 TAC §§553.211, 553.212, 553.215

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 rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively.

The amendments implement Texas Government Code §531.0055 and §531.033 and Texas Health and Safety Code §247.025 and §247.026.

§553.211. *Construction Requirements for a New Small Type A Assisted Living Facility.*

(a) Structurally sound. A new small Type A assisted living facility must ensure any building is structurally sound regarding actual or expected dead, live, and wind loads according to applicable building codes, as determined and enforced by local authorities.

(b) Separation of occupancies. A new small Type A assisted living facility must be separated from other occupancies including other assisted living facilities, hospitals, or nursing facilities, by a fire barrier having at least a 2-hour fire resistance rating constructed according to the requirements of NFPA 101 and its referenced standards.

(c) Sheathing.

(1) Except as provided in paragraph (3) of this subsection a new small Type A assisted living facility must ensure all buildings used by residents are sheathed with materials providing a fire resistance rating as follows.

(A) Interior wall and ceiling surfaces must have finished surfaces, substrates, or sheathing with a fire resistance rating of not less than 20 minutes.

(B) Columns, beams, girders, or trusses that are not enclosed within walls or ceilings must be encased in materials having a fire resistance rating of not less than 20 minutes.

(2) A sprinkler system does not substitute for the minimum sheathing requirements under paragraph (1) of this subsection.

(3) A building constructed to meet the minimum building construction type requirements of 18.1.6, Minimum Construction Requirements, in NFPA 101, Chapter 18, New Health Care Occupancies, is not also required to be sheathed.

(d) Interior finish. A new small Type A assisted living facility must ensure interior wall and ceiling finish materials meet the requirements of 32.2.3.3.2, Interior Wall and Ceiling Finish, in NFPA 101, Chapter 32, New Residential Board and Care Occupancies.

(e) Vertical openings. A new small Type A assisted living facility must ensure vertical openings are protected according to the requirements of 32.2.3.1, Protection of Vertical Openings, in NFPA 101, Chapter 32, New Residential Board and Care Occupancies.

§553.212. *Space Planning and Utilization Requirements for a New Small Type A Assisted Living Facility.*

(a) Resident bedrooms.

(1) A new small Type A assisted living facility must ensure a resident bedroom or living unit is not located on a floor that is below finished ground level.

(2) A new small Type A assisted living facility must ensure bedroom usable floor space is not less than 80 square feet for a bedroom housing one resident and not less than 60 square feet per resident for a bedroom housing multiple residents, unless otherwise permitted by paragraphs (3) and (4) of this subsection. Portions of a bedroom that are less than eight feet in the smallest dimension cannot be included in the measurement of bedroom usable floor space, unless approved by the Texas Health and Human Services Commission.

(3) A new small Type A assisted living facility containing individual living units that include living space for the residents in addition to their bedrooms may reduce the bedroom usable floor space for a bedroom housing multiple residents within a living unit by up to 10 percent of the required bedroom usable floor space, as long as the minimum dimensional criteria are maintained. A new small Type A assisted living facility may not use this provision in conjunction with the provision permitting the reduction of common social-diversional areas or common dining areas found in subsection (g)(5) of this section.

(4) A new small Type A assisted living facility must house no more than 50 percent of its licensed resident capacity in bedrooms housing three or more residents. A bedroom must not house more than four residents.

(b) Bedroom windows. A new small Type A assisted living facility must ensure each bedroom has at least one operable window with outside exposure and meeting the following requirements.

(1) The window sill [wɪndəʊ sɪl] must be no higher than 44 inches above the floor.

(2) The window must be operable from the inside by all residents occupying the bedroom, [~~from the inside,~~] without the use of tools or special devices.

(3) The total area of all windows in a bedroom must not be less than eight percent of the minimum bedroom usable floor space in subsection (a)(2) [(a)(3)] of this section.

(c) Bedroom furnishings. When a resident does not provide their own furnishings, a new small Type A assisted living facility must provide the following furnishings for each resident, which must be maintained in good repair:

(1) a bed, including a mattress;

(2) a chair;

(3) a table or dresser; and

(4) private clothes storage space, which must include closable doors, and drawer space for clothing and personal belongings.

(d) Arrangement of resident living units or rooms.

(1) A new small Type A assisted living facility must ensure all resident rooms open on an exit, corridor, living area, or public area.

(2) A new small Type A assisted living facility must ensure all resident rooms are arranged for convenient resident access to dining and recreation areas.

(e) Staff area. A new small Type A assisted living facility must provide a staff area on each floor of a new small Type A assisted living facility and in each separate building containing resident sleeping rooms, except as permitted under paragraph (1) of this subsection.

(1) A new small Type A assisted living facility that is not more than two stories in height and is composed of separate buildings grouped together and connected by covered walks, is not required to provide a staff area on each floor or in each building, provided that a staff area is located not more than 200 feet walking distance from the farthest resident living unit.

(2) A new small Type A assisted living facility must provide the following at each staff area:

(A) a desk or writing surface;

(B) a telephone; and

(C) a fire alarm control unit or a fire alarm annunciator panel meeting the requirements of §553.215 of this division (relating to Fire Protection Systems Requirements for a New Small Type A Assisted Living Facility).

(f) Resident toilet and bathing facilities. A new small Type A assisted living facility must ensure each resident bedroom is served by a separate private toilet room, a connecting toilet room, or a general toilet room.

(1) A new small Type A assisted living facility that houses individuals of more than one gender must provide toilet rooms for each gender, or individual single-occupant toilet rooms for use by any gender.

(2) A new small Type A assisted living facility must ensure a general toilet room or bathing room is accessible from a corridor or public space.

(3) A new small Type A assisted living facility must ensure resident toilet and bathing facilities comply with the requirements for resident-use plumbing fixtures according to §553.217 of this division (relating to Mechanical Requirements for a New Small Type A Assisted Living Facility).

(g) Resident living areas.

(1) A new small Type A assisted living facility must provide, in a common area of the facility, social-diversional spaces with appropriate furniture. Examples of social-diversional spaces include living rooms, day rooms, lounges, dens, game rooms, and sunrooms.

(A) A new small Type A assisted living facility must provide a social-diversional space with a minimum area of 120 square feet in at least one space within a common area of the facility, regardless of the number of residents or other provisions of this section permitting a reduction in the total minimum social-diversional space.

(B) A new small Type A assisted living facility must ensure a social-diversional space has one or more exterior windows providing a view of the outside.

(C) A new small Type A assisted living facility must ensure the total space for social-diversional area provides an area of at least 15 square feet for each resident in the licensed capacity of the



facility. No space smaller than 120 square feet in area can be counted toward meeting this requirement.

(2) A new small Type A assisted living facility must provide a dining area with appropriate furniture.

(A) A new small Type A assisted living facility must provide a dining space with a minimum area of 120 square feet in at least one space within a common area of the facility, regardless of the number of residents or other provisions of this section permitting a reduction in the total minimum dining space.

(B) A new small Type A assisted living facility must ensure a dining space has one or more exterior windows providing a view of the outside.

(C) A new small Type A assisted living facility must ensure a dining area is accessible from resident living units or bedrooms via a covered path.

(D) A new small Type A assisted living facility must ensure the total space for dining areas provides an area of at least 15 square feet for each resident in the licensed capacity of the facility. No space smaller than 120 square feet in area can be counted toward meeting this requirement.

(3) A new small Type A assisted living facility may provide a total living and dining area combined in a single or interconnecting space where the minimum area of the combined space is at least 240 square feet.

(4) A new small Type A assisted living facility must ensure an escape route through a resident living or dining area is kept clear of obstructions.

(5) Subject to the limitations of paragraphs (1)(A) and (2)(A) of this subsection and subparagraphs (A) and (B) of this paragraph, a new small Type A assisted living facility containing individual living units may reduce the minimum square footage required by paragraphs (1)(C) and (2)(D) of this subsection for total common social diversional or common dining areas, respectively, by including up to 10 percent of the individual living unit area in the calculation of the total social-diversional area or total dining area.

(A) The individual living unit area contributed toward total social-diversional space or total dining space must not be counted more than once per living unit but may be split between social-diversional and dining space calculations.

(B) A new small Type A assisted living facility must not utilize both this paragraph and subsection (a)(3) of this section to reduce both the minimum square footage otherwise required for its common social-diversional or dining areas and the minimum square footage of usable floor space otherwise required in bedrooms housing multiple residents within a living unit.

(h) Storage areas. A new small Type A assisted living facility must provide sufficient separate storage spaces or areas for at least:

- (1) administrative records, office supplies, and other storage needs related to administration;
- (2) medications and medical supplies;
- (3) equipment supplied by the facility for resident needs, including wheelchairs, walkers, beds, and mattresses;
- (4) cleaning supplies, including for janitorial needs;
- (5) food;
- (6) clean linens and towels, if the facility furnishes linen;

(7) soiled linen, if the facility furnishes linen; and

(8) lawn and maintenance equipment.

(i) Kitchen.

~~[(1) A new small Type A assisted living facility that prepares food off-site or in a separate building must ensure food is served at the proper temperature and transported in a sanitary manner.]~~

~~[(2) A new small Type A assisted living facility that prepares food on-site must provide a kitchen or dietary area meeting the general food service needs of the residents and must ensure that the kitchen:]~~

~~[(A) is equipped to store, refrigerate, prepare and serve food;]~~

~~[(B) is equipped to clean and sterilize;]~~

~~[(C) provides for refuse storage and removal; and]~~

~~[(D) meets the requirements of the local fire, building, and health codes.]~~

~~[(3)] A new small Type A assisted living facility must ensure a kitchen uses only residential cooking equipment or, if the kitchen uses commercial cooking equipment, that the facility protects the kitchen's cooking operations as required in §553.216 of this division (relating to Hazardous Area Requirements for a New Small Type A Assisted Living Facility).~~

*§553.215. Fire Protection Systems Requirements for a New Small Type A Assisted Living Facility.*

(a) Fire alarm and smoke detection system. A new small Type A assisted living facility must provide a manual fire alarm system meeting the requirements of 9.6, Fire Detection, Alarm, and Communication Systems, in NFPA 101, Chapter 9, Building Service and Fire Protection Equipment, as modified by this section.

(1) General. A new small Type A assisted living facility must ensure the operation of any alarm initiating device automatically activates the manual fire alarm system evacuation alarm for the entire building.

(2) Smoke detectors.

(A) A new small Type A assisted living facility must install smoke detectors in resident bedrooms, corridors, hallways, living rooms, dining rooms, offices, kitchens, laundries, attached garages used for car parking, and public or common areas, except as permitted in subparagraphs (B) and (C) of this paragraph.

(B) A new small Type A assisted living facility may install heat detectors in lieu of smoke detectors in kitchens, laundries, and attached garages used for car parking.

(C) A new small Type A assisted living facility located in a building constructed to meet the requirements of NFPA 101, Chapter 18, New Health Care Occupancies, may install a smoke detection system meeting the requirements of 18.3.4.5.3, Nursing Homes, in NFPA 101, Chapter 18, New Health Care Occupancies, in lieu of the requirements found in subparagraph (A) of this paragraph.

(3) Alarm control panel.

(A) A new small Type A assisted living facility must provide a fire alarm control unit, or a fire alarm annunciator providing annunciation of all fire alarm, supervisory, and trouble signals by audible and visible indicators, in a location visible to staff at or near the staff area that is attended 24 hours a day.

(B) A new small Type A assisted living facility is not required to ensure a fire alarm control unit or fire alarm annunciator is visible to staff if the fire alarm is monitored by devices carried by all staff.

(4) Fire alarm power source.

(A) A new small Type A assisted living facility must ensure a fire alarm system is powered by a permanently-wired, dedicated branch circuit that is powered from a commercial power source in accordance with NFPA 70.

(B) A new small Type A assisted living facility must provide a secondary, emergency power source meeting the requirements of NFPA 72.

(b) Fire sprinkler system.

(1) In accordance with requirements in 32.2.3.5, Extinguishment Requirements in NFPA 101, Chapter 32, New Residential Board and Care Occupancies, a new small Type A assisted living facility must provide: [A new small Type A assisted living facility must provide one of the following fire sprinkler systems according to the requirements of 32.2.3.5, Extinguishment Requirements, in NFPA 101, Chapter 32, New Residential Board and Care Occupancies.]

(A) a [A] fire sprinkler system meeting the requirements of NFPA 13 in accordance with 32.2.3.5.3;

(B) a [A] fire sprinkler system meeting the requirements of NFPA 13R in accordance with 32.2.3.5.3.1; or

(C) a [A] fire sprinkler system meeting the requirements of NFPA 13D in accordance with 32.2.3.5.3.2.

(2) A new small Type A assisted living facility must ensure a fire sprinkler system is supervised according to 9.7.2, Supervision, in NFPA 101, Chapter 9, Building Service and Fire Protection Equipment [provide electrical supervision of any fire sprinkler system according to the requirements of 32.2.3.5.4, in NFPA 101, Chapter 32, New Residential Board and Care Occupancies].

(c) Protection of attics. A new small Type A assisted living facility must ensure an attic is protected according to the requirements of 32.2.3.5.7, in NFPA 101, Chapter 32, New Residential Board and Care Occupancies.

(d) Portable fire extinguishers. A new small Type A assisted living facility must provide and maintain portable fire extinguishers according to the requirements of NFPA 10.

(1) A new small Type A assisted living facility must ensure all requirements of NFPA 10 are followed for all extinguisher types, including requirements for location, spacing, mounting heights, monthly inspections by staff, yearly inspections by a licensed agent, any necessary servicing, and hydrostatic testing as recommended by the manufacturer.

(2) A new small Type A assisted living facility must ensure portable fire extinguishers are located so the travel distance from any point in the facility to an extinguisher is no more than 75 feet.

(3) A new small Type A assisted living facility must ensure the actual size of any portable fire extinguisher meets the requirements of NFPA 10 for maximum floor area per unit covered, but an extinguisher must be no smaller than the following.

(A) A water-type portable fire extinguisher must have a rating of at least 1-A according to NFPA 10.

(B) All other portable fire extinguishers must have a rating of at least 2-A:10-B:C according to NFPA 10.

(4) A new small Type A assisted living facility must ensure portable fire extinguishers are installed on hangers or brackets supplied with the extinguisher or mounted in an approved cabinet.

(5) A new small Type A assisted living facility must ensure a portable fire extinguisher is protected from impact or dislodgement.

(6) A new small Type A assisted living facility must ensure a portable fire extinguisher is installed at an appropriate height.

(A) A portable fire extinguisher having a gross weight of up to 40 pounds must be installed so the top of the extinguisher is not more than five feet above the floor.

(B) A portable fire extinguisher having a gross weight greater than 40 pounds must be installed so the top of the extinguisher is not more than three and a half feet above the floor.

(C) A portable fire extinguisher must be installed so the clearance between the bottom of the extinguisher and the floor is at least four inches.

(7) A portable extinguisher provided in a hazardous room must be located as close as possible to the door leading from the room and on the latch or knob side of the door.

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-3161

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**DIVISION 9. NEW SMALL TYPE B ASSISTED LIVING FACILITIES**

**26 TAC §553.222, §553.225**

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 rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively.

The amendments implement Texas Government Code §531.0055 and §531.033 and Texas Health and Safety Code §247.025 and §247.026.

§553.222. *Space Planning and Utilization Requirements for a New Small Type B Assisted Living Facility.*

(a) Resident bedrooms.

(1) A new small Type B assisted living facility must ensure a resident bedroom or living unit is not located on a floor that is below finished ground level.

(2) A new small Type B assisted living facility must ensure bedroom usable floor space is not less than 100 square feet for a bedroom housing one resident and not less than 80 square feet per resident for a bedroom housing multiple residents, unless otherwise permitted by paragraphs (3) and (4) of this subsection. Portions of a bedroom that are less than 10 feet in the smallest dimension cannot be included in the measurement of bedroom usable floor space, unless approved by the Texas Health and Human Services Commission.

(3) A new small Type B assisted living facility containing individual living units that include living space for the residents, in addition to their bedroom, may reduce the bedroom usable floor space for a bedroom housing multiple residents within a living unit by up to 10 percent of the required bedroom usable floor space, as long as the minimum dimensional criteria are maintained. A new small Type B assisted living facility must not use this provision in conjunction with the provision permitting the reduction of common social-diversional areas or common dining areas found in subsection (g)(5) of this section.

(4) A new small Type B assisted living facility must house no more than 50 percent of its licensed resident capacity in bedrooms housing three or more residents. A bedroom must not house more than four residents.

(b) Bedroom windows. A new small Type B assisted living facility must ensure each bedroom has at least one operable window with outside exposure and meeting the following requirements.

(1) The windowsill [~~window sill~~] must be no higher than 44 inches above the floor.

(2) The window must be operable from the inside by a resident occupying the bedroom, [~~from the inside,~~] without the use of tools or special devices.

(3) The total area of all windows in a bedroom must not be less than eight percent of the minimum bedroom usable floor space required by subsection (a)(2) [~~(a)(3)~~] of this section.

(c) Bedroom furnishings. When a resident does not provide their own furnishings, a new small Type B assisted living facility must provide the following furnishings for each resident, which must be maintained in good repair:

- (1) a bed, including a mattress;
- (2) a chair;
- (3) a table or dresser; and
- (4) private clothes storage space, which must have closable doors, and drawer space for clothing and personal belongings.

(d) Arrangement of resident living units or rooms.

(1) A new small Type B assisted living facility must ensure all resident rooms open on an exit, corridor, living area, or public area.

(2) A new small Type B assisted living facility must ensure all resident rooms are arranged for convenient resident access to dining and recreation areas.

(e) Staff area. A new small Type B assisted living facility must provide a staff area on each floor of a new small Type B assisted living facility and in each separate building containing resident sleeping rooms. A new small Type B assisted living facility must provide the following at each staff area:

- (1) a desk or writing surface;
- (2) a telephone; and

(3) a fire alarm control unit or a fire alarm annunciator panel meeting the requirements of §553.225 of this division (relating to Fire Protection Systems Requirements for a New Small Type B Assisted Living Facility).

(f) Resident toilet and bathing facilities. A new small Type B assisted living facility must ensure each resident bedroom is served by a separate private toilet room, a connecting toilet room, or a general toilet room.

(1) A new small Type B assisted living facility that houses individuals of more than one gender must provide toilet rooms for each gender, or individual single-occupant toilet rooms for use by any gender.

(2) A new small Type B assisted living facility must ensure a general toilet room or bathing room is accessible from a corridor or public space.

(3) A new small Type B assisted living facility must ensure resident toilet and bathing facilities comply with the requirements for resident-use plumbing fixtures according to §553.227 of this division (relating to Mechanical Requirements for a New Small Type B Assisted Living Facility).

(g) Resident living areas.

(1) A new small Type B assisted living facility must provide, in a common area of the facility, social-diversional spaces with appropriate furniture. Examples of social-diversional spaces include living rooms, day rooms, lounges, dens, game rooms, and sunrooms.

(A) A new small Type B assisted living facility must provide a social-diversional space with a minimum area of 120 square feet in at least one space within a common area of the facility, regardless of the number of residents or other provisions of this section permitting a reduction in the total minimum social-diversional space.

(B) A new small Type B assisted living facility must ensure a social-diversional space has one or more exterior windows providing a view of the outside.

(C) A new small Type B assisted living facility must ensure the total space for social-diversional area provides an area of at least 15 square feet for each resident in the licensed capacity of the facility. No space smaller than 120 square feet in area can be counted toward meeting this requirement.

(2) A new small Type B assisted living facility must provide a dining area with appropriate furniture.

(A) A new small Type B assisted living facility must provide a dining space with a minimum area of 120 square feet in at least one space within a common area of the facility, regardless of the number of residents or other provisions of this section permitting a reduction in the total minimum dining space.

(B) A new small Type B assisted living facility must ensure a dining space has one or more exterior windows providing a view of the outside.

(C) A new small Type B assisted living facility must ensure a dining area is accessible from resident living units or bedrooms via a covered path.

(D) A new small Type B assisted living facility must ensure the total space for dining areas provides an area of at least 15 square feet for each resident in the licensed capacity of the facility. No space smaller than 120 square feet in area can be counted toward meeting this requirement.

(3) A new small Type B assisted living facility may provide a total living and dining area combined in a single or interconnecting space where the minimum area of the combined space is at least 240 square feet.

(4) A new small Type B assisted living facility must ensure an escape route through a resident living or dining area is kept clear of obstructions.

(5) Subject to the limitations of paragraphs (1)(A) and (2)(A) of this subsection and subparagraphs (A) and (B) of this paragraph, a new small Type B assisted living facility containing individual living units may reduce the minimum square footage required by paragraphs (1)(C) and (2)(D) of this subsection for total common social-diversional or common dining areas, respectively, by including up to 10 percent of the individual living unit area in the calculation of the total social-diversional area or total dining area.

(A) The individual living unit area contributed toward total social-diversional space or total dining space must not be counted more than once per living unit but may be split between social-diversional and dining space calculations.

(B) A new small Type B assisted living facility must not utilize both this paragraph and subsection (a)(3) of this section to reduce both the minimum square footage otherwise required for its common social-diversional or dining areas and the minimum square footage of usable floor space otherwise required in bedrooms housing multiple residents within a living unit.

(h) Storage areas. A new small Type B assisted living facility must provide sufficient separate storage spaces or areas for at least:

- (1) administrative records, office supplies, and other storage needs related to administration;
- (2) medications and medical supplies;
- (3) equipment supplied by the facility for resident needs, including wheelchairs, walkers, beds, and mattresses;
- (4) cleaning supplies, including for janitorial needs;
- (5) food;
- (6) clean linens and towels, if the facility furnishes linen;
- (7) soiled linen, if the facility furnishes linen; and
- (8) lawn and maintenance equipment.

(i) Kitchen.

~~[(1) A new small Type B assisted living facility that prepares food off-site or in a separate building must ensure food is served at the proper temperature and transported in a sanitary manner.]~~

~~[(2) A new small Type B assisted living facility that prepares food on-site must provide a kitchen or dietary area meeting the general food service needs of the residents and must ensure that the kitchen:]~~

~~[(A) is equipped to store, refrigerate, prepare, and serve food;]~~

~~[(B) is equipped to clean and sterilize;]~~

~~[(C) provides for refuse storage and removal; and]~~

~~[(D) meets the requirements of the local fire, building, and health codes.]~~

~~[(3)] A new small Type B assisted living facility must ensure a kitchen uses only residential cooking equipment or, if the kitchen uses commercial cooking equipment, that the facility protects~~

the kitchen's cooking operations, as required in §553.226 of this division (relating to Hazardous Area Requirements for a New Small Type B Assisted Living Facility).

*§553.225. Fire Protection Systems Requirements for a New Small Type B Assisted Living Facility.*

(a) Fire alarm and smoke detection system. A new small Type B assisted living facility must provide a manual fire alarm system meeting the requirements of 9.6, Fire Detection, Alarm, and Communication Systems, in NFPA 101, Chapter 9, Building Service and Fire Protection Equipment, as modified by this section.

(1) General. A new small Type B assisted living facility must ensure the operation of any alarm initiating device automatically activates the manual fire alarm system evacuation alarm for the entire building.

(2) Smoke detectors.

(A) A new small Type B assisted living facility must install smoke detectors in resident bedrooms, corridors, hallways, living rooms, dining rooms, offices, kitchens, laundries, attached garages used for car parking, and public or common areas, except as permitted in subparagraphs (B) and (C) of this paragraph.

(B) A new small Type B assisted living facility may install heat detectors in lieu of smoke detectors in kitchens, laundries, and attached garages used for car parking.

(C) A new small Type B assisted living facility located in a building constructed to meet the requirements of NFPA 101, Chapter 18, New Health Care Occupancies, may install a smoke detection system meeting the requirements of 18.3.4.5.3, Nursing Homes, in NFPA 101, Chapter 18, New Health Care Occupancies, in lieu of the requirements found in subparagraph (A) of this paragraph.

(3) Alarm control panel.

(A) A new small Type B assisted living facility must provide a fire alarm control unit, or a fire alarm annunciator providing annunciation of all fire alarm, supervisory, and trouble signals by audible and visible indicators, in a location visible to staff at or near the staff area that is attended 24 hours a day.

(B) A new small Type B assisted living facility is not required to ensure a fire alarm control unit or fire alarm annunciator is visible to staff if the fire alarm is monitored by devices carried by all staff.

(4) Fire alarm power source.

(A) A new small Type B assisted living facility must ensure a fire alarm system is powered by a permanently wired [~~permanently-wired~~], dedicated branch circuit that is powered from a commercial power source in accordance with NFPA 70.

(B) A new small Type B assisted living facility must provide a secondary, emergency power source meeting the requirements of NFPA 72.

(b) Fire sprinkler system.

(1) In accordance with 32.2.3.5, Extinguishment Requirements, in NFPA 101, Chapter 32, New Residential Board and Care Occupancies, a new small Type B assisted living facility must provide: [A new small Type B assisted living facility must provide one of the following fire sprinkler systems according to the requirements of 32.2.3.5, Extinguishment Requirements, in NFPA 101, Chapter 32, New Residential Board and Care Occupancies.]

(A) a [A] fire sprinkler system meeting the requirements of NFPA 13 in accordance with 32.2.3.5.3;

(B) a [A] fire sprinkler system meeting the requirements of NFPA 13R in accordance with 32.2.3.5.3.1; or

(C) a [A] fire sprinkler system meeting the requirements of NFPA 13D in accordance with 32.2.3.5.3.2.

(2) A new small Type B assisted living facility must ensure a fire sprinkler system is supervised according to 9.7.2, Supervision, in NFPA 101, Chapter 9, Building Service and Fire Protection Equipment. [provide electrical supervision of any fire sprinkler system according to the requirements of 32.2.3.5.4, in NFPA 101, Chapter 32, New Residential Board and Care Occupancies.]

(c) Protection of attics. A new small Type B assisted living facility must ensure an attic is protected according to the requirements of 32.2.3.5.7, in NFPA 101, Chapter 32, New Residential Board and Care Occupancies.

(d) Portable fire extinguishers. A new small Type B assisted living facility must provide and maintain portable fire extinguishers according to the requirements of NFPA 10.

(1) A new small Type B assisted living facility must ensure all requirements of NFPA 10 are followed for all extinguisher types, including requirements for location, spacing, mounting heights, monthly inspections by staff, yearly inspections by a licensed agent, any necessary servicing, and hydrostatic testing as recommended by the manufacturer.

(2) A new small Type B assisted living facility must ensure portable fire extinguishers are located so the travel distance from any point in the facility to an extinguisher is no more than 75 feet.

(3) A new small Type B assisted living facility must ensure the actual size of any portable fire extinguisher meets the requirements of NFPA 10 for maximum floor area per unit covered, but an extinguisher must be no smaller than the following.

(A) A water-type portable fire extinguisher must have a rating of at least 1-A according to NFPA 10.

(B) All other portable fire extinguishers must have a rating of at least 2-A:10-B:C according to NFPA 10.

(4) A new small Type B assisted living facility must ensure portable fire extinguishers are installed on hangers or brackets supplied with the extinguisher or mounted in an approved cabinet.

(5) A new small Type B assisted living facility must ensure a portable fire extinguisher is protected from impact or dislodgement.

(6) A new small Type B assisted living facility must ensure a portable fire extinguisher is installed at an appropriate height.

(A) A portable fire extinguisher having a gross weight of up to 40 pounds must be installed so the top of the extinguisher is not more than five feet above the floor.

(B) A portable fire extinguisher having a gross weight greater than 40 pounds must be installed so the top of the extinguisher is not more than three and a half feet above the floor.

(C) A portable fire extinguisher must be installed so the clearance between the bottom of the extinguisher and the floor is at least four inches.

(7) A portable extinguisher provided in a hazardous room must be located as close as possible to the door leading from the room and on the latch or knob side of the door.

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-3161

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DIVISION 10. NEW LARGE TYPE A ASSISTED LIVING FACILITIES

**26 TAC §§553.231, 553.232, 553.235**

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 rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively.

The amendments implement Texas Government Code §531.0055 and §531.033 and Texas Health and Safety Code §247.025 and §247.026.

§553.231. *Construction Requirements for a New Large Type A Assisted Living Facility.*

(a) Structurally sound. A new large Type A assisted living facility must ensure any building is structurally sound regarding actual or expected dead, live, and wind loads according to applicable building codes, as determined and enforced by local authorities.

(b) Separation of occupancies. A new large Type A assisted living facility must be separated from other occupancies, including other assisted living facilities, hospitals or nursing facilities, by a fire barrier having at least a 2-hour fire resistance rating constructed according to the requirements of NFPA 101 and its referenced standards.

(c) Construction type. A new large Type A assisted living facility must ensure a building housing the facility meets the requirements of 32.3.1.3, Minimum Construction Requirements, in NFPA 101, Chapter 32, New Residential Board and Care Occupancies.

(d) Interior finish. A new large Type A assisted living facility must ensure interior wall and ceiling finish materials meet the requirements of 32.3.3.3, Interior Finish, in NFPA 101, Chapter 32, New Residential Board and Care Occupancies.

(e) Vertical openings. A new large Type A assisted living facility must ensure vertical openings are protected according to the requirements of 32.3.3.1, Protection of Vertical Openings, in NFPA 101, Chapter 32, New Residential Board and Care Occupancies.

§553.232. *Space Planning and Utilization Requirements for a New Large Type A Assisted Living Facility.*

(a) Resident bedrooms.

(1) A new large Type A assisted living facility must ensure a resident bedroom or living unit is not located on a floor that is below finished ground level.

(2) A new large Type A assisted living facility must ensure bedroom usable floor space is not less than 80 square feet for a bedroom housing one resident and not less than 60 square feet per resident for a bedroom housing multiple residents, unless otherwise permitted in paragraphs (3) and (4) of this subsection. Portions of a bedroom that are less than eight feet in the smallest dimension cannot be included in the measurement of bedroom usable floor space, unless approved by HHSC.

(3) A new large Type A assisted living facility containing individual living units that include living space for the residents, in addition to their bedroom, may reduce the bedroom usable floor space for a bedroom housing multiple residents within a living unit by up to 10 percent of the required bedroom usable floor space, as long as the minimum dimensional criteria are maintained. A new large Type A assisted living facility must not use this provision in conjunction with the provision permitting the reduction of common social-diversional areas or common dining areas found in subsection (g)(6) of this section.

(4) A new large Type A assisted living facility must house no more than 50 percent of its licensed resident capacity in bedrooms housing three or more residents. A bedroom must not house more than four residents.

(b) Bedroom windows. A new large Type A assisted living facility must ensure each bedroom has at least one operable window with outside exposure and meeting the following requirements.

(1) The windowsill [~~window sill~~] must be no higher than 44 inches above the floor.

(2) The window must be operable from the inside by a resident occupying the bedroom, [~~from the inside,~~] without the use of tools or special devices.

(3) The total area of all windows in a bedroom must not be less than eight percent of the minimum bedroom usable floor space according to the requirements of subsection (a)(2) [~~(a)(3)~~] of this section.

(c) Bedroom furnishings. When a resident does not provide their own furnishings, a new large Type A assisted living facility must provide the following furnishings for each resident, which must be maintained in good repair:

(1) a bed, including a mattress;

(2) a chair;

(3) a table or dresser; and

(4) private clothes storage space, which must have closable doors, and drawer space for clothing and personal belongings.

(d) Arrangement of resident living units or rooms.

(1) A new large Type A assisted living facility must ensure all resident rooms open on an exit, corridor, living area, or public area.

(2) A new large Type A assisted living facility must ensure a resident room is arranged for convenient resident access to dining and recreation areas.

(e) Staff area. A new large Type A assisted living facility must provide a staff area on each floor of a new large Type A assisted living facility and in each separate building containing resident sleeping rooms, except as permitted under paragraph (1) of this subsection.

(1) A new large Type A assisted living facility that is not more than two stories in height and is composed of separate buildings grouped together and connected by covered walks, is not required to provide a staff area on each floor or in each building, provided that a

staff area is located not more than 200 feet walking distance from the farthest resident living unit.

(2) A new large Type A assisted living facility must provide the following at each staff area:

(A) a desk or writing surface;

(B) a telephone; and

(C) a fire alarm control unit or a fire alarm annunciator panel meeting the requirements of §553.235 of this division (relating to Fire Protection Systems Requirements for a New Large Type A Assisted Living Facility).

(f) Resident toilet and bathing facilities. A new large Type A assisted living facility must ensure each resident bedroom is served by a separate private toilet room, a connecting toilet room, or a general toilet room.

(1) A new large Type A assisted living facility that houses individuals of more than one gender must provide toilet rooms for each gender, or individual single-occupant toilet rooms for use by any gender.

(2) A new large Type A assisted living facility must ensure a general toilet room or bathing room is accessible from a corridor or public space.

(3) A new large Type A assisted living facility must ensure resident toilet and bathing facilities comply with the requirements for resident-use plumbing fixtures according to §553.237 of this division (relating to Mechanical Requirements for a New Large Type A Assisted Living Facility).

(g) Resident living areas.

(1) A new large Type A assisted living facility must provide, in a common area of the facility, social-diversional spaces with appropriate furniture. Examples of social-diversional spaces include living rooms, day rooms, lounges, dens, game rooms, and sunrooms.

(A) A new large Type A assisted living facility must provide a social-diversional space with a minimum area of 120 square feet in at least one space within a common area of the facility, regardless of the number of residents or other provisions of this section permitting a reduction in the total minimum social-diversional space.

(B) A new large Type A assisted living facility must ensure a social-diversional space has one or more exterior windows providing a view of the outside.

(C) A new large Type A assisted living facility must ensure the total space for social-diversional areas is provided on a sliding scale according to the following table. No space smaller than 120 square feet in area can be counted toward meeting this requirement. Figure: 26 TAC §553.232(g)(1)(C) (No change.)

(2) A new large Type A assisted living facility must provide a dining area with appropriate furniture.

(A) A new large Type A assisted living facility must provide a dining space with a minimum area of 120 square feet in at least one space within a common area of the facility, regardless of the number of residents or other provisions of this section permitting a reduction in the total minimum dining space.

(B) A new large Type A assisted living facility must ensure a dining space has one or more exterior windows providing a view of the outside.

(C) A new large Type A assisted living facility must ensure a dining area is accessible from resident living units or bedrooms via a covered path.

(D) A new large Type A assisted living facility must ensure the total space for dining areas is provided on a sliding scale according to the following table. No space smaller than 120 square feet in area can be counted toward meeting this requirement. Figure: 26 TAC §553.232(g)(2)(D) (No change.)

(3) A new large Type A assisted living facility may provide a total living and dining area combined in a single or interconnecting space where the minimum area of the combined space is at least 240 square feet.

(4) For calculation purposes, where a means of egress passes through a living or dining area, a new large Type A assisted living facility must deduct a pathway, equal to the minimum corridor width according to §553.233 of this division (relating to Means of Egress Requirements for a New Large Type A Assisted Living Facility), from the measured area of the space.

(5) A new large Type A assisted living facility must ensure a means of egress through a resident living or dining area is kept clear of obstructions, except as permitted by NFPA 101.

(6) Subject to the limitations of paragraphs (1)(A) and (2)(A) of this subsection and subparagraphs (A) and (B) of this paragraph, a new large Type A assisted living facility containing individual living units may reduce the minimum square footage required by paragraphs (1)(C) and (2)(D) of this subsection for total common social-diversional or common dining areas, respectively, by including up to 10 percent of the individual living unit area in the calculation of the total social-diversional area or total dining area.

(A) The individual living unit area contributed toward total social-diversional space or total dining space must not be counted more than once per living unit but may be split between social-diversional and dining space calculations.

(B) A new large Type A assisted living facility must not utilize both this paragraph and subsection (a)(3) of this section to reduce both the minimum square footage otherwise required for its common social-diversional or dining areas and the minimum square footage of usable floor space otherwise required in bedrooms housing multiple residents within a living unit.

(h) Storage areas. A new large Type A assisted living facility must provide sufficient separate storage spaces or areas for at least:

- (1) administrative records, office supplies, and other storage needs related to administration;
- (2) medications and medical supplies;
- (3) equipment supplied by the facility for resident needs, including wheelchairs, walkers, beds, and mattresses;
- (4) cleaning supplies including for janitorial needs;
- (5) food;
- (6) clean linens and towels, if the facility furnishes linen;
- (7) soiled linen, if the facility furnishes linen; and
- (8) lawn and maintenance equipment.

(i) General kitchen.

~~(4) A new large Type A assisted living facility that prepares food off-site or in a separate building must ensure food is served at the proper temperature and transported in a sanitary manner.~~

~~(2) A new large Type A assisted living facility must ensure a kitchen meets the requirements of the local fire, building, and health codes.~~

~~(1) [(3)] A new large Type A assisted living facility that prepares food onsite [on-site] must provide a kitchen or dietary area that includes [to meet the general food service needs of the residents and must include] space for the following:~~

- (A) storage, refrigeration, preparation, and serving food;
- (B) dish and utensil cleaning which includes:
  - (i) a three-compartment sink large enough to immerse pots and pans; and
  - (ii) a mechanical dishwasher for washing and sanitizing dishes;
- (C) a food preparation sink;
- (D) a handwashing station in every food preparation area with a supply of hot and cold water, soap, a towel dispenser and a waste receptacle;
- (E) a handwashing lavatory that is readily accessible to every dish room area; and
- (F) refuse storage and removal; and
- (G) floor drains in the kitchen and dishwashing areas, unless the facility was created through conversion and the facility can keep the floor clean. [; and]
- ~~[(H) a grease trap, if required by local authorities.]~~

~~(2) [(4)] A new large Type A assisted living facility must ensure a kitchen is designed so that room temperature, at peak load or in the summer, does not exceed 85 degrees Fahrenheit measured throughout the room at five feet above the floor.~~

~~(3) [(5)] A new large Type A assisted living facility must ensure the volume of supply air provided takes into account the large quantities of air that may be exhausted at the range hood and dishwashing area.~~

~~(4) [(6)] A new large Type A assisted living facility must provide a supply of hot and cold water.~~

(A) Hot water for sanitizing purposes must be 180 degrees Fahrenheit.

(B) When chemical sanitizers are used, hot water must meet the manufacturer's suggested temperature.

~~(5) [(7)] A new large Type A assisted living facility must maintain a separation between soiled and clean dish areas.~~

~~(6) [(8)] A new large Type A assisted living facility must maintain a separation of air flow between soiled and clean dish areas.~~

(j) Kitchen restrooms.

(1) A new large Type A assisted living facility must provide a restroom facility for kitchen staff, including a lavatory, except as described in paragraph (2) of this subsection.

(A) The restroom facility must be directly accessible to kitchen staff without traversing resident use areas.

(B) The restroom must open into a service corridor or vestibule and not open directly into the kitchen.

(2) A new large Type A assisted living facility created through conversion may provide a staff restroom that may be located outside the kitchen area.

(k) Kitchen janitorial facility.

(1) A new large Type A assisted living facility must provide janitorial facilities exclusively for the kitchen and located in the kitchen area except as described in paragraph (2) of this subsection.

(2) A new large Type A assisted living facility created through conversion must provide a janitorial facility for the kitchen. The janitorial facility may be located outside the kitchen if sanitary procedures are used to reduce the possibility of cross-contamination.

(3) A new large Type A assisted living facility must provide a garbage can or cart washing area with a floor drain and a supply of hot water. The garbage can or cart washing area may be in the interior or on the exterior of the facility.

(l) Finishes.

(1) A new large Type A assisted living facility must provide non-absorbent, smooth finishes or surfaces on all kitchen floors, walls and ceilings.

(2) A new large Type A assisted living facility must provide non-absorbent, smooth, cleanable finishes on counter surfaces and all cabinet surfaces.

(3) A new large Type A assisted living facility must ensure surfaces are capable of being routinely cleaned and sanitized to maintain a healthful environment.

(m) Vision panels in communicating doors. A new large Type A assisted living facility must ensure a door between a kitchen and a dining area, serving area, or resident-use area, is provided with a vision panel with fixed safety glass. Where the door is a required fire door or is located in a fire barrier or other fire resistance-rated enclosure, the vision panel, including the glazing and the frame, must meet the requirements of NFPA 101.

(n) Auxiliary serving kitchens.

(1) A new large Type A assisted living facility must ensure an auxiliary serving kitchen is equipped to maintain required food temperatures.

(2) A new large Type A assisted living facility must ensure an auxiliary serving kitchen is equipped with a handwashing lavatory meeting the requirements of this section.

(3) A new large Type A assisted living facility must ensure all surfaces in an auxiliary serving kitchen meet the requirements for finishes in this section.

(o) Protection of cooking operations.

(1) A new large Type A assisted living facility must protect cooking facilities according to the requirements in §553.236 of this division (relating to Hazardous Area Requirements for a New Large Type A Assisted Living Facility).

(2) The following commercial or residential cooking equipment used only for reheating, and not for meal preparation, is not required to comply with the requirements of §553.236 of this division:

- (A) microwave ovens;
- (B) hot plates; or
- (C) toasters.

(p) Food storage areas.

(1) A new large Type A assisted living facility must provide a food storage area large enough to consistently maintain a four-day minimum supply of non-perishable food. A food storage area may be located away from the food preparation area as long as there is space adjacent to the kitchen for necessary daily usage.

(2) A new large Type A assisted living facility must provide dollies, racks, pallets, wheeled containers, or shelving, so that food is not stored on the floor, and must ensure shelves are adjustable wire type shelving.

(3) A new large Type A assisted living facility must provide non-absorbent finishes or surfaces on all floors and walls in food storage areas.

(4) A new large Type A assisted living facility must provide effective ventilation in dry food storage areas to ensure positive air circulation.

(5) A new large Type A assisted living facility must ensure the maximum room temperature in a food storage area does not exceed 85 degrees Fahrenheit at any time, when measured at the highest food storage level, but not less than five feet above the floor.

(q) Laundry and linen services.

(1) A new large Type A assisted living facility that co-mingles and processes laundry onsite [~~on-site~~] in a central location, regardless of the type of laundry equipment used, must ensure a laundry area:

(A) is separated from the assisted living building by a fire barrier having a one-hour fire resistance rating. This separation must extend from the floor to the floor or roof above;

(B) is protected throughout by a fire sprinkler system; and

(C) has access doors that open to the exterior or to an interior non-resident use area, such as a vestibule or service corridor; and

(D) is provided with:

(i) a soiled linen receiving, holding, and sorting room with a floor drain and forced exhaust to the exterior;

(I) the exhaust must always operate when soiled linen is held in this area; and

(II) the area may be combined with the washer section;

(ii) a general laundry work area that is separated by partitioning a washer section and a dryer section;

(iii) a storage area for laundry supplies;

(iv) a folding area;

(v) an adequate air supply and ventilation for staff comfort without having to rely on opening a door that is part of the fire barrier separation required by subparagraph (A) of this paragraph; and

(vi) provisions to exhaust heat from dryers and to separate dryer make-up air from the habitable work areas of the laundry.

(2) If linen is processed off site, the facility must provide:

(A) a soiled linen holding room with adequate forced exhaust ducted to the exterior; and

(B) a clean linen receiving, holding, inspection, sorting or folding, and storage room.



(3) A new large Type A assisted living facility must ensure a laundry area for resident-use meets the following requirements.

(A) A new large Type A assisted living facility must ensure only residential type washers and dryers are provided in a laundry area for resident-use.

(B) When more than three washers and three dryers are provided in one laundry area for resident-use, the area must be:

(i) protected throughout by a fire sprinkler system; or

(ii) separated from the facility by a fire barrier having a one-hour fire resistance rating.

§553.235. *Fire Protection Systems Requirements for a New Large Type A Assisted Living Facility.*

(a) Fire alarm and smoke detection system. A new large Type A assisted living facility must provide a manual fire alarm system meeting the requirements of 9.6, Fire Detection, Alarm, and Communication Systems, in NFPA 101, Chapter 9, Building Service and Fire Protection Equipment, as modified by this section.

(1) General. A new large Type A assisted living facility must ensure the operation of any alarm initiating device automatically activates the manual fire alarm system evacuation alarm for the entire building.

(2) Smoke detectors.

(A) A new large Type A assisted living facility must install smoke detectors in resident bedrooms, corridors, hallways, living rooms, dining rooms, offices, kitchens, laundries, attached garages used for car parking, and public or common areas, except as permitted in subparagraphs (B) - (D) of this paragraph.

(B) A new large Type A assisted living facility may install heat detectors in lieu of smoke detectors in kitchens, laundries, and attached garages used for car parking.

(C) A new large Type A assisted living facility located in a building constructed to meet the requirements of NFPA 101, Chapter 18, New Health Care Occupancies, may install a smoke detection system meeting the requirements of 18.3.4.5.3, Nursing Homes [19.3.4.5.1, Corridors], in NFPA 101, Chapter 18, New Health Care Occupancies, in lieu of the requirements found in subparagraphs (A) and (B) of this paragraph.

(D) A new large Type A assisted living facility comprised of buildings containing living units with independent cooking equipment must additionally have:

(i) a smoke detector installed in all [in] resident bedrooms, corridors, hallways, living rooms, dining rooms, offices, kitchens and laundries within the living unit, that sounds an alarm only within the living unit; and

(ii) a heat detector installed in the kitchen within the living unit that activates the general alarm.

(E) A new large Type A assisted living facility is not required to install smoke alarms, as required by 32.3.3.4.7 [32.3.4.7] Smoke Alarms, in NFPA 101, Chapter 32, New Residential Board and Care Occupancies, in addition to the smoke detectors required by subparagraphs (A) - (D) of this paragraph.

(3) Alarm control panel.

(A) A new large Type A assisted living facility must provide a fire alarm control unit, or a fire alarm annunciator providing annunciation of all fire alarm, supervisory, and trouble signals by

audible and visible indicators, in a location visible to staff at or near the staff area that is attended 24 hours a day.

(B) A new large Type A assisted living facility is not required to ensure a fire alarm control unit or fire alarm annunciator is visible to staff if the fire alarm is monitored by devices carried by all staff.

(C) A new large Type A assisted living facility must ensure a fire alarm panel indicates each floor and smoke compartment, as applicable, as a separate zone. Each zone must provide an alarm and trouble indication. When all alarm initiating devices are addressable and the status of each device is identified on the fire alarm panel, zone indication is not required.

(4) Fire alarm power source.

(A) A new large Type A assisted living facility must ensure a fire alarm system is powered by a permanently-wired, dedicated branch circuit that is powered from a commercial power source in accordance with NFPA 70.

(B) A new large Type A assisted living facility must provide a secondary, emergency power source meeting the requirements of NFPA 72.

(5) Emergency forces notification. A new large Type A assisted living must ensure a fire alarm system provides emergency forces notification according to the requirements of 32.3.3.4.6, Emergency Forces Notification, in NFPA 101, Chapter 32, New Residential Board and Care Occupancies.

(b) Fire sprinkler system. A new large Type A assisted living facility must provide a fire sprinkler system meeting the requirements of NFPA 13 in accordance with 32.3.3.5, in NFPA 101, Chapter 32, New Residential Board and Care Occupancies.

(c) Portable Fire Extinguishers. A new large Type A assisted living facility must provide and maintain portable fire extinguishers according to the requirements of 32.3.3.5.7, Portable Fire Extinguishers, in NFPA 101, Chapter 32, New Residential Board and Care Occupancies, and the additional requirements of this subsection.

(1) A new large Type A assisted living facility must ensure all requirements of NFPA 10 are followed for all extinguisher types, including requirements for location, spacing, mounting heights, monthly inspections by staff, yearly inspections by a licensed agent, any necessary servicing, and hydrostatic testing as recommended by the manufacturer.

(2) A new large Type A assisted living facility must ensure portable fire extinguishers are located in resident corridors so the travel distance from any point in the facility to an extinguisher is no more than 75 feet.

(3) A new large Type A assisted living facility must ensure the actual size of any portable fire extinguisher meets the requirements of NFPA 10 for maximum floor area per unit covered, but an extinguisher must be no smaller than the following.

(A) A water-type portable fire extinguisher must have a rating of at least 1-A according to NFPA 10.

(B) All other portable fire extinguishers must have a rating of at least 2-A:10-B:C according to NFPA 10.

(C) A facility must provide at least one approved 20-B:C portable fire extinguisher in each laundry, kitchen and walk-in mechanical room.

(4) A new large Type A assisted living facility must ensure portable fire extinguishers are installed on hangers or brackets supplied with the extinguisher or is mounted in an approved cabinet.

(5) A new large Type A assisted living facility must ensure a portable fire extinguisher is protected from impact or dislodgement.

(6) A new large Type A assisted living facility must ensure a portable fire extinguisher is installed at an appropriate height.

(A) A portable fire extinguisher having a gross weight of up to 40 pounds must be installed so the top of the extinguisher is not more than five feet above the floor.

(B) A portable fire extinguisher having a gross weight greater than 40 pounds must be installed so the top of the extinguisher is not more than three and a half feet above the floor.

(C) A portable fire extinguisher must be installed so the clearance between the bottom of the extinguisher and the floor is at least four inches.

(7) A portable extinguisher provided in a hazardous room must be located as close as possible to the exit access door leading from the room and on the latch or knob side of the door.

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-3161



## DIVISION 11. NEW LARGE TYPE B ASSISTED LIVING FACILITIES

### 26 TAC §§553.241, 553.242, 553.245, 553.246

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 rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively.

The amendments implement Texas Government Code §531.0055 and §531.033 and Texas Health and Safety Code §247.025 and §247.026.

§553.241. *Construction Requirements for a New Large Type B Assisted Living Facility.*

(a) Structurally sound. A new large Type B assisted living facility must ensure any building is structurally sound regarding actual or expected dead, live, and wind loads according to applicable building codes, as determined and enforced by local authorities.

(b) Separation of occupancies.

(1) A new large Type B assisted living facility must be separated from other occupancies by a fire barrier having at least a 2-hour fire resistance rating constructed according to the requirements of NFPA 101 and its referenced standards.

(2) A large Type B assisted living facility is not required to be separated from a hospital or nursing facility unless the separation is required by NFPA 101 or the standards for licensing the hospital or nursing facility.

(c) Construction type. A new large Type B assisted living facility must ensure a building housing the facility meets the requirements of 18.1.6, Minimum Construction Requirements, in NFPA 101, Chapter 18, New Health Care Occupancies.

(d) Interior finish. A new Large Type B assisted living facility must ensure interior wall, ceiling and floor finish materials meet the requirements of 18.3.3, Interior Finish, in NFPA 101, Chapter 18, New Health Care Occupancies.

(e) Vertical openings. A new large Type B assisted living facility must ensure vertical openings are protected according to the requirements of 18.3.1, Protection of Vertical Openings, in NFPA 101, Chapter 18, New Health Care Occupancies.

§553.242. *Space Planning and Utilization Requirements for a New Large Type B Assisted Living Facility.*

(a) Resident bedrooms.

(1) A new large Type B assisted living facility must ensure a resident bedroom or living unit is not located on a floor that is below finished ground level.

(2) A new large Type B assisted living facility must ensure bedroom usable floor space is not less than 100 square feet for a bedroom housing one resident and not less than 80 square feet per resident for a bedroom housing multiple residents, unless otherwise permitted by paragraphs (3) and (4) of this subsection. Portions of a bedroom that are less than 10 feet in the smallest dimension cannot be included in the measurement of bedroom usable floor space, unless approved by HHSC.

(3) A new large Type B assisted living facility containing individual living units that include living space for the residents, in addition to their bedroom, may reduce the bedroom usable floor space for a bedroom housing multiple residents within a living unit by up to 10 percent of the required bedroom usable floor space, as long as the minimum dimensional criteria are maintained. A new large Type B assisted living facility must not use this provision in conjunction with the provision permitting the reduction of common social-diversional areas or common dining areas found in subsection (g)(6) of this section.

(4) A new large Type B assisted living facility must house no more than 50 percent of its licensed resident capacity in bedrooms housing three or more residents. A bedroom must not house more than four residents.

(b) Bedroom windows. A new large Type B assisted living facility must ensure each bedroom has at least one operable window with outside exposure and meeting the following requirements.

(1) The windowsill [~~window sill~~] must be no higher than 44 inches above the floor.

(2) The window must be operable from the inside by a resident occupying the bedroom, [~~from the inside,~~] without the use of tools or special devices.

(3) The total area of all windows in a bedroom must not be less than eight percent of the minimum bedroom usable floor space required by subsection (a)(2) [(a)(3)] of this section.

(c) Bedroom furnishings. When a resident does not provide their own furnishings, a new large Type B assisted living facility must provide the following furnishings for each resident, which must be maintained in good repair:

- (1) a bed including a mattress;
- (2) a chair;
- (3) a table or dresser; and
- (4) private clothes storage space, which must have closable doors, and drawer space for clothing and personal belongings.

(d) Arrangement of resident living units or rooms.

(1) A new large Type B assisted living facility must ensure all resident rooms open on an exit, corridor, living area, or public area.

(2) A new large Type B assisted living facility must ensure a resident room is arranged for convenient resident access to dining and recreation areas.

(e) Staff area. A new large Type B assisted living facility must provide a staff area on each floor of a new large Type B assisted living facility and in each separate building containing resident sleeping rooms. A new large Type B assisted living facility must provide the following at each staff area:

- (1) a desk or writing surface;
- (2) a telephone; and
- (3) a fire alarm control unit or a fire alarm annunciator panel meeting the requirements of §553.245 of this division (relating to Fire Protection Systems Requirements for a New Large Type B Assisted Living Facility).

(f) Resident toilet and bathing facilities. A new large Type B assisted living facility must ensure each resident bedroom is served by a separate private toilet room, a connecting toilet room, or a general toilet room.

(1) A new large Type B assisted living facility that houses individuals of more than one gender must provide toilet rooms for each gender, or individual single-occupant toilet rooms for use by any gender.

(2) A new large Type B assisted living facility must ensure a general toilet room or bathing room is accessible from a corridor or public space.

(3) A new large Type B assisted living facility must ensure resident toilet and bathing facilities comply with the requirements for resident-use plumbing fixtures according to §553.247 of this division (relating to Mechanical Requirements for a New Large Type B Assisted Living Facility).

(g) Resident living areas.

(1) A new large Type B assisted living facility must provide, in a common area of the facility, social-diversional spaces with appropriate furniture. Examples of social-diversional spaces include living rooms, day rooms, lounges, dens, game rooms, and sunrooms.

(A) A new large Type B assisted living facility must provide a social-diversional space with a minimum area of 120 square feet in at least one space within a common area of the facility, regardless of number of residents or other provisions of this section permitting a reduction in the total minimum social-diversional space.

(B) A new large Type B assisted living facility must ensure a social-diversional space has one or more exterior windows providing a view of the outside.

(C) A new large Type B assisted living facility must ensure the total space for social-diversional areas is provided on a sliding scale according to the following table. No space smaller than 120 square feet in area can be counted toward meeting this requirement. Figure: 26 TAC §553.242(g)(1)(C) (No change.)

(2) A new large Type B assisted living facility must provide a dining area with appropriate furniture.

(A) A new large Type B assisted living facility must provide a dining space with a minimum area of 120 square feet in at least one space within a common area of the facility, regardless of number of residents or other provisions of this section permitting a reduction in the total minimum dining space.

(B) A new large Type B assisted living facility must ensure a dining space has one or more exterior windows providing a view of the outside.

(C) A new large Type B assisted living facility must ensure a dining area is accessible from resident living units or bedrooms via a covered path.

(D) A new large Type B assisted living facility must ensure the total space for dining areas is provided on a sliding scale according to the following table. No space smaller than 120 square feet in area can be counted toward meeting this requirement. Figure: 26 TAC §553.242(g)(2)(D) (No change.)

(3) A new large Type B assisted living facility may provide a total living and dining area combined in a single or interconnecting space where the minimum area of the combined space is at least 240 square feet.

(4) For calculation purposes, where a means of egress passes through a living or dining area, a new large Type B assisted living facility must deduct a pathway, equal to the minimum corridor width according to §553.243 of this division (relating to Means of Egress Requirements for a New Large Type B Assisted Living Facility), from the measured area of the space.

(5) A new large Type B assisted living facility must ensure a means of egress through a resident living or dining area is kept clear of obstructions, except as permitted by NFPA 101.

(6) Subject to the limitations of paragraphs (1)(A) and (2)(A) of this subsection and subparagraphs (A) and (B) of this paragraph, a new large Type B assisted living facility containing individual living units may reduce the minimum square footage required by paragraphs (1)(C) and (2)(D) of this subsection for total common social-diversional or common dining areas, respectively, by including up to 10 percent of the individual living unit area in the calculation of the total social-diversional area or total dining area.

(A) The individual living unit area contributed toward total social-diversional space or total dining space must not be counted more than once per living unit but may be split between social-diversional and dining space calculations.

(B) A new large Type B assisted living facility must not utilize both this paragraph and subsection (a)(3) of this section to reduce both the minimum square footage otherwise required for its common social-diversional or dining areas and the minimum square footage of usable floor space otherwise required in bedrooms housing multiple residents within a living unit.

(h) Storage areas. A new large Type B assisted living facility must provide sufficient separate storage spaces or areas for at least:

- (1) administrative records, office supplies, and other storage needs related to administration;
- (2) medications and medical supplies;
- (3) equipment supplied by the facility for resident needs, including wheelchairs, walkers, beds, and mattresses;
- (4) cleaning supplies, including for janitorial needs;
- (5) food;
- (6) clean linens and towels, if the facility furnishes linen;
- (7) soiled linen, if the facility furnishes linen; and
- (8) lawn and maintenance equipment.

(i) General kitchen.

~~[(1) A new large Type B assisted living facility that prepares food off-site or in a separate building must ensure food is served at the proper temperature and transported in a sanitary manner.]~~

~~[(2) A new large Type B assisted living facility must ensure a kitchen meets the requirements of the local fire, building, and health codes.]~~

~~(1) [(3)] A new large Type B assisted living facility that prepares food onsite [on-site] must provide a kitchen or dietary area that includes [to meet the general food service needs of the residents and must include] space for the following:~~

~~(A) storage, refrigeration, preparation, and serving food;~~

~~(B) dish and utensil cleaning which includes:~~

~~(i) a three-compartment sink large enough to immerse pots and pans; and~~

~~(ii) a mechanical dishwasher for washing and sanitizing dishes;~~

~~(C) a food preparation sink;~~

~~(D) a handwashing station in every food preparation area with a supply of hot and cold water, soap, a towel dispenser, and a waste receptacle;~~

~~(E) a handwashing lavatory that is readily accessible to every dish room area;~~

~~(F) refuse storage and removal; and~~

~~(G) floor drains in the kitchen and dishwashing areas; and~~

~~[(H) a grease trap, if required by local authorities.]~~

~~(2) [(4)] A new large Type B assisted living facility must ensure a kitchen is designed so that room temperature, at peak load or in the summer, does not exceed 85 degrees Fahrenheit measured throughout the room at five feet above the floor.~~

~~(3) [(5)] A new large Type B assisted living facility must ensure the volume of supply air provided takes into account the large quantities of air that may be exhausted at the range hood and dishwashing area.~~

~~(4) [(6)] A new large Type B assisted living facility must provide a supply of hot and cold water.~~

~~(A) Hot water for sanitizing purposes must be 180 degrees Fahrenheit.~~

~~(B) When chemical sanitizers are used, hot water must meet the manufacturer's suggested temperature.~~

~~(5) [(7)] A new large Type B assisted living facility must maintain a separation between soiled and clean dish areas.~~

~~(6) [(8)] A new large Type B assisted living facility must maintain a separation of air flow between soiled and clean dish areas.~~

~~(j) Kitchen restrooms.~~

~~(1) A new large Type B assisted living facility must provide a restroom facility for kitchen staff, including a lavatory, except as described in paragraph (2) of this subsection.~~

~~(A) The restroom facility must be directly accessible to kitchen staff without traversing resident use areas.~~

~~(B) The restroom must open into a service corridor or vestibule and not open directly into the kitchen.~~

~~(2) A new large Type B facility must ensure a kitchen serving a neighborhood or household provides a restroom accessible to kitchen staff located in close proximity to the kitchen.~~

~~(k) Kitchen janitorial facility.~~

~~(1) A new large Type B assisted living facility must provide janitorial facilities exclusively for the kitchen and located in the kitchen area except as described in paragraph (2) of this subsection.~~

~~(2) A new large Type B facility must ensure a kitchen serving a neighborhood or household provides a janitorial facility exclusively for the kitchen that is located in close proximity to the kitchen.~~

~~(3) A new large Type B assisted living facility must provide a garbage can or cart washing area with a floor drain and a supply of hot water. The garbage can or cart washing area may be in the interior or on the exterior of the facility.~~

~~(l) Finishes.~~

~~(1) A new large Type B assisted living facility must provide non-absorbent, smooth finishes or surfaces on all kitchen floors, walls, and ceilings.~~

~~(2) A new large Type B assisted living facility must provide non-absorbent, smooth, cleanable finishes on counter surfaces and all cabinet surfaces.~~

~~(3) A new large Type B assisted living facility must ensure surfaces are capable of being routinely cleaned and sanitized to maintain a healthful environment.~~

~~(m) Vision panels in communicating doors. A new large Type B assisted living facility must ensure a door between a kitchen and a dining area, serving area, or resident-use area, is provided with a vision panel with fixed safety glass. Where the door is a required fire door or is located in a fire barrier or other fire resistance-rated enclosure, the vision panel, including the glazing and the frame, must meet the requirements of NFPA 101.~~

~~(n) Auxiliary serving kitchens.~~

~~(1) A new large Type B assisted living facility must ensure an auxiliary serving kitchen is equipped to maintain required food temperatures.~~

~~(2) A new large Type B assisted living facility must ensure an auxiliary serving kitchen is equipped with a handwashing lavatory meeting the requirements of this subsection.~~

(3) A new large Type B assisted living facility must ensure all surfaces in an auxiliary serving kitchen meet the requirements for finishes in this section.

(o) Protection of cooking operations.

(1) A new large Type B assisted living facility must protect cooking facilities according to the requirements in §553.246 of this division (relating to Hazardous Area Requirements for a new Large Type B Assisted Living Facility).

(2) The following commercial or residential cooking equipment used only for reheating, and not for meal preparation, is not required to comply with the requirements of §553.246 of this division:

- (A) microwave ovens;
- (B) hot plates; or
- (C) toasters.

(p) Food storage areas.

(1) A new large Type B assisted living facility must provide a food storage area large enough to consistently maintain a four-day minimum supply of non-perishable food. A food storage area may be located away from the food preparation area as long as there is space adjacent to the kitchen for necessary daily usage.

(2) A new large Type B assisted living facility must provide dollies, racks, pallets, wheeled containers, or shelving so that food is not stored on the floor and must ensure shelves are adjustable wire type shelving.

(3) A new large Type B assisted living facility must provide non-absorbent finishes or surfaces on all floors and walls in food storage areas.

(4) A new large Type B assisted living facility must provide effective ventilation in dry food storage areas to ensure positive air circulation.

(5) A new large Type B assisted living facility must ensure the maximum room temperature in a food storage area does not exceed 85 degrees Fahrenheit at any time when measured at the highest food storage level, but not less than five feet above the floor.

(q) Laundry and linen services.

(1) A new large Type B assisted living facility that co-mingles and processes laundry onsite [on-site] in a central location, regardless of the type of laundry equipment used, must ensure a laundry area:

(A) is separated from the assisted living building by a fire barrier having a one-hour fire resistance rating. This separation must extend from the floor to the floor or roof above;

(B) is protected throughout by a fire sprinkler system;

(C) has access doors that open to the exterior or to an interior non-resident use area, such as a vestibule or service corridor; and

(D) is provided with:

(i) a soiled linen receiving, holding, and sorting room with a floor drain and forced exhaust to the exterior;

(I) The exhaust must always operate when soiled linen is held in this area; and

(II) The area may be combined with the washer section;

(ii) a general laundry work area that is separated by partitioning a washer section and a dryer section;

(iii) a storage area for laundry supplies;

(iv) a folding area;

(v) an adequate air supply and ventilation for staff comfort without having to rely on opening a door that is part of the fire barrier separation required by subparagraph (A) of this paragraph; and

(vi) provisions to exhaust heat from dryers and to separate dryer make-up air from the habitable work areas of the laundry.

(2) If linen is processed off site, the facility must provide:

(A) a soiled linen holding room with adequate forced exhaust ducted to the exterior; and

(B) a clean linen receiving, holding, inspection, sorting or folding, and storage room.

(3) A new large Type B assisted living facility must ensure a laundry area for resident-use meets the following requirements.

(A) A new large Type B assisted living facility must ensure only residential type washers and dryers are provided in a laundry area for resident-use.

(B) When more than three washers and three dryers are provided in one laundry area for resident-use, the area must be:

(i) protected throughout by a fire sprinkler system; or

(ii) separated from the facility by a fire barrier having a one-hour fire resistance rating.

§553.245. *Fire Protection Systems Requirements for a New Large Type B Assisted Living Facility.*

(a) Fire alarm and smoke detection system. A new large Type B assisted living facility must provide a fire alarm system meeting the requirements of 18.3.4, Detection, Alarm, and Communications Systems, in NFPA 101, Chapter 18, New Health Care Occupancies, as modified by this section.

(1) General. A new large Type B assisted living facility must ensure the operation of any alarm initiating device automatically activates the manual fire alarm system evacuation alarm for the entire building.

(2) Smoke detectors.

(A) A new large Type B assisted living facility must install smoke detectors meeting the requirements of 18.3.4.5.3, Nursing Homes, [18.3.4.5.1, Corridors,] in NFPA 101, Chapter 18, New Health Care Occupancies.

(B) A new large Type B assisted living facility comprised of buildings containing living units with independent cooking equipment within the living unit, must additionally have:

(i) a smoke detector installed in all resident bedrooms, corridors, hallways, living rooms, dining rooms, offices, kitchens and laundries within the living unit, that sounds an alarm only within the living unit; and

(ii) a heat detector installed in the kitchen within the living unit that activates the general alarm.

(3) Alarm control panel.

(A) A new large Type B assisted living facility must provide a fire alarm control unit, or a fire alarm annunciator providing annunciation of all fire alarm, supervisory, and trouble signals by

audible and visible indicators, in a location visible to staff at or near the staff area that is attended 24 hours a day.

(B) A new large Type B assisted living facility is not required to ensure a fire alarm control unit or fire alarm annunciator is visible to staff if the fire alarm is monitored by devices carried by all staff.

(C) A new large Type B assisted living facility must ensure a fire alarm panel indicates each floor and smoke compartment, as applicable, as a separate zone. Each zone must provide an alarm and trouble indication. When all alarm initiating devices are addressable and the status of each device is identified on the fire alarm panel, zone indication is not required.

(4) Fire alarm power source.

(A) A new large Type B assisted living facility must ensure a fire alarm system is powered by a permanently wired [~~permanently wired~~], dedicated branch circuit that is powered from a commercial power source in accordance with NFPA 70.

(B) A new large Type B assisted living facility must provide a secondary, emergency power source meeting the requirements of NFPA 72.

(5) Emergency forces notification. A new large Type B assisted living facility must ensure a fire alarm system automatically notifies emergency forces according to the requirements of 18.3.4.3.2, Emergency Forces Notification, in NFPA 101, Chapter 18, New Health Care Occupancies.

(b) Fire sprinkler system. A new large Type B assisted living facility must provide a fire sprinkler system meeting the requirements of NFPA 13 in accordance with 18.3.5, in NFPA 101, Chapter 18, New Health Care Occupancies.

(c) Portable Fire Extinguishers. A new large Type B assisted living facility must provide and maintain portable fire extinguishers according to the requirements of NFPA 10.

(1) A new large Type B assisted living facility must ensure all requirements of NFPA 10 are followed for all extinguisher types, including requirements for location, spacing, mounting heights, monthly inspections by staff, yearly inspections by a licensed agent, any necessary servicing, and hydrostatic testing as recommended by the manufacturer.

(2) A new large Type B assisted living facility must ensure portable fire extinguishers are located in resident corridors so the travel distance from any point in the facility to an extinguisher is no more than 75 feet.

(3) A new large Type B assisted living facility must ensure the actual size of any portable fire extinguisher meets the requirements of NFPA 10 for maximum floor area per unit covered, but an extinguisher must be no smaller than the following.

(A) A water-type portable fire extinguisher must have a rating of at least 1-A according to NFPA 10.

(B) All other portable fire extinguishers must have a rating of at least 2-A:10-B:C according to NFPA 10.

(C) A facility must provide at least one approved 20-B:C portable fire extinguisher in each laundry, kitchen, and walk-in mechanical room.

(4) A new large Type B assisted living facility must ensure portable fire extinguishers are installed on hangers or brackets supplied with the extinguisher or mounted in an approved cabinet.

(5) A new large Type B assisted living facility must ensure a portable fire extinguisher is protected from impact or dislodgement.

(6) A new large Type B assisted living facility must ensure a portable fire extinguisher is installed at an appropriate height.

(A) A portable fire extinguisher having a gross weight of up to 40 pounds must be installed so the top of the extinguisher is not more than five feet above the floor.

(B) A portable fire extinguisher having a gross weight greater than 40 pounds must be installed so the top of the extinguisher is not more than three and a half feet above the floor.

(C) A portable fire extinguisher must be installed so the clearance between the bottom of the extinguisher and the floor is at least four inches.

(7) A portable extinguisher provided in a hazardous room must be located as close as possible to the exit access door leading from the room and on the latch or knob side of the door.

§553.246. *Hazardous Area Requirements for a New Large Type B Assisted Living Facility.*

(a) A new large Type B assisted living facility must meet the requirements of 18.3.2 [~~19.3.2~~], Protection from Hazards, in NFPA 101, Chapter 18 [~~19~~], New Health Care Occupancies.

(b) A new large Type B assisted living facility must ensure flammable or combustible liquids, including gasoline, oil-based paint, charcoal lighter fluid, or similar products are not stored in a building housing residents.

(c) A new large Type B assisted living facility must protect any cooking operation according to the requirements of 18.3.2.5, Cooking Facilities, in NFPA 101, Chapter 18, New Health Care Occupancies.

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-3161



## DIVISION 12. SPECIALIZED ASSISTED LIVING FACILITIES

### 26 TAC §553.250

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 rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively.

The new section implements Texas Government Code §531.0055 and §531.033 and Texas Health and Safety Code §247.025 and §247.026.

§553.250. Construction Requirements for a Certified Alzheimer's Assisted Living Facility.

(a) Applicability. This section applies only to a Type B assisted living facility that has obtained a certification as a certified Alzheimer's assisted living facility according to the requirements of §553.27 of this chapter (relating to Certification of a Type B Facility or Unit for Persons with Alzheimer's Disease and Related Disorders) or §553.29 of this chapter (relating to Alzheimer's Certification of a Type B Facility for an Initial License Applicant in Good Standing) and chooses to:

(1) secure certified Alzheimer's assisted living facility means of escape or exit doors using the approved locking arrangements described in this section; or

(2) create one or more certified Alzheimer's assisted living units segregated from other parts of the Type B assisted living facility by control doors using the approved locking arrangements described in this section.

(b) Small, fully locked certified Alzheimer's assisted living facility. A small Type B assisted living facility that has an Alzheimer's certification for the full licensed capacity of the small Type B assisted living facility and chooses to secure control doors or exterior doors using the approved locking arrangements described in subsection (g) or (h) of this section must meet the requirements for a small Type B assisted living facility according to §553.100(e) of this subchapter (relating to General Requirements), except as modified by this subsection.

(1) Resident living areas.

(A) An existing small Type B assisted living facility must ensure resident living areas meet the requirements of §553.227(b) of this subchapter (relating to Mechanical Requirements for a New Small Type B Assisted Living Facility).

(B) A new small Type B assisted living facility must ensure resident living areas meet the requirements of §553.212(g) of this subchapter (relating to Space Planning and Utilization Requirements for a New Small Type A Assisted Living Facility).

(C) A small, fully locked certified Alzheimer's assisted living facility that contains two or more certified Alzheimer's assisted living units separated by control doors, located on one floor of a building, located on multiple floors of a building, or located in multiple buildings, must ensure resident living areas in each separate certified Alzheimer's assisted living unit meet the requirements for resident living areas in a small Type B assisted living facility for the capacity of each separate certified Alzheimer's assisted living unit.

(2) Resident-use plumbing fixtures.

(A) An existing small Type B assisted living facility must ensure resident-use plumbing fixtures meet the requirements of §553.127(b) of this subchapter (relating to Mechanical Requirements for an Existing Small Type B Assisted Living Facility).

(B) A new small Type B assisted living facility must ensure resident-use plumbing fixtures meet the requirements of §553.227(b) of this subchapter.

(C) A small, fully locked certified Alzheimer's assisted living facility that contains two or more certified Alzheimer's assisted living units separated by control doors, located on one floor of a building, located on multiple floors of a building, or located in multiple buildings, must ensure resident-use plumbing fixtures in each separate

certified Alzheimer's assisted living unit meet the requirements for resident-use plumbing in a small Type B assisted living facility for the capacity of each separate certified Alzheimer's assisted living unit.

(3) Monitoring station or staff area. A small, fully locked certified Alzheimer's assisted living facility that occupies only one floor of a building, and is not divided into two or more separated certified Alzheimer's assisted living units, must provide a staff area as follows.

(A) An existing small Type B assisted living facility must meet the requirements for a staff area according to §553.122(e) of this subchapter (relating to Space Planning and Utilization Requirements for an Existing Small Type B Assisted Living Facility).

(B) A new small Type B assisted living facility must meet the requirements for a staff area according to §553.222(e) of this subchapter (relating to Space Planning and Utilization Requirements for a New Small Type B Assisted Living Facility).

(C) A small Type B assisted living facility must provide a monitoring station meeting the requirements of subsection (f) of this section in each separate certified Alzheimer's assisted living unit, except:

(i) in a small Type B assisted living facility that contains two or more certified Alzheimer's assisted living units on one floor separated by control doors, one monitoring station must meet the requirements for a staff area according to subparagraph (A) or (B) of this paragraph; and

(ii) in a small Type B assisted living facility that contains two or more certified Alzheimer's assisted living units located on two or more floors of a building or located in multiple buildings, one monitoring station on each floor and in each building must meet the requirements for a staff area according to subparagraph (A) or (B) of this paragraph.

(4) Means of escape.

(A) An existing small Type B assisted living facility must meet §553.123 of this subchapter (relating to Means of Escape Requirements for an Existing Small Type B Assisted Living Facility) and must have at least two means of escape from every building and from every floor as required by NFPA 101.

(B) A new small Type B assisted living facility must meet the requirements of §553.223 of this subchapter (relating to Means of Escape Requirements for a New Small Type B Assisted Living Facility) and must have at least two means of escape from every building and from every floor as required by NFPA 101.

(5) Control doors. If control doors are locked, locking arrangements on control doors must meet the requirements of subsection (g) of this section.

(6) Exterior doors. If exterior doors are locked, locking arrangements on exterior doors must meet one of the following:

(A) the locking arrangement must meet the requirements for Delayed Egress Locking Systems in NFPA 101; or

(B) the locking arrangement must meet the requirements of subsection (h) of this section.

(7) Outdoor area. A small, fully locked certified Alzheimer's assisted living facility must provide an outdoor area meeting the requirements of subsection (j) of this section.

(c) Small Type B assisted living facility containing one or more certified Alzheimer's assisted living units. A small Type B assisted living facility that has a certified Alzheimer's capacity lower than the facility's licensed capacity and that has one or more certified

Alzheimer's assisted living units must meet the requirements for a small Type B assisted living facility according to §553.100(e) of this subchapter, except as modified by this subsection.

(1) Resident living areas.

(A) An existing small Type B assisted living facility must ensure resident living areas meet the requirements of §553.122(g) of this subchapter.

(B) A new small Type B assisted living facility must ensure resident living areas meet the requirements of §553.212(g) of this subchapter.

(C) A small Type B assisted living facility that contains one or more certified Alzheimer's assisted living units must ensure resident living areas in each separate certified Alzheimer's assisted living unit meet the requirements for resident living areas in a small Type B assisted living facility for the capacity of each separate certified Alzheimer's assisted living unit.

(2) Resident-use plumbing fixtures.

(A) An existing small Type B assisted living facility must ensure resident-use plumbing fixtures meet the requirements of §553.127(b) of this subchapter.

(B) A new small Type B assisted living facility must ensure resident-use plumbing fixtures meet the requirements of §553.227(b) of this subchapter.

(C) A small Type B assisted living facility that contains one or more certified Alzheimer's assisted living units must ensure resident-use plumbing fixtures in each separate certified Alzheimer's assisted living unit meet the requirements for resident-use plumbing fixtures in a small Type B assisted living facility for the capacity of each separate certified Alzheimer's assisted living unit.

(3) Monitoring station. A small Type B assisted living facility that contains one or more certified Alzheimer's assisted living units must provide staff areas and monitoring stations as follows.

(A) An existing small Type B assisted living facility must meet the requirements for a staff area as required by §553.122(e) of this subchapter.

(B) A new small Type B assisted living facility must meet the requirements for a staff area as required by §553.222(e) of this subchapter.

(C) A small Type B assisted living facility must provide a monitoring station meeting the requirements of subsection (f) of this section in each separate certified Alzheimer's assisted living unit.

(4) Means of escape.

(A) An existing small Type B assisted living facility must meet §553.123 of this subchapter and must have at least two means of escape from every building and from every floor as required by NFPA 101.

(B) A new small Type B assisted living facility must meet the requirements of §553.223 of this subchapter and must have at least two means of escape from every building and from every floor as required by NFPA 101.

(5) Control doors. If control doors are locked, locking arrangements on control doors must meet the requirements of subsection (g) of this section.

(6) Exterior doors. If exterior doors are locked, locking arrangements on exterior doors must meet one of the following:

(A) the locking arrangement must meet the requirements for Delayed Egress Locking Systems in NFPA 101; or

(B) the locking arrangement must meet the requirements of subsection (h) of this section.

(7) Outdoor area. A small, fully locked certified Alzheimer's assisted living facility must provide an outdoor area meeting the requirements of subsection (j) of this section.

(d) Large, fully locked certified Alzheimer's assisted living facility. A large Type B assisted living facility that has an Alzheimer's certification for the full licensed capacity of the assisted living facility and chooses to secure control doors or exit doors using approved locking arrangements described in subsection (g) or (i) of this section must meet the requirements for a large Type B assisted living facility according to §553.100(e) of this subchapter, except as modified by this subsection.

(1) Resident living areas.

(A) An existing large Type B assisted living facility must ensure resident living areas meet the requirements of §553.142(g) of this subchapter (relating to Space Planning and Utilization Requirements for an Existing Large Type B Assisted Living Facility).

(B) A new large Type B assisted living facility must ensure resident living areas meet the requirements of §553.242(g) of this subchapter (relating to Space Planning and Utilization Requirements for a New Large Type B Assisted Living Facility).

(C) A large, fully locked certified Alzheimer's assisted living facility that contains two or more certified Alzheimer's assisted living units separated by control doors, located on one floor of a building, located on multiple floors of a building, or located in multiple buildings, must ensure resident living areas in each separate certified Alzheimer's assisted living unit meet the requirements for resident living areas in a Type B assisted living facility for the capacity of each separate certified Alzheimer's assisted living unit.

(2) Resident-use plumbing fixtures.

(A) An existing large Type B assisted living facility must ensure resident-use plumbing fixtures meet the requirements of §553.147(b) of this subchapter (relating to Mechanical Requirements for an Existing Large Type B Assisted Living Facility).

(B) A new large Type B assisted living facility must ensure resident-use plumbing fixtures meet the requirements of §553.247(b) of this subchapter (relating to Mechanical Requirements for a New Large Type B Assisted Living Facility).

(C) A large, fully locked certified Alzheimer's assisted living facility that contains two or more certified Alzheimer's assisted living units separated by control doors, located on one floor of a building, located on multiple floors of a building, or located in multiple buildings, must ensure resident-use plumbing fixtures in each separate certified Alzheimer's assisted living unit meet the requirements for resident-use plumbing in a large Type B assisted living facility for the capacity of each separate certified Alzheimer's assisted living unit.

(3) Monitoring station or staff area. A large, fully locked certified Alzheimer's assisted living facility that occupies only one floor of one building, and is not divided into two or more separate certified Alzheimer's assisted living units, must provide a staff area as follows.

(A) An existing large Type B assisted living facility must meet the requirements for a staff area as required by §553.142(e) of this chapter.



(B) A new large Type B assisted living facility must meet the requirements for a staff area as required by §553.242(e) of this subchapter.

(C) A large Type B assisted living facility must provide a monitoring station in each separate certified Alzheimer's assisted living unit and meeting the requirements of subsection (f) of this section, except:

(i) in a large Type B assisted living facility that contains two or more certified Alzheimer's assisted living units on one floor separated by control doors, one monitoring station must meet the requirements for a staff area according to subparagraph (A) or (B) of this paragraph; and

(ii) in a large Type B assisted living facility that contains two or more certified Alzheimer's assisted living units located on two or more floors of a building, or located in multiple buildings, one monitoring station on each floor and in each building must meet the requirements for a staff area according to subparagraph (A) or (B) of this paragraph.

(4) Means of egress.

(A) An existing large Type B assisted living facility must meet §553.143 of this chapter (relating to Means of Egress Requirements for an Existing Large Type B Assisted Living Facility) and must have at least two means of egress from every building and from every floor as required by NFPA 101.

(B) A new large Type B assisted living facility must meet the requirements of §553.243 of this chapter (relating to Means of Egress Requirements for a New Large Type B Assisted Living Facility) and must have at least two means of egress from every building and from every floor according to NFPA 101.

(5) Control doors.

(A) Cross corridor control doors, if locked according to subparagraph (B) of this paragraph, must:

(i) be a pair of swinging doors arranged so that each door swings in a direction opposite from the other;

(ii) have door leaves that must each provide a minimum clear width of 32 inches; and

(iii) if latching, must have a knob, handle, panic bar, or other simple type of releasing device.

(B) If control doors are locked, locking arrangements on control doors must meet the requirements of subsection (g) of this section.

(6) Exit doors. If exit doors are locked, locking arrangements on exit doors must meet one of the following:

(A) the locking arrangement must meet the requirements for Delayed Egress Locking Systems in NFPA 101; or

(B) the locking arrangement must meet the requirements of subsection (i) of this section.

(7) Outdoor area. A large, fully locked certified Alzheimer's assisted living facility must provide an outdoor area meeting the requirements of subsection (k) of this section.

(e) Large Type B assisted living facility containing one or more certified Alzheimer's assisted living units. A large Type B assisted living facility that has a certified Alzheimer's capacity lower than the facility's licensed capacity and has one or more certified Alzheimer's assisted living units must meet the requirements for a

large Type B assisted living facility according to §553.100(e) of this chapter, except as modified by this subsection.

(1) Resident living areas.

(A) An existing large Type B assisted living facility must ensure resident living areas meet the requirements of §553.142(g) of this subchapter.

(B) A new large Type B assisted living facility must ensure resident living areas meet the requirements of §553.242(g) of this subchapter.

(C) A large Type B assisted living facility that contains one or more certified Alzheimer's assisted living units must ensure resident living areas in each separate certified Alzheimer's assisted living unit meet the requirements for resident living areas in a large Type B assisted living facility for the capacity of each separate certified Alzheimer's assisted living unit.

(2) Resident-use plumbing fixtures.

(A) An existing large Type B assisted living facility must ensure resident-use plumbing fixtures meet the requirements of §553.147(b) of this subchapter.

(B) A new large Type B assisted living facility must ensure resident-use plumbing fixtures meet the requirements of §553.247(b) of this subchapter.

(C) A large Type B assisted living facility that contains one or more certified Alzheimer's assisted living units must ensure resident-use plumbing fixtures in each separate certified Alzheimer's assisted living unit meet the requirements for resident-use plumbing fixtures in a large Type B assisted living facility for the capacity of each separate certified Alzheimer's assisted living unit.

(3) Monitoring station. A large Type B assisted living facility that contains one or more certified Alzheimer's assisted living units must provide staff areas and monitoring stations as follows:

(A) an existing large Type B assisted living facility must meet the requirements for a staff area as required by §553.142(e) of this subchapter;

(B) a new large Type B assisted living facility must meet the requirements for a staff area as required by §553.242(e) of this chapter; and

(C) a large Type B assisted living facility must provide a monitoring station meeting the requirements of subsection (f) of this section in each separate certified Alzheimer's assisted living unit.

(4) Means of egress.

(A) An existing large Type B assisted living facility must meet §553.143 of this subchapter and must have at least two means of egress from every building and from every floor as required by NFPA 101.

(B) A new large Type B assisted living facility must meet the requirements of §553.243 of this chapter and must have at least two means of egress from every building and from every floor as required by NFPA 101.

(5) Control doors.

(A) Cross corridor control doors, if locked according to subparagraph (B) of this paragraph, must:

(i) be a pair of swinging doors arranged so that each door swings in a direction opposite from the other;

(ii) have door leaves that must each provide a minimum clear width of 32 inches; and

(iii) if latching, must have a knob, handle, panic bar or other simple type of releasing device.

(B) If control doors are locked, locking arrangements on control doors must meet the requirements of subsection (g) of this section.

(6) Exit doors. If exit doors are locked, the locking arrangements on exit doors must:

(A) meet the requirements for Delayed Egress Locking Systems in NFPA 101; or

(B) meet the requirements of subsection (i) of this section.

(7) Outdoor area. A large, fully locked certified Alzheimer's assisted living facility must provide an outdoor area meeting the requirements of subsection (k) of this section.

(f) Monitoring station requirements required by this section include:

- (1) a writing surface, such as a desk or counter;
- (2) a chair;
- (3) task illumination at the task surface;
- (4) a telephone or intercom; and
- (5) lockable storage for resident records.

(g) Control door locking arrangements permitted by this section in a certified Alzheimer's assisted living facility must not be locked unless all the following requirements are met.

(1) The building must have an approved fire alarm system and an approved fire sprinkler system meeting the requirements of this subchapter.

(2) The locking device must be electronic and must be released when any of the following occurs:

- (A) activation of the fire alarm system;
- (B) activation of the fire sprinkler system;
- (C) power failure to the certified Alzheimer's assisted living facility or to the locking device;
- (D) activating a switch or button located at a monitoring station required by subsection (b) or (c) of this section; or
- (E) activating a switch or button located at a staff area required by subsection (c) of this section.

(3) A keypad, credential reader, or buttons may be located at the control door for routine use by staff.

(4) Staff must be trained in all the methods of unlocking the control door.

(h) Exterior door locking arrangements for small certified Alzheimer's assisted living facilities permitted by this section must not be locked unless all the following requirements are met.

(1) The building must have an approved fire alarm system and an approved fire sprinkler system meeting the requirements of this subchapter.

(2) The locking device must be electro-magnetic; that is, no type of throw-bolt is to be used.

(3) The locking device must release when any of the following occurs:

(A) activation of the fire alarm system;

(B) activation of the fire sprinkler system;

(C) power failure to the small certified Alzheimer's assisted living facility or to the locking device;

(D) activating a switch or button located at a monitoring station required by subsection (b) or (c) of this section; or

(E) activating a switch or button located at a staff area required by subsection (c) of this section.

(4) A keypad, credential reader, or buttons may be located at the exterior door for routine use by staff.

(5) A sign must be provided adjacent to any manual fire alarm pull required by NFPA 101 stating, "Pull to release exterior doors in an emergency."

(6) Staff must be trained in all the methods of unlocking the door.

(i) Exit door locking arrangements for large certified Alzheimer's assisted living facilities permitted by this section must not be locked unless all the following requirements are met.

(1) The building must have an approved fire alarm system and an approved fire sprinkler system meeting the requirements of this subchapter.

(2) The locking device must be electro-magnetic; that is, no type of throw-bolt is to be used.

(3) The locking device must release when any of the following occurs:

(A) activation of the fire alarm system;

(B) activation of the fire sprinkler system;

(C) power failure to the large certified Alzheimer's assisted living facility or to the locking device;

(D) activating a switch or button located at a monitoring station required by subsection (d) or (e) of this section; or

(E) activating a switch or button located at a staff area required by subsection (e) of this section.

(4) A keypad, credential reader, or buttons may be located at the exterior door for routine use by staff.

(5) A manual fire alarm pull must be located within five feet of each exit door with a sign stating, "Pull to release door in an emergency."

(6) Staff must be trained in all the methods of unlocking the door.

(j) Outdoor area requirements for small certified Alzheimer's assisted living facilities required by subsection (b) or (c) of this section must meet the following requirements.

(1) The outdoor area must provide at least 800 square feet of area in at least one contiguous space.

(2) The outdoor area must be connected to, be part of, be controlled by, and be directly accessible from the small certified Alzheimer's assisted living facility.

(3) The outdoor area must be enclosed with walls or fencing that do not allow climbing or present a hazard to residents; and

(A) where a resident bedroom window does not face the wall or fence the minimum distance to the enclosure wall or fence from the building is eight feet if the wall or fence is parallel to the building;

(B) where a resident bedroom window faces the wall or fence the minimum distance to the enclosure wall or fence from the building is 20 feet if the wall or fencing is solid and 15 feet if the wall or fencing is open; and

(C) for unusual or unique site conditions, outdoor areas may have other configurations with the prior approval of HHSC.

(D) The minimum dimensions in subparagraphs (A) and (B) of this paragraph do not apply to:

(i) additional fencing erected along property lines;  
or

(ii) building setback lines for privacy or for meeting the requirements of local building authorities.

(4) A small certified Alzheimer's assisted living facility must provide at least one gate in the fence or wall with a continuous path of travel from the building to the gate.

(5) If any gate in the fence or wall is locked, the gate nearest the building must be locked with an electronic lock that operates the same as electronic locks specified in subsection (g) or (h) of this section and meet the requirements of NFPA 70 for exterior exposure.

(A) Additional gates may be locked according to the requirements of subsection (g) or (h) of this section or may be locked using keyed locks, provided all staff carry the keys at all times the staff are on duty at the small certified Alzheimer's assisted living facility.

(B) All gates may be locked using keyed locks, provided all staff carry the keys at all times the staff are on duty at the small certified Alzheimer's assisted living facility, and the outdoor area includes an area of refuge meeting the following requirements.

(i) If the small Type B assisted living facility obtained certification as a certified Alzheimer's assisted living facility before May 2, 2024, the area extends beyond a line parallel to the building at a minimum distance of 30 feet from the building.

(ii) If the small Type B assisted living facility obtained certification as a certified Alzheimer's assisted living facility on or after May 2, 2024, the area is located beyond a line parallel to the building at a minimum distance of 30 feet from the building.

(iii) The area of refuge must allow at least 15 square feet per person, including residents, staff, and visitors potentially present at the time of an emergency.

(k) Outdoor area requirements for large certified Alzheimer's assisted living facilities required by subsection (d) or (e) of this section must meet the following requirements.

(1) The outdoor area must provide at least 800 square feet of area in at least one contiguous space.

(2) The outdoor area must be connected to, be part of, be controlled by, and be directly accessible from the large certified Alzheimer's assisted living facility.

(3) The outdoor area must be enclosed with walls or fencing that do not allow climbing or present a hazard to residents and the following conditions apply.

(A) Where a resident bedroom window does not face the wall or fence the minimum distance to the enclosure wall or fence from the building is eight feet if the wall or fence is parallel to the building.

(B) Where a resident bedroom window faces the wall or fence the minimum distance to the enclosure wall or fence from the building is 20 feet if the wall or fencing is solid and 15 feet if the wall or fencing is open.

(C) For unusual or unique site conditions, outdoor areas may have other configurations with the prior approval of HHSC.

(D) The minimum dimensions in subparagraphs (A) and (B) of this paragraph do not apply to:

(i) additional fencing erected along property lines;  
or

(ii) building setback lines for privacy or for meeting the requirements of local building authorities.

(4) A large certified Alzheimer's assisted living facility must provide at least two means of egress from the enclosed outdoor area that are remote from each other and meet the requirements of NFPA 101.

(5) Where a required exit discharges into the enclosed area, a large certified Alzheimer's assisted living facility must meet the following additional requirements.

(A) If only one exit discharges into the enclosed area, a minimum of two gates must be remotely located from each other.

(B) If two or more exits discharge into the enclosed area and unrestricted entry access can be made at each door, a minimum of one gate is required.

(C) Any gate must be located to provide a continuous path of travel from the building exit to a public way, including walkways of concrete, asphalt, or other approved materials.

(D) If gates are locked, the gate nearest the exit from the building must be locked with an electronic lock that operates the same as electronic locks specified in subsection (g) or (i) of this section and meets the requirements of NFPA 70 for exterior exposure.

(i) Additional gates may be locked according to the requirements of subsection (g) or (i) of this section or be locked using keyed locks, provided all staff carry the keys at all times they are on duty at the large certified Alzheimer's assisted living facility.

(ii) All gates may be locked using keyed locks, provided all staff carry the keys at all times the staff are on duty at the large certified Alzheimer's assisted living facility and the outdoor area includes an area of refuge meeting the following requirements.

(I) If the large Type B assisted living facility or the certified Alzheimer's assisted living unit was certified as a certified Alzheimer's assisted living facility before May 2, 2024, the area extends beyond a line parallel to the building at a minimum distance of 30 feet from the building.

(II) If the large Type B assisted living facility or the certified Alzheimer's assisted living unit is certified as a certified Alzheimer's assisted living facility on or after May 2, 2024, the area is located beyond a line parallel to the building at a minimum distance of 30 feet from the building.

(III) The area of refuge must allow at least 15 square feet per person, including residents, staff, and visitors potentially present at the time of an emergency.

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-3161



## SUBCHAPTER E. STANDARDS FOR LICENSURE

26 TAC §§553.253, 553.255, 553.257, 553.259, 553.261, 553.263, 553.265, 553.267, 553.269, 553.271, 553.273, 553.275, 553.277, 553.279, 553.281, 553.283, 553.285, 553.287, 553.289, 553.291 - 553.293, 553.295

The amendments and new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively.

The amendments and new section implement Texas Government Code §531.0055 and §531.033 and Texas Health and Safety Code §247.025 and §247.026.

§553.253. *Employee Qualifications and Training.*

(a) Manager qualifications and training. The ~~[Each]~~ facility must designate, in writing, a manager to have authority over the operation.

(1) In a small facility [~~Qualifications. In small facilities~~], the manager must have proof of graduation from an accredited high school or certification of equivalency of graduation.

(2) In a large facility [~~facilities~~], the manager must have:

(A) an associate [~~associate's~~] degree in nursing, health care management, or a related field;

(B) a bachelor's degree; or

(C) proof of graduation from an accredited high school or certification of equivalency of graduation and at least one year of experience working in management or in the health care industry [~~management~~].

(3) Manager training. A manager must complete a 24-hour training course on the management of assisted living facilities that meets the requirements in this subsection within the first 12 months of employment as manager.

~~[(2)]~~ [~~Training in management of assisted living facilities. A manager must complete at least one educational course on the management of assisted living facilities, which must include information on the assisted living standards; resident characteristics (including dementia); resident assessment and skills working with residents; basic principles of management; food and nutrition services; federal laws, with an emphasis on accessibility requirements under the Americans~~

~~with Disabilities Act; community resources; ethics, and financial management.]~~

~~[(A)]~~ [~~The course must be at least 24 hours in length.]~~

~~[(ii)]~~ [~~A manager must complete eight hours of training on the assisted living standards within the first three months of employment.]~~

(A) ~~[(ii)]~~ The 24-hour training requirement may not be met through in-services at the facility, but may be met through structured, formalized classes, correspondence courses, training videos, or computer-based education programs [~~distance learning programs, or off-site training courses. All training must be provided or produced by academic institutions, assisted living corporations, or recognized state or national organizations or associations. Subject matter that deals with the internal affairs of an organization will not qualify for credit.~~].

(B) The 24-hour training course must be provided or produced by academic institutions or established state or national assisted living organizations or associations.

(C) Subject matter that deals with the internal affairs of an organization does not qualify for credit.

(D) The 24-hour course of education must include:

(i) eight hours based on the assisted living standards established by this chapter;

(ii) typical characteristics of residents in assisted living facilities, including dementia, and skills for working with residents;

(iii) conducting resident evaluations;

(iv) basic principles of management;

(v) food and nutrition services;

(vi) basic infection prevention and control principles;

(vii) federal laws, with an emphasis on accessibility requirements under the Americans with Disabilities Act;

(viii) use of community resources as they apply to residents in an assisted living facility;

(ix) ethics; and

(x) financial management.

~~[(iii)]~~ Evidence of training must be on file at the facility and must contain documentation of content, hours, dates, and provider.]

~~[(B)]~~ A manager who can show documentation of a previously completed comparable course of study are exempt from the training requirements.]

~~[(C)]~~ A manager must complete the training required by subparagraph (A) or (B) of this paragraph, as applicable, by the first anniversary of employment as manager.]

(E) ~~[(D)]~~ An assisted living manager who was employed by a licensed assisted living facility as the manager and changes employment to another licensed assisted living facility as the manager, with a break in employment of no longer than 90 [30] days, is exempt from the 24-hour training requirement.

(4) ~~[(3)]~~ Continuing education for managers. After the first 12 months as manager, a manager must complete 12 hours of continuing education before the next anniversary of employment as manager. Annual continuing education must include at least two of the following

topics: [All managers must show evidence of 12 hours of annual continuing education. This requirement will be met during the first year of employment by the 24-hour assisted living management course. The annual continuing education requirement must include at least two of the following areas:]

(A) resident and provider rights and responsibilities; [; abuse and neglect, and confidentiality;]

(B) abuse, neglect and exploitation;

(C) resident and staff confidentiality;

(D) [~~(B)~~] basic principles of management;

(E) [~~(C)~~] skills for working with residents, families, and other professional service providers;

(F) [~~(D)~~] resident characteristics and needs;

(G) [~~(E)~~] community resources as they relate to residents;

(H) [~~(F)~~] accounting and budgeting;

(I) basic infection prevention and control principles;

(J) [~~(G)~~] basic emergency first aid, including the Heimlich maneuver; and [; or]

(K) [~~(H)~~] federal laws, such as the Americans with Disabilities Act of 1990, as amended; the Civil Rights Act of 1991; the Rehabilitation Act of 1973, as amended; the Family and Medical Leave Act of 1993; and the Fair Housing Act, as amended.

(5) [(4)] Manager's responsibilities. The manager must be on duty for at least 40 hours per week and may manage only one facility, except for managers of small Type A facilities, who: [may have responsibility for no more than 16 residents in no more than four facilities. The managers of small Type A facilities must be available by telephone or pager when conducting facility business off-site.]

(A) may have responsibility for no more than 16 residents in no more than four facilities; and

(B) must be available by phone when conducting facility business off-site.

(6) [(5)] Manager's absence. [An employee competent and authorized to act in the absence of the manager must be designated in writing.]

(A) The facility must designate in writing an authorized employee to act in the absence of the manager.

(B) The facility must ensure the employee designated to act in the manager's absence is competent to do so.

(C) The facility must maintain a record of the designated employee currently authorized to act in the manager's absence.

(b) Attendants. [Full-time facility attendants must be at least 18 years old or a high-school graduate.]

(1) An attendant must be at least 18 years old or a high school graduate.

(2) [(4)] An attendant must be present [in the facility] at all times when residents are in the facility.

[(2) Attendants are not precluded from performing other functions as required by the facility.]

(c) Staffing.

(1) A facility must develop and implement staffing policies, which require staffing ratios based upon the needs and acuity of the residents, as identified in their service plans.

(2) A facility must have dedicated staff on duty for each shift and must not share on-duty staff with another licensed facility or provider type, such as another assisted facility, a home and community support services agency, or a nursing facility.

(3) A facility must disclose, to prospective residents and their families, the facility's normal 24-hour staffing pattern.

(A) A facility must post its normal 24-hour staffing pattern monthly in accordance with §553.291 of this subchapter (relating to Postings).

(B) A facility's posted 24-hour staffing pattern must include:

(i) the number of attendants scheduled to work each shift;

(ii) the number of nurses scheduled to work each shift if the facility has nurses on staff;

(iii) the number of medication aides scheduled to work each shift if the facility has medication aides on staff; and

(iv) office hours of the facility manager.

[(2) Prior to admission, a facility must disclose, to prospective residents and their families, the facility's normal 24-hour staffing pattern and post it monthly in accordance with §553.271 of this subchapter (relating to Postings).]

(4) [(3)] A facility must have sufficient staff to:

(A) maintain order, safety, and cleanliness;

(B) assist with medication regimens;

(C) prepare and serve meals that meet the daily nutritional and special dietary needs of each resident, in accordance with each resident's service plan;

(D) assist with laundry;

(E) ensure [assure] that each resident receives the kind and amount of supervision and care required to meet his or her basic needs, including specified nighttime care or supervision requirements; and

(F) ensure safe evacuation of the facility in the event of an emergency.

(5) A facility must not use a companion care provider or solicit or involve resident family members to provide care for a resident to mitigate staffing shortages.

(6) [(4)] A facility must meet the applicable staffing requirements for night shift as follows [described in this subparagraph].

(A) Type A facility: Night shift staff in a small facility must be immediately available. In a large facility, the staff must be immediately available and awake.

(B) Type B facility: Night shift staff must be immediately available and awake, regardless of the number of licensed beds.

(d) Staff training. The facility must document that staff [members] are competent to provide personal care before assuming these responsibilities and have received: [the following training:]

(1) [All staff members must complete] four hours of orientation that covers [before assuming any job responsibilities. Training must cover], at a minimum: [; the following topics:]

- (A) reporting of abuse, neglect and exploitation [and neglect];
  - (B) confidentiality of resident information;
  - (C) universal precautions;
  - (D) conditions about which they should notify the facility manager;
  - (E) residents' rights; [and]
  - (F) basic infection prevention and control principles;
- and
- (G) [(F)] emergency and evacuation procedures.

(2) In addition to the requirements in paragraph (1) of this subsection, attendants [Attendants] must complete 16 hours of on-the-job supervision and training directly [within the first 16 hours of employment] following orientation. Training must include:

- (A) assisting residents [providing assistance] with the activities of daily living;
  - (B) health conditions and diagnoses of residents in the facility and how they may affect provision of care [resident's health conditions and how they may affect provision of tasks];
  - (C) safety measures to prevent accidents and injuries;
  - (D) emergency first aid procedures, such as the Heimlich maneuver and actions to take when a resident falls, suffers a laceration, or is experiencing [experiences] a sudden change in physical or cognitive [mental] status;
  - (E) managing disruptive behavior;
  - (F) behavior management, such as the [for example,] prevention of aggressive behavior and de-escalation techniques, [practices to decrease the frequency of the use of restraint,] and alternatives to restraints; [and]
  - (G) basic infection prevention and control principles;
- and
- (H) [(G)] fall prevention.

(3) An attendant [Direct care staff] must complete six documented hours of continuing education annually, based on the individual's hire date. One hour of the annual continuing education must be in fall prevention and one hour must be in behavior management such as preventing aggressive behavior and de-escalation techniques and alternatives to restraints, and both topics must be competency-based. Subject matter for the annual continuing education must address the unique needs of the facility and may include [each employee's hire date. Staff must complete one hour of annual training in fall prevention and one hour of training in behavior management, for example, prevention of aggressive behavior and de-escalation techniques, practices to decrease the frequency of the use of restraint, and alternatives to restraints. Training for these subjects must be competency-based. Subject matter must address the unique needs of the facility. Suggested topics include]:

- (A) promoting resident dignity, independence, individuality, privacy, and choice;
- (B) resident rights and principles of self-determination;

(C) communication techniques for working with residents with hearing, visual, or cognitive impairment;

(D) communicating with families and other persons interested in the resident;

(E) common physical, psychological, social, and emotional conditions and how these conditions affect residents' care;

(F) basic infection prevention and control principles;

(G) [(F)] essential facts about common physical, emotional, cognitive, and mental disorders such as [; for example,] arthritis, cancer, dementia, depression, heart and lung diseases, sensory problems, mental illness, and [or] stroke;

(H) [(G)] cardiopulmonary resuscitation (CPR);

(I) [(H)] common medications and side effects, including psychotropic medications; [; when appropriate;]

(J) [(I)] recognizing the symptoms of a [understanding] mental health concern [illness];

(K) [(J)] conflict resolution and de-escalation techniques; and

(L) [(K)] information regarding community resources as they relate to resident needs.

(4) A facility that employs [Facilities that employ] licensed nurses, certified nurse aides, or certified medication aides must ensure that staff members in these positions receive [provide] annual in-service training, appropriate to their job responsibilities, including [from one or more of the following areas]:

(A) communication techniques and skills useful when [providing geriatric care (skills for) communicating with the hearing impaired, visually impaired, and cognitively impaired; therapeutic touch; and recognizing communication that indicates psychological abuse];

(B) assessment and interventions related to the common physical and psychological changes of aging for each body system;

(C) geriatric pharmacology, including treatment for pain management, food and drug interactions, and sleep disorders;

(D) common emergencies of geriatric residents and how to prevent them, such as [for example] falls, choking on food or medicines, and injuries from restraint use;

(E) recognizing sudden changes in physical condition, such as stroke, heart attack, acute abdomen, acute angle-closure glaucoma, and respiratory distress and obtaining emergency treatment;

(F) [(E)] common mental and cognitive disorders with related nursing implications; and

(G) [(F)] ethical and legal issues regarding advance directives, abuse, neglect, and exploitation [and neglect], guardianship, and confidentiality.

§553.255. All Staff Policy for Residents with Alzheimer's Disease or a Related Disorder:

(a) A facility must adopt, implement, and enforce a written policy that:

(1) requires a facility employee who provides personal [direct] care services to a resident with Alzheimer's disease or a related disorder to successfully complete training in the provision of care to residents with Alzheimer's disease and related disorders; and

(2) ensures the care and services provided by a facility employee to a resident with Alzheimer's disease or a related disorder meet the specific identified needs of the resident relating to the diagnosis of Alzheimer's disease or a related disorder.

(b) The training required for facility employees under subsection (a)(1) of this section must include information about:

- (1) symptoms of dementia;
- (2) stages of Alzheimer's disease;
- (3) person-centered behavioral interventions; and
- (4) communication with a resident with Alzheimer's disease or a related disorder.

§553.257. *Personnel [Human Resources].*

(a) Personnel records. A facility must keep current and complete personnel records on a facility employee for review by HHSC staff including:

- (1) documentation that the facility performed a criminal history check;
- (2) an annual employee misconduct registry check;
- (3) an annual nurse aide registry check;
- (4) documentation of initial tuberculosis screenings referenced in §553.277(e) [~~§553.264(f)~~] of this subchapter (relating to Infection Prevention and Control [Coordination of Care]);
- (5) documentation of the employee's compliance with or exemption from the facility vaccination policy referenced in §553.277(d) [~~§553.264(f)~~] of this subchapter;
- (6) the signed statement from the employee referenced in §553.293 [~~§553.273~~] of this subchapter (relating to Abuse, Neglect, or Exploitation and Incidents Reportable to HHSC by Facilities), acknowledging that the employee may be criminally liable for the failure to report abuse, neglect, and exploitation; and

(7) a signed disclosure statement~~;~~ indicating whether the employee:

- (A) has been convicted of an offense described in Texas Health and Safety Code §250.006; and
- (B) has lived in a state other than Texas within the past five years.

(b) Investigation of facility employees.

(1) A facility must comply with the provisions of Texas Health and Safety Code, Chapter 250.

(2) Before a facility hires an employee, the facility must search the employee misconduct registry (EMR) established under §253.007, Texas Health and Safety Code, and the HHSC nurse aide registry (NAR) to determine if the individual is designated in either registry as unemployable based on employee misconduct. Both registries can be accessed on the HHSC Internet website.

(3) A facility is prohibited from hiring or continuing to employ a person who is listed in the EMR or NAR as unemployable or who has been convicted of an offense listed in Texas Health and Safety Code §250.006 as a bar to employment or is a contraindication to employment with the facility.

(4) A facility must provide notification about the EMR to an employee in accordance with §561.3 of this title [26 TAC §741.1413] (relating to Employment and Registry Information).

(5) In addition to the initial search of the NAR and the EMR, a facility must conduct a search of the NAR and the EMR at least once every 12 months to determine if the employee is designated in either registry as unemployable [~~at least every 12 months~~].

(6) A facility must keep a copy of the results of the initial and annual searches of the NAR and EMR in the employee's personnel file.

(7) If an applicant for employment indicates on the disclosure statement that he or she [they] have lived in another state within the past five years, the facility must conduct a name-based criminal history check in each state in which the applicant previously resided within the five-year period. A facility may hire the applicant pending the results of the name-based criminal history check in each state, but the employee must not be in a position that has direct contact with residents.

§553.259. *Admission Policies and Procedures.*

(a) Admission policies and disclosure statement.

(1) A facility must not admit a resident under the age of 18 years unless the person is an emancipated minor.

(2) ~~[(4)]~~ A facility must not admit ~~[or retain]~~ a resident whose needs cannot be met by the facility and who cannot secure the necessary services from an outside resource. ~~[As part of the facility's general supervision and oversight of the physical and mental well-being of its residents, the facility remains responsible for all care provided at the facility. If the individual is appropriate for placement in a facility, then the decision that additional services are necessary and can be secured is the responsibility of facility management with written concurrence of the resident, resident's attending physician, or legal representative. Regardless of the possibility of "aging in place" or securing additional services, the facility must meet all NFPA 101 and physical plant requirements in Subchapter D of this chapter (relating to Facility Construction); and, as applicable, §553.311 (relating to Physical Plant Requirements for Alzheimer's Units); based on each resident's evacuation capabilities; except as provided in subsection (e) of this section.]~~

(3) ~~[(2)]~~ The facility must provide [There must be] a written admission agreement to the resident before admitting the resident to the facility. [between the facility and the resident. The agreement must specify such details as services to be provided and the charges for the services. If the facility provides services and supplies that could be a Medicare benefit, the facility must provide the resident a statement that such services and supplies could be a Medicare benefit.]

(A) The agreement must specify such details as services to be provided and the charges for the services.

(B) If the facility provides services and supplies that could be a Medicare benefit, the facility must provide the resident a statement that such services and supplies could be a Medicare benefit.

(C) The admission agreement must not conflict with the standards set forth in this chapter.

(4) ~~[(3)]~~ A facility must share a copy of the ~~facility's [facility]~~ disclosure statement, rate schedule, and a resident's individual ~~[resident]~~ service plan with an outside resource that provides ~~[outside resources that provide any additional]~~ services to the ~~[a]~~ resident. An outside resource [Outside resources] must provide the facility [facilities] with a copy of its care plan for the resident [their resident care plans] and must document, at the facility, any services provided to the resident ~~;~~ on the day provided.

(5) ~~[(4)]~~ In addition to the facility disclosure statement, a facility that advertises, markets, or otherwise promotes that it provides services, including memory care services, to residents with Alzheimer's

disease and related disorders, must provide to each resident the Assisted Living Facility Memory Care Disclosure Statement. The facility must disclose whether the facility is certified to provide specialized care to residents with Alzheimer's disease or related disorders.

(A) A facility that is Alzheimer's certified and provides the Assisted Living Facility Memory Care Disclosure Statement to a resident, must also provide HHSC Form 3641, Alzheimer's Assisted Living Facility Disclosure Statement.

(B) A facility that is not Alzheimer's certified and provides the Assisted Living Facility Memory Care Disclosure Statement, to a resident does not need to provide HHSC form 3641, Alzheimer's Assisted Living Disclosure Statement.

~~[(5) Each resident must have a health examination by a physician performed within 30 days before admission or 14 days after admission, unless a transferring hospital or facility has a physical examination in the medical record.]~~

(6) The facility must secure, upon [at the time of] admission of a resident, the resident's [the following identifying information]:

- (A) full name [of resident];
- (B) Social Security [social security] number;
- (C) usual residence (where the resident lived before admission);
- (D) sex;
- (E) marital status;
- (F) date of birth;
- (G) place of birth;
- (H) [usual occupation (during most of working life);
- (I) family, other persons named by the resident, and physician for emergency notification;
- (J) pharmacy preference; and
- (K) Medicaid/Medicare number, if applicable [available].

(7) A facility that allows pets must implement, maintain, and enforce a pet policy. The policy must address:

- (A) sanitation, including pest control;
- (B) safety, including any vaccination requirements or size restrictions;
- (C) compliance with any local codes or ordinances; and
- (D) service animals.

(b) Resident evaluation [assessment] and service plan. [Within 14 days of admission, a resident comprehensive assessment and an individual service plan for providing care, which is based on the comprehensive assessment, must be completed. The comprehensive assessment must be completed by the appropriate staff and documented on a form developed by the facility. When a facility is unable to obtain information required for the comprehensive assessment, the facility should document its attempts to obtain the information.]

(1) A resident must have a health examination by a health-care practitioner performed within 30 days before admission or 14 days after admission unless a transferring hospital or facility has provided a physical examination as part of the resident's medical record.

(2) Within 14 days after admission, the facility must complete an evaluation of a resident and develop an individual service plan

for providing care that is based on the resident evaluation. The resident evaluation must be performed by the manager or a nurse, as applicable to a resident's individual requirements. The resident evaluation must be documented on a form developed by the facility. When a facility is unable to obtain information required for the resident evaluation, the facility must document its attempts to obtain the information.

(3) After the first resident evaluation, the facility must conduct a resident evaluation annually and upon any significant change in the resident's condition and note and date any necessary changes to the resident's service plan based on the most recent evaluation.

(4) Upon admission, the facility must conduct a resident evaluation on a resident admitted for respite care and develop an individual service plan based on the evaluation in accordance with this section. The facility may keep the service plan for six months from the date on which it is developed. During that period, the facility may admit the individual as frequently as needed.

(5) [(+) A resident evaluation [The comprehensive assessment] must be conducted in person and include information regarding the resident's [the following items]:

(A) signed consent designating a legally authorized representative to make decisions on his or her behalf and the name and contact information for that person, if applicable;

(B) [(A)] location prior to admission [the location from which the resident was admitted];

(C) [(B)] primary language;

(D) [(C)] sleep-cycle issues;

(E) [(D)] behavioral symptoms;

(F) [(E)] psychosocial issues [(i.e., a psychosocial functioning assessment that includes an assessment of mental or psychosocial adjustment difficulty; a screening for signs of depression, such as withdrawal, anger or sad mood; assessment of the resident's level of anxiety; and determining if the resident has a history of psychiatric diagnosis that required in-patient treatment)];

(G) [(F)] history of Alzheimer's disease or related disorders [disease/dementia history];

(H) [(G)] activities of daily living patterns such as waking [(e.g., wakened] to toilet all or most nights, bathing in the morning or night, and preferring showering or bathing [bathed in morning/night, shower or bath];

(I) [(H)] involvement patterns and preferred activity pursuits such as [e.g., daily contact with relatives or [;] friends, attendance at [usually attended] religious services, involvement [involved] in group activities, preferred activity settings, and general activity preferences[)];

(J) [(I)] cognitive skills for daily decision-making such as [(e.g.,] independent, modified independent [independence], moderately impaired, or severely impaired[)];

(K) [(J)] communication such as [(e.g.,] ability to communicate with others and use of [;] communication devices[)];

(L) [(K)] physical functioning such as [(e.g.,] transfer status,[;] ambulation status,[;] toilet use,[;] personal hygiene, and[;] ability to dress, feed, and groom self[)];

(M) [(L)] continence status;

(N) [(M)] nutritional status including [(e.g.,] weight changes, nutritional problems or approaches, any food allergies and



intolerances, therapeutic diets, and diets in observation of religious practices ]];

(O) [~~(N)~~] oral/dental status;

(P) [~~(O)~~] diagnoses;

(Q) [~~(P)~~] medications including whether [(e.g.,] administered, supervised, or self-administered [self-administers)];

(R) [~~(Q)~~] health conditions and possible medication side effects;

(S) [~~(R)~~] special treatments and procedures;

(T) [~~(S)~~] hospital admissions within the past six months or since last evaluation [assessment]; [and]

(U) [~~(T)~~] preventive health needs such as [(e.g.,] blood pressure monitoring and[,] hearing-vision assessment; ]-]

(V) barriers to communicating in spoken English; and

(W) use of assistive devices, as defined in §553.3 of this chapter (relating to Definitions), in order to achieve the highest practicable quality of life and independence.

(6) [(2)] The service plan must be approved and signed by the resident or, if applicable, the resident's legally authorized representative, or acknowledged in writing by a person chosen by the resident to participate in the resident's care [responsible for the resident's health care decisions].

(A) The facility must provide care according to the service plan. [The service plan must be updated annually and upon a significant change in condition, based upon an assessment of the resident.]

(B) The facility must provide a copy of a resident's service plan to the resident or, as applicable, the resident's legally authorized representative upon admission.

[(3) For respite clients, the facility may keep a service plan for six months from the date on which it is developed. During that period, the facility may admit the individual as frequently as needed.]

[(4) Emergency admissions must be assessed, and a service plan developed for them.]

(c) Resident policies.

(1) The facility must [Before admitting a resident, facility staff must] explain the facility's disclosure statement and provide a copy of it [the disclosure statement] to the resident [, family,] or the resident's responsible party. A facility that provides brain injury rehabilitation services must attach to its disclosure statement a specific statement that licensure as an assisted living facility does not indicate state review, approval, or endorsement of the facility's rehabilitative services. The facility must document that a copy of the disclosure statement was delivered and to whom [receipt of the disclosure statement].

(2) The facility must provide residents with a copy of the Resident's Bill of Rights.

(3) When a resident is admitted, the facility must provide to the resident's legally authorized representative or responsible party [immediate family], and document the applicable party's [family's] receipt of, the HHSC telephone hotline number to report suspected abuse, neglect, or exploitation, as referenced in §553.293 [§553.273] of this subchapter (relating to Abuse, Neglect, or Exploitation and Incidents Reportable to HHSC by Facilities).

(4) The facility must have written policies regarding the characteristics of residents accepted, services provided, charges, refunds, responsibilities of the facility and residents, use of facility space

and amenities by [privileges of] residents, and other rules and regulations that residents must follow and make a copy available to a resident, legally authorized representative, or responsible party.

[(5) The facility must make available copies of the resident policies to staff and to residents or residents' responsible parties at time of admission.]

(5) The facility must notify residents and their legally authorized representatives, as applicable, whenever there are any important changes to resident [Documented notification of any changes to the] policies referenced in paragraph (4) of this subsection at least 30 days [must occur] before the effective date of the changes.

(6) [Before or upon admission of a resident, a] The facility must provide a document that contains HHSC rules and the facility's policies relating to restraint and seclusion prior to or upon admission [notify the resident and, if applicable, the resident's legally authorized representative, of HHSC rules and the facility's policies related to restraint and seclusion].

(7) The facility must provide a resident and the resident's legally authorized representative with a written copy of the facility's emergency preparedness plan or an evacuation summary, as required under §553.295(d) [§553.275(d)] of this subchapter (relating to Emergency Preparedness and Response).

(8) A facility that uses an electronic method for any documentation or notification required under this subsection must implement a procedure for printing the information for a resident, legally authorized representative, or responsible party who requests a printed copy.

(d) Advance directives.

(1) The facility must develop, maintain, and enforce written policies regarding the implementation of advance directives. The policies must include a clear and precise statement of any procedure the facility is unwilling or unable to provide or withhold such as cardiopulmonary resuscitation (CPR) in accordance with an advance directive.

(2) A facility that employs a nurse must ensure policies address nurse interventions during an emergent situation in accordance with Texas Board of Nursing rules at Texas Administrative Code (TAC), Title 22 §217.11 (relating to Standards of Nursing Practice).

(3) [(2)] The facility must provide written notice of these policies to residents upon admission to the facility [at the time they are admitted to receive services from the facility].

(A) If, at the time notice is to be provided, the resident is incompetent or otherwise incapacitated and unable to receive the notice, the facility must provide the written notice, in the following order of preference, to:

(i) the resident's legal guardian;

(ii) the resident's legally authorized representative [a person responsible for the resident's health care decisions];

(iii) the resident's spouse;

(iv) the resident's adult child; or

(v) the resident's parents.[; or

(vi) the person admitting the resident.]

(B) If the facility is unable, after a diligent search, to locate an individual listed under subparagraph (A) of this paragraph, the facility is not required to give notice.

(4) [(3)] If a resident who was incompetent or otherwise incapacitated and unable to receive notice regarding the facility's advance directives policies later becomes able to [receive the notice], the facility must provide the written notice at the time the resident becomes able to receive the notice.

(5) [(4)] HHSC imposes an administrative penalty of \$500 for failure to inform the resident of facility policies regarding the implementation of advance directives.

(A) HHSC sends a facility written notice of the recommendation for an administrative penalty.

(B) Within 20 days after the date on which HHSC sends written notice to a facility, the facility must give written consent to the penalty or make a written request to HHSC for an administrative hearing.

(C) Hearings will be [are] held in accordance with the formal hearing procedures at 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedures Act).

[(e) Inappropriate placement in Type A or Type B facilities.]

[(1) HHSC or a facility may determine that a resident is inappropriately placed in the facility if the resident experiences a change of condition but continues to meet the facility evacuation criteria.]

[(A) If HHSC determines the resident is inappropriately placed and the facility is willing to retain the resident, the facility is not required to discharge the resident if, within 10 working days after receiving the Statement of Licensing Violations and Plan of Correction, Form 3724, and the Report of Contact, Form 3614-A, from HHSC, the facility submits the following to the HHSC regional office:]

[(i) Physician's Assessment, Form 1126, indicating that the resident is appropriately placed and describing the resident's medical conditions and related nursing needs, ambulatory and transfer abilities, and mental status;]

[(ii) Resident's Request to Remain in Facility, Form 1125, indicating that:]

[(t) the resident wants to remain at the facility; or]

[(t) if the resident lacks capacity to provide a written statement, the resident's family member or legally authorized representative wants the resident to remain at the facility; and]

[(iii) Facility Request, Form 1124, indicating that the facility agrees that the resident may remain at the facility.]

[(B) If the facility initiates the request for an inappropriately placed resident to remain in the facility, the facility must complete and date the forms described in subparagraph (A) of this paragraph and submit them to the HHSC regional office within 10 working days after the date the facility determines the resident is inappropriately placed, as indicated on the HHSC prescribed forms.]

[(2) HHSC or a facility may determine that a resident is inappropriately placed in the facility if the facility does not meet all requirements for the evacuation of a designated resident referenced in §553.5 of this chapter (relating to Types of Assisted Living Facilities).]

[(A) If, during a site visit, HHSC determines that a resident is inappropriately placed at the facility and the facility is willing to retain the resident, the facility must request an evacuation waiver, as described in subparagraph (C) of this paragraph, to the HHSC regional office within 10 working days after the date the facility receives the Statement of Licensing Violations and Plan of Correction, Form 3724, and the Report of Contact, Form 3614-A. If the facility is not willing

to retain the resident, the facility must discharge the resident within 30 days after receiving the Statement of Licensing Violations and Plan of Correction and the Report of Contact.]

[(B) If the facility initiates the request for a resident to remain in the facility, the facility must request an evacuation waiver, as described in subparagraph (C) of this paragraph, from the HHSC regional office within 10 working days after the date the facility determines the resident is inappropriately placed, as indicated on the HHSC prescribed forms.]

[(C) To request an evacuation waiver for an inappropriately placed resident, a facility must submit to the HHSC regional office:]

[(i) Physician's Assessment, Form 1126, indicating that the resident is appropriately placed and describing the resident's medical conditions and related nursing needs, ambulatory and transfer abilities, and mental status;]

[(ii) Resident's Request to Remain in Facility, Form 1125, indicating that:]

[(t) the resident wants to remain at the facility; or]

[(t) if the resident lacks capacity to provide a written statement, the resident's family member or legally authorized representative wants the resident to remain at the facility;]

[(iii) Facility Request, Form 1124, indicating that the facility agrees that the resident may remain at the facility;]

[(iv) a detailed emergency plan that explains how the facility will meet the evacuation needs of the resident, including:]

[(t) specific staff positions that will be on duty to assist with evacuation and their shift times;]

[(t) specific staff positions that will be on duty and awake at night; and]

[(t) specific staff training that relates to resident evacuation;]

[(v) a copy of an accurate facility floor plan, to scale, that labels all rooms by use and indicates the specific resident's room;]

[(vi) a copy of the facility's emergency evacuation plan;]

[(vii) a copy of the facility fire drill records for the last 12 months;]

[(viii) a copy of a completed Fire Marshal/State Fire Marshal Notification, Form 1127, signed by the fire authority having jurisdiction (either the local Fire Marshal or State Fire Marshal) as an acknowledgement that the fire authority has been notified that the resident's evacuation capability has changed;]

[(ix) a copy of a completed Fire Suppression Authority Notification, Form 1129, signed by the local fire suppression authority as an acknowledgement that the fire suppression authority has been notified that the resident's evacuation capability has changed;]

[(x) a copy of the resident's most recent comprehensive assessment that addresses the areas required by subsection (e) of this section and that was completed within 60 days, based on the date stated on the evacuation waiver form submitted to HHSC;]

[(xi) the resident's service plan that addresses all aspects of the resident's care, particularly those areas identified by HHSC, including:]

~~[(I) the resident's medical condition and related nursing needs;]~~

~~[(II) hospitalizations within 60 days, based on the date stated on the evacuation waiver form submitted to HHSC;]~~

~~[(III) any significant change in condition in the last 60 days, based on the date stated on the evacuation waiver form submitted to HHSC;]~~

~~[(IV) specific staffing needs; and]~~

~~[(V) services that are provided by an outside provider;]~~

~~[(xii) any other information that relates to the required fire safety features of the facility that will ensure the evacuation capability of any resident; and]~~

~~[(xiii) service plans of other residents, if requested by HHSC.]~~

~~[(D) A facility must meet the following criteria to receive a waiver from HHSC:]~~

~~[(i) The emergency plan submitted in accordance with subparagraph (C)(iv) of this paragraph must ensure that:]~~

~~[(I) staff is adequately trained;]~~

~~[(II) a sufficient number of staff are on all shifts to move all residents to a place of safety;]~~

~~[(III) residents will be moved to appropriate locations, given health and safety issues;]~~

~~[(IV) all possible locations of fire origin areas and the necessity for full evacuation of the building are addressed;]~~

~~[(V) the fire alarm signal is adequate;]~~

~~[(VI) there is an effective method for warning residents and staff during a malfunction of the building fire alarm system;]~~

~~[(VII) there is a method to effectively communicate the actual location of the fire; and]~~

~~[(VIII) the plan satisfies any other safety concerns that could have an effect on the residents' safety in the event of a fire; and]~~

~~[(ii) the emergency plan will not have an adverse effect on other residents of the facility who have waivers of evacuation or who have special needs that require staff assistance.]~~

~~[(E) HHSC reviews the documentation submitted under this subsection and notifies the facility in writing of its determination to grant or deny the waiver within 10 working days after the date the request is received in the HHSC regional office.]~~

~~[(F) Upon notification that HHSC has granted the evacuation waiver, the facility must immediately initiate all provisions of the proposed emergency plan. If the facility does not follow the emergency plan, and there are health and safety concerns that are not addressed, HHSC may determine that there is an immediate threat to the health or safety of a resident.]~~

~~[(G) HHSC reviews a waiver of evacuation during the facility's annual renewal licensing inspection.]~~

~~[(3) If an HHSC surveyor determines that a resident is inappropriately placed at a facility and the facility either agrees with the determination or fails to obtain the written statements or waiver required in this subsection, the facility must discharge the resident.]~~

~~[(A) The resident is allowed 30 days after the date of notice of discharge to move from the facility.]~~

~~[(B) A discharge required under this subsection must be made notwithstanding:]~~

~~[(i) any other law, including any law relating to the rights of residents and any obligations imposed under the Property Code; and]~~

~~[(ii) the terms of any contract.]~~

~~[(4) If a facility is required to discharge the resident because the facility has not submitted the written statements required by paragraph (1) of this subsection to the HHSC regional office, or HHSC denies the waiver as described in paragraph (2) of this subsection, HHSC may:]~~

~~[(A) assess an administrative penalty if HHSC determines the facility has intentionally or repeatedly disregarded the waiver process because the resident is still residing in the facility when HHSC conducts a future onsite visit; or]~~

~~[(B) seek other sanctions, including an emergency suspension or closing order, against the facility under Texas Health and Safety Code, Chapter 247, Subchapter C, if HHSC determines there is a significant risk and immediate threat to the health and safety of a resident of the facility.]~~

~~[(5) The facility's disclosure statement must notify the resident and resident's legally authorized representative of the waiver process described in this section and the facility's policies and procedures for aging in place.]~~

~~[(6) After the first year of employment and no later than the anniversary date of the facility manager's hire date, the manager must show evidence of annual completion of HHSC training on aging in place and retaliation.]~~

§553.261. Inappropriate Placement in a Type A or Type B Facility.

(a) An HHSC surveyor or a facility may determine that a resident is inappropriately placed in the facility if the resident experiences a change of condition.

(1) If an HHSC surveyor or a facility determines a resident is inappropriately placed but the resident continues to meet the facility evacuation criteria according to §553.5 of this chapter (relating to Types of Assisted Living Facilities), the facility must follow the process in subsection (b) of this section.

(2) If an HHSC surveyor or a facility determines a resident is inappropriately placed and the resident can no longer meet facility evacuation criteria according to §553.5 of this chapter, the facility must follow the process in subsection (c) of this section, including applying for an evacuation waiver from HHSC.

(b) If both the resident and the facility want the resident to remain despite an HHSC surveyor or the facility determining that the resident is inappropriately placed, the facility is not required to discharge the resident if, within 10 working days after receiving the Statement of Licensing Violations and Plan of Correction, Form 3724, and the Report of Contact, Form 3614-A, from HHSC, the facility submits to the HHSC regional office:

(1) a completed Physician's Assessment, Form 1126, indicating that the resident is appropriately placed and describing the resident's medical conditions and related nursing needs, ambulatory and transfer abilities, and cognitive status;

(2) a completed Resident's Request to Remain in Facility, Form 1125, indicating that:

(A) the resident wants to remain at the facility; or

(B) if the resident lacks capacity to provide a written statement, the resident's legally authorized representative or responsible party wants the resident to remain at the facility; and

(3) a completed Facility Request, Form 1124, indicating that the facility agrees that the resident may remain at the facility.

(c) If, during a site visit, HHSC determines that a resident is inappropriately placed at the facility and both the resident and the facility want the resident to remain, the facility must request an evacuation waiver, as described in paragraph (1) of this subsection, to the HHSC regional office within 10 working days after the date the facility receives the Statement of Licensing Violations and Plan of Correction, Form 3724, and the Report of Contact, Form 3614-A.

(1) To request an evacuation waiver for an inappropriately placed resident, a facility must submit to the HHSC regional office:

(A) a completed Physician's Assessment, Form 1126, indicating that the resident is appropriately placed and describing the resident's medical conditions and related nursing needs, ambulatory and transfer abilities, and mental status;

(B) a completed Resident's Request to Remain in Facility, Form 1125, indicating that:

(i) the resident wants to remain at the facility; or

(ii) if the resident lacks capacity to provide a written statement, the resident's family member or legally authorized representative wants the resident to remain at the facility;

(C) a completed Facility Request, Form 1124, indicating that the facility agrees that the resident may remain at the facility;

(D) a detailed emergency plan that explains how the facility will meet the evacuation needs of the resident, including:

(i) specific staff positions that will be on duty to assist with evacuation and their shift times;

(ii) specific staff positions that will be on duty and awake at night; and

(iii) specific staff training that relates to resident evacuation;

(E) a copy of an accurate facility floor plan, to scale, that labels all rooms by use and indicates the specific resident's room;

(F) a copy of the facility's emergency evacuation plan;

(G) a copy of the facility fire drill records for the last 12 months;

(H) a copy of a completed Fire Marshal/State Fire Marshal Notification, Form 1127, either:

(i) signed by the fire authority having jurisdiction (either the local Fire Marshal or State Fire Marshal) as an acknowledgement that the fire authority has been notified that the resident's evacuation capability has changed; or

(ii) signed by the facility acknowledging notification to the fire authority having jurisdiction (either the local Fire Marshal or State Fire Marshal) that the resident's evacuation capability has changed;

(I) a copy of a completed Fire Suppression Authority Notification, Form 1129, either:

(i) signed by the local fire suppression authority as an acknowledgement that the fire suppression authority has been notified that the resident's evacuation capability has changed; or

(ii) signed by the facility acknowledging notification to the local fire suppression authority that the resident's evacuation capability has changed;

(J) a copy of the resident's most recent resident evaluation that addresses the areas required by subsection (c) of this section and that was completed within the previous 60 days, based on the date stated on the evacuation waiver form submitted to HHSC;

(K) the resident's service plan that addresses all aspects of the resident's care, particularly those areas identified by HHSC, including:

(i) the resident's medical condition and related nursing needs;

(ii) hospitalizations within the previous 60 days, based on the date stated on the evacuation waiver form submitted to HHSC;

(iii) any significant change in condition in the previous 60 days, based on the date stated on the evacuation waiver form submitted to HHSC;

(iv) specific staffing needs; and

(v) services that are provided by an outside resource;

(L) any other information that relates to the required fire safety features of the facility that will ensure the evacuation capability of any resident; and

(M) copies of service plans of other residents, if requested by HHSC.

(2) A facility must meet the following criteria to receive a waiver from HHSC.

(A) The emergency plan submitted in accordance with paragraph (1)(D) of this subsection must ensure that:

(i) staff is adequately trained;

(ii) a sufficient number of staff are on all shifts to move all residents to a place of safety;

(iii) residents will be moved to appropriate locations, given health and safety issues;

(iv) all possible locations of fire origin areas and the necessity for full evacuation of the building are addressed;

(v) the fire alarm signal is adequate;

(vi) there is an effective method for warning residents and staff during a malfunction of the building fire alarm system;

(vii) there is a method to effectively communicate the actual location of the fire; and

(viii) the plan satisfies any other safety concerns that could adversely affect residents' safety in the event of a fire; and

(B) the emergency plan must not adversely affect other residents of the facility who have waivers of evacuation or who have special needs that require staff assistance.

(3) HHSC reviews the documentation submitted under this section and notifies the facility in writing of its determination to grant or deny the waiver within 10 working days after the date the request is received in the HHSC regional office.

(4) Upon notification that HHSC has granted the evacuation waiver, the facility must immediately initiate all provisions of the proposed emergency plan. If the facility does not follow the emergency plan, and there are health and safety concerns that are not addressed, HHSC may determine that there is an immediate threat to the health or safety of a resident.

(5) HHSC reviews a waiver of evacuation during the facility's annual renewal licensing inspection.

(d) If HHSC determines that a resident is inappropriately placed at a facility and the facility either agrees with the determination or fails to obtain the written statements or waiver required in this section, the facility must discharge the resident.

(1) The resident is allowed 30 days after the date of notice of discharge to move from the facility.

(2) A discharge required under this subsection must be made notwithstanding:

(A) any other law, including any law relating to the rights of residents and any obligations imposed under the Property Code; and

(B) the terms of any contract.

(e) If a facility is required to discharge the resident because the facility has not submitted the written statements required by this section to the HHSC regional office, or HHSC denies the waiver as described in subsection (c) of this section, HHSC may:

(1) assess an administrative penalty if HHSC determines the facility has intentionally or repeatedly disregarded the waiver process because the resident is still residing in the facility when HHSC conducts a future onsite visit; or

(2) seek other sanctions, including an emergency suspension or closing order against the facility under Texas Health and Safety Code, Chapter 247, Subchapter C, if HHSC determines there is a significant risk and immediate threat to the health and safety of a resident.

(f) The facility's disclosure statement must notify a resident and resident's legally authorized representative of the waiver process described in this section and the facility's policies and procedures for aging in place.

#### §553.263. Resident Transfer and Discharge.

(a) The facility must have and enforce a policy relating to resident transfer and discharge. The policy must:

(1) ensure a process of written transfer or discharge in accordance with subsection (c) of this section;

(2) be written in a manner the resident and the resident's legally authorized representative, if applicable, understands; and

(3) address whether a facility has a process for appealing a discharge, and if so, state that the appeals process:

(A) allows a resident 10 calendar days from the date of the discharge notice to challenge a discharge or transfer for just cause; and

(B) informs the resident of the availability of intervention and assistance.

(b) A facility may transfer or discharge a resident only if:

(1) the transfer or discharge is for the resident's welfare and the resident's needs cannot be met by the facility;

(2) the resident's health is improved sufficiently so that services are no longer needed and both the resident and the facility wish to terminate the admission agreement;

(3) the resident's health and safety or the health and safety of another resident would be endangered if the transfer or discharge was not made;

(4) the facility ceases to operate or to participate in the program that reimburses the facility for the resident's treatment or care; or

(5) the resident fails, after reasonable and appropriate notice, to pay the facility for services.

(c) Except in an emergency, as provided in subsection (f) of this section, a facility must provide a resident written notice of transfer or discharge at least 30 days before the date of transfer or discharge. The notice must state:

(1) that the facility intends to transfer or discharge the resident;

(2) the reason for the transfer or discharge;

(3) the effective date of the transfer or discharge;

(4) if the resident is to be transferred, the location to which the resident will be transferred; and

(5) the facility's appeal rights available to the resident, if any.

(d) A facility must develop a plan of transfer or discharge with input from the resident, the resident's health care practitioners, attending physician, and the resident's legally authorized representative, if applicable.

(e) A facility may immediately transfer or discharge a resident only:

(1) at the request of the resident or the resident's legally authorized representative;

(2) if the resident's medical needs require transfer, such as in a medical emergency; or

(3) if the resident creates a serious or immediate threat to the health, safety, or welfare of another resident.

(f) When a facility transfers or discharges a resident, the facility must ensure that the transfer or discharge is documented in the resident's record and appropriate information is communicated to the receiving provider.

(1) Documentation must include:

(A) the reason for the transfer or discharge; and

(B) if the transfer or discharge is related to the facility's inability to meet the resident's needs:

(i) the specific resident's needs that cannot be met;

(ii) any change in the resident's condition that precipitated the facility's inability to meet the resident's needs;

(iii) all facility attempts to meet the needs of the resident; and

(iv) that the facility provided the resident and the resident's legally authorized representative or interested party with contact information for the toll-free number of the Ombudsman Program.

(2) A facility must obtain and retain documentation of the resident's physician's order for transfer or discharge in the resident's record when it is the reason for transfer or discharge.

(3) If the transfer or discharge is to protect the health and safety of another resident, the facility must have documentation in the resident's record of:

(A) the facility's reasonable efforts to mitigate and diffuse risks; and

(B) notice to HHSC of incidents when the resident created a serious or immediate threat to the health, safety, or welfare of other residents of the facility and the results of the facility investigation of the incidents.

(4) If the facility transfers a resident, the facility must retain documentation of all information the facility provided to the receiving health care institution or provider. The documentation must include all information necessary to ensure a safe and effective transition of care, including:

(A) contact information of the practitioner responsible for the care of the resident;

(B) resident legally authorized representative or responsible party's information, including contact information, if applicable;

(C) resident advance directive orders;

(D) all special instructions or precautions for ongoing care, as appropriate;

(E) current service plan; and

(F) transfer or discharge plan and summary.

§553.265. Respite Admissions.

(a) A person admitted for respite services is a resident and has all of the rights and privileges of a resident as stated in this chapter. A facility that admits a resident for respite services must do so in accordance with §553.259 of this division (relating to Admission Policies and Procedures).

(b) A facility must not provide respite admission for an individual who is receiving hospice services for the purposes of hospice inpatient care or hospice residential care.

(c) A facility must not admit a resident for respite services if it causes the facility to exceed its licensed capacity.

(d) A facility must ensure it has adequate staffing to meet the needs of residents admitted for the purposes of respite care and services.

§553.267. Medications.

(a) Medication services.

(1) A facility that provides medication administration, supervision, or storage must develop and implement policies and procedures for:

(A) residents who self-administer their medications;

(B) facility staff assisting or supervising a resident's medication regimen;

(C) medication administration by facility staff;

(D) medication storage;

(E) medication disposal; and

(F) if the facility stores controlled drugs, prevention of controlled drug diversions including:

(i) identification and management of controlled drug diversions;

(ii) notification and reporting procedures for identified controlled drug diversions; and

(iii) storage of controlled drugs.

(2) A facility that provides medication administration or supervision must have policies and procedures to ensure staff are available to administer or supervise and assist a resident with a medication according to the prescribing practitioner's orders.

(3) A facility that provides medication administration or supervision must maintain, for a resident who receives that service:

(A) a medication profile record which lists, from the prescription label of each prescribed medication, the medication's:

(i) name;

(ii) strength;

(iii) dosage;

(iv) date and quantity received;

(v) directions for use;

(vi) route of administration;

(vii) prescription number; and

(viii) name of dispensing pharmacy; and

(B) a medication administration record that records:

(i) the name of any medication administered;

(ii) the date and time of administration;

(iii) the dose the resident received; and

(iv) whether a dose of medication was taken, missed, or refused, and the reason for missed doses; however, the recording of medication administration does not apply when the resident is away from the facility.

(4) A facility that provides medication administration or supervision must have a procedure to assist a resident who is away from the facility to maintain his or her medication regimen. To help with this, the facility may:

(A) ask the resident's health care practitioner to prescribe a medication schedule that coincides with the resident's presence in the facility; or

(B) give the medications to the resident or their family member upon leaving the facility.

(5) If the facility provides either of the methods under paragraph (4) of this subsection to assist a resident with medication while away, the facility must document the procedures that were followed in the resident's record.

(6) A facility that uses a preferred pharmacy must inform a resident of his or her right to choose his or her own pharmacy and document a resident's choice in the resident's record.

(A) If a facility uses a preferred pharmacy, the facility must develop and implement policies and procedures for a preferred pharmacy that identify:

(i) the name, address, and phone number of the facility's preferred pharmacy;

(ii) a description of the facility's expectation for medication packaging and delivery including the individual responsible for receiving medication deliveries at the facility; and

(iii) a cost analysis breakdown of any fee imposed on residents relating to the facility's preferred pharmacy that includes specifications on how the fee will be used.

(B) If the facility charges a fee for residents who receive medication administration or supervision but choose not to use the facility's preferred pharmacy, the facility must:

(i) waive the preferred pharmacy fee for a resident whose chosen pharmacy provides delivery and packaging options that meet the delivery and packaging requirements identified in the facility's policies and procedures; and

(ii) waive the preferred pharmacy fee for a resident who can provide or arrange ongoing delivery of medications that meets the delivery and packaging requirements identified in the facility's policies and procedures.

(C) A resident for whom the facility provides medication administration or supervision services who uses a pharmacy other than the facility's preferred pharmacy must sign a document authorizing the use of the facility's preferred pharmacy and acknowledging the resident's responsibility for any related costs in the event the resident's chosen pharmacy or arranged delivery service cannot provide a medication timely in accordance with the prescribing practitioner's order.

(b) Self-administration of medication.

(1) The facility must allow and encourage a resident who can self-administer his or her own medications without assistance to do so.

(2) In order to facilitate a resident's self-administration of a medication, staff may prepare and make available such items as water, juice, cups, and spoons.

(3) The facility must counsel a resident who self-administers his or her medications to ascertain whether the resident remains capable of doing so and whether security of medications can continue to be maintained:

(A) no less than once a month; and

(B) whenever the resident experiences a significant change in condition, as defined in §553.3 of this chapter (relating to Definitions) that might affect the resident's ability to self-administer his or her medications; or

(C) the resident's health care practitioner advises that the resident's medication regimen has changed due to suspected medication administration errors or noncompliance with his or her medication regimen.

(4) The facility must keep a written record of counseling that includes:

(A) resident name and date of counseling;

(B) resident current diagnoses; and

(C) documentation that the resident understands the medications he or she currently takes, including possible side effects and storage requirements.

(c) Supervision of a resident's medication regimen.

(1) A facility may supervise or assist with a resident's medication regimen if the resident is incapable of self-administering a medication without assistance. Medication supervision and assistance is limited to:

(A) obtaining medications from a pharmacy and listing the medications on a resident's medication profile record, as described in subsection (a) of this section;

(B) reminding a resident to take medications at the prescribed time;

(C) opening containers or packages and replacing lids;

(D) pouring a prescribed dose according to the medication profile record;

(E) handing poured medication to a resident, or using a hand over hand assistance method if the resident needs help getting the medication to his or her mouth, and monitoring and documenting whether the medication is taken or refused, in accordance with subsection (a) of this section;

(F) returning medications to the proper locked areas; and

(G) preparing and making available such items as water, juice, cups, and spoons.

(2) The facility must ensure that a person who supervises or assists with a resident's medication regimen:

(A) observes the resident take the medication;

(B) records a missed dose in the resident's record, in accordance with paragraph (a)(4) of this section; and

(C) reports any concerns about a resident's reaction to a medication or suspected noncompliance with the prescribed medication regimen to the resident's prescribing health care practitioner and primary health care practitioner and documents it in the resident's record.

(d) Facility administration of medication.

(1) Residents who choose not to or who cannot self-administer their medications must have their medications administered by a person who:

(A) holds a current license to administer the medication;

(B) holds a current medication aide permit and who:

(i) acts under the authority of a person who holds a current nursing license under state law that authorizes the licensee to administer medication; and

(ii) functions under the direct supervision of a licensed nurse on duty or on call by the facility; or

(C) is an employee of the facility to whom medication administration has been delegated by a registered nurse who has trained the employee to administer medications or verified their training in accordance with Texas Board of Nursing rules at Texas Administrative Code (TAC), Title 22, Chapter 225 (relating to RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegation in Independent Living Environments for Clients with Stable and Predictable Conditions).

(2) A resident's prescribed medication must be dispensed through a pharmacy or by the resident's treating practitioner.

(3) Practitioner sample medications may be given to a resident by the facility provided the medication has specific dosage instructions for the resident.

(4) Medications provided to the facility by an entity other than a pharmacy or physician, such as from a resident's family, home

health provider, or hospice provider, must have an accompanying active and current prescribing practitioner's order.

(e) General.

(1) Facility staff must, as soon as practicable but within 24 hours, report any unusual reaction to a medication to the resident's prescribing health care practitioner, primary health care practitioner, and legally authorized representative, and document it in the resident's record.

(2) The facility must contact a resident's primary health care provider and legally authorized representative whenever health changes occur that may be attributed to the resident's medications.

(3) The facility must document any unusual reactions to medications or treatments, actions taken, and monitoring of reactions in the resident's record.

(f) Storage.

(1) The facility must provide a locked area for all medications. Examples of areas include:

(A) a central storage area;

(B) a medication cart; and

(C) a resident's room.

(2) The facility must store each resident's medications in their original containers with the labels intact, separately from all other residents' medications.

(3) A refrigerator must have a designated and locked storage area for medications that require refrigeration unless the refrigerator is inside a locked medication room or the resident's room.

(4) Poisonous substances and medications labeled for "external use only" must be stored separately within the locked medication area.

(5) A resident who self-administers and keeps prescribed, over-the-counter, or potentially hazardous or dangerous medications or ointments in his or her room must have a designated storage area that prevents unauthorized access to the medications, such as a lock box or self-locking room door that remains closed when the resident is not present.

(6) Residents who choose to keep their medications locked in the central medication storage area may be permitted entrance or access to the area for the purpose of self-administering their own medication or treatment regimen. A facility staff member must remain in or at the storage area the entire time any resident is present.

(g) Disposal.

(1) At least quarterly, a facility must dispose of medications that:

(A) have been discontinued by order of the resident's prescribing practitioner;

(B) remain after a resident is deceased or has transferred or discharged without taking the medications per paragraph (5) of this subsection; or

(C) have passed the expiration date.

(2) Medication destruction must be carried out by a licensed pharmacist, which can include a medication take-back program or pharmacy disposal drop-off unit.

(3) The facility must inventory and store medications awaiting disposal separately from current resident medications.

(4) Needles and hypodermic syringes with needles attached must be disposed of as required by 25 TAC §§1.131 - 1.137 (relating to Definition, Treatment, and Disposal of Special Waste from Health Care-Related Facilities).

(5) A resident's medications must be released, upon transfer or discharge, to the resident when a receipt has been signed by the resident or, as applicable, the resident's legally authorized representative.

§553.269. Accident, Injury, or Acute Illness.

(a) In the event of accident or injury that requires emergency medical, dental, or nursing care, such as from a fall or unexpected loss of consciousness, or in the event of apparent death, the facility must:

(1) make arrangements for emergency care or transfer to an appropriate place for treatment, such as a practitioner's office, clinic, or hospital, and back to the facility;

(2) immediately notify the resident's practitioner and resident's legally authorized representative; and

(3) describe and document the injury, accident, or illness. The report must contain a statement of final disposition and the facility must retain the report in accordance with §553.285 of this subchapter (relating to Resident Records and Retention).

(b) The facility must stock and maintain, in a single location that is always accessible to staff, first aid supplies to treat burns, cuts, and poisoning.

(c) Residents who need the services of professional nursing or medical personnel due to a temporary illness or injury may have those services delivered by persons qualified to deliver the necessary service, in accordance with §553.7 of this chapter (relating to Assisted Living Facility Services).

§553.271. Health Care Professional.

(a) A health care professional may coordinate the provision of services to a resident within the professional's scope of practice and as authorized under Texas Health and Safety Code, Chapter 247; however, a facility must not provide ongoing services to a resident that are comparable to the services available in a nursing facility licensed under Texas Health and Safety Code, Chapter 242.

(b) A resident may contract to have health care services delivered to the resident at the facility by a home and community support services agency licensed under Chapter 558 of this title (relating to Licensing Standards for Home and Community Support Services Agencies) or with an independent health professional of the resident's choice.

§553.273. Activities Program.

(a) The facility must plan and offer a daily activity that is consistent with resident choice and preferences and that promotes the physical, mental, and social well-being of the residents.

(b) The facility must develop and follow a written daily activity schedule and, at least monthly, post the schedule in accordance with §553.291 of this subchapter (relating to Postings).

(c) The facility must encourage but never force a resident to participate in activities.

§553.275. Dietary Services.

(a) Food Preparation.

(1) A facility that prepares food off-site or in a separate building must ensure food is served at the proper temperature and transported in a sanitary manner.



(2) A facility that prepares food onsite must provide a kitchen or dietary area meeting the general food service needs of the residents and must ensure that the kitchen:

(A) is equipped to store, refrigerate, prepare, and serve food;

(B) is equipped to clean and sterilize food preparation surfaces, dishes, cookware and bakeware, cooking utensils, and eating utensils;

(C) provides for refuse storage and removal; and

(D) meets the requirements of the local fire, building, and health codes.

(b) Dietary staff.

(1) The facility must designate an employee to be responsible for the total food service of the facility.

(2) The facility must ensure that staff who work with or handle unpackaged food, food equipment or utensils, or food contact surfaces, complete an accredited food handler training course approved by the Texas Department of State Health Services or the American National Standards Institute.

(c) Diets and menus.

(1) The facility must offer at least three meals a day that include all five basic food groups in accordance with USDA Dietary Guidelines for Americans, at regularly scheduled times, with no more than a 16-hour span between a substantial evening meal and breakfast the following morning. The five basic food groups include protein, dairy, grains, vegetables, and fruits.

(2) Food must be palatable and vary from week to week, taking into consideration resident preferences, including cultural preferences.

(3) The facility must provide a therapeutic diet as ordered by a resident's practitioner according to the resident's service plan.

(4) Therapeutic diets that cannot customarily be prepared by a layperson must be calculated by a qualified dietician.

(5) The facility may prepare and serve a therapeutic diet that can customarily be prepared by a person in a family setting.

(6) The facility must plan and post menus at least one week in advance, in accordance with §553.291 of this subchapter (relating to Postings) and menus must be followed as posted.

(7) Reasons for any variations from the posted menus must be documented and communicated to residents as soon as practicable.

(8) The facility must prepare menus that provide a nutritious, well-balanced diet that meets each resident's daily nutritional and special dietary needs and conscientious dietary preferences accounting for food allergies and intolerances, therapeutic diets, and diets in observation of religious practices, as documented in a resident's individual service plan in accordance with §553.259 of this subchapter (relating to Admission Policies and Procedures).

(9) The facility must retain records of menus as served for at least 30 days following the date of serving.

(d) Food supply and storage.

(1) The facility must maintain on the premises a supply of pantry-stable foods sufficient for a minimum of a four-day period and perishable foods for a minimum of a two-day period; and

(A) obtain foods from sources that comply with all laws relating to food and food labeling;

(B) store and label shelf-stable foods removed from their original packaging in plastic containers with tight fitting lids;

(C) store foods requiring refrigeration, such as meat and milk products, at 41 degrees Fahrenheit or below; and

(D) reseal or tightly seal, label, and date foods subject to spoilage.

(2) The facility must prepare and serve food with the least possible manual contact, with suitable utensils, and on surfaces that have been cleaned, rinsed, and sanitized before use to prevent cross-contamination; and

(A) keep hot foods at 135 degrees Fahrenheit or above during preparation and serving, and reheat foods to a minimum of 165 degrees Fahrenheit;

(B) keep freezers at a temperature of zero degrees Fahrenheit or below; and

(C) keep refrigerators at a temperature of 41 degrees Fahrenheit or below, with the thermometer placed in the warmest area of the refrigerator and freezer to ensure proper temperature.

(e) Dietary hygiene and sanitation.

(1) Dietary staff, including staff that serves food to residents, must maintain appropriate hand hygiene and take all precautions to prevent contamination of food, including wearing gloves whenever applicable, and throwing away disposable gloves after one use.

(2) The facility must ensure that any food service employee who is infected with a communicable disease that can be transmitted by foods, a carrier of organisms that cause such a disease, or afflicted with a boil, an infected wound, or an acute respiratory infection not work in the food service area in any capacity until fully recovered from the illness or infection.

(3) Effective hair restraints including facial hair restraints, as applicable, must be worn by any individual assisting with food or working in a food service and preparation area, to prevent contamination of food.

(4) Tobacco products must not be used in the food preparation and service areas.

(5) Kitchen employees must wash their hands before returning to work after using the lavatory.

(6) Dishwashing chemicals used in the kitchen may be stored in plastic containers if they are the original containers in which the manufacturer packaged the chemicals.

(7) A facility must follow sanitary dishwashing procedures and techniques.

(8) A facility must comply with local health ordinances or requirements for storing, preparing, and distributing food; cleaning dishes, equipment, and work area; and storing and disposing of waste.

(9) Facilities licensed for 17 or more residents must comply with Texas Administrative Code, Title 25 Chapter 228 (relating to Retail Food Establishments).

§553.277. Infection Prevention and Control.

(a) A facility must develop, implement, enforce, and maintain an infection prevention and control program that will provide a safe, sanitary, and comfortable environment and help prevent development and transmission of disease and infection.

(1) The infection prevention and control program must include policies and procedures that reduce the risk of spreading communicable diseases in the facility, including:

(A) monitoring key infectious agents, including multidrug-resistant organisms, as those terms are defined in §553.3 of this chapter (relating to Definitions);

(B) making a rapid influenza diagnostic test, as defined in §553.3 of this chapter, available to a resident who is exhibiting flu like symptoms;

(C) wearing personal protective equipment, such as gloves, a gown, or a mask when called on for anticipated exposure, and properly cleaning hands before and after touching another resident and in between glove changes;

(D) cleaning and disinfecting environmental surfaces, including doorknobs, handrails, light switches, control panels, and remote controls;

(E) using universal precautions for blood and bodily fluids; and

(F) removing soiled items (such as used tissues, wound dressings, incontinence briefs, and soiled linens) from the environment at least once daily, or more often if an infection or infectious disease is present or suspected.

(2) Personnel must handle, store, process, and transport linens in a manner that prevents the spread of infection.

(3) If a facility knows or suspects an employee has contracted a communicable disease that is transmissible to residents through food handling or direct resident care, the facility must exclude the employee from providing these services for the applicable period of communicability.

(4) A facility must maintain evidence of compliance with local and state health codes and ordinances regarding employee and resident health status.

(5) A facility must immediately report the name of any resident with a reportable disease as specified in Texas Administrative Code, Title 25, Chapter 97, Subchapter A (relating to Control of Communicable Diseases), to the city health officer, county health officer, or health unit director having jurisdiction, and implement appropriate infection control procedures as directed by the local health authority.

(b) During a declared public health emergency or disaster that impacts a facility, in addition to the rules in this section, a facility must also follow Chapter 570 Subchapter B of this title (relating to Assisted Living Facilities).

(c) A facility must comply with rules regarding special waste in 25 TAC Chapter 1, Subchapter K (relating to Definition, Treatment, and Disposition of Special Waste from Health Care-Related Facilities).

(d) A facility's infection prevention and control program must include a policy to protect residents from vaccine preventable diseases in accordance with Texas Health and Safety Code, Chapter 224, and subsection (e) of this section.

(1) The policy must:

(A) require employees and contractors to receive facility-determined vaccines based on the level of risk the employee or contractor presents to residents in routine and direct exposure;

(B) specify the vaccines an employee or contractor is required to receive in accordance with subparagraph (A) of this paragraph;

(C) include procedures for the facility to verify that an employee or contractor has complied with the policy;

(D) include procedures for the facility to exempt an employee or contractor from the required vaccines for the medical conditions identified as contraindications or precautions by the Centers for Disease Control and Prevention (CDC);

(E) include procedures the employee or contractor must follow to protect residents from exposure to disease from an employee or contractor who is exempt from the required vaccines, based on the level of risk the employee or contractor presents during routine and direct exposure to residents, such as:

(i) use of protective equipment, such as gloves and masks; and

(ii) reassignment of the employee or contractor to work with residents who are vaccinated or have reduced risk of contracting vaccine-preventable diseases;

(F) prohibit discrimination or retaliatory action against an employee or contractor who is exempt from the required vaccines for the medical conditions identified as contraindications or precautions by the CDC, except that required use of protective medical equipment, including gloves and masks, may not be considered retaliatory action;

(G) require the facility to maintain a written or electronic record of each employee's or contractor's compliance with or exemption from the policy; and

(H) include disciplinary actions the facility may take against an employee or contractor who fails to comply with the policy.

(2) The policy may:

(A) include procedures for an employee or contractor to be exempt from the required vaccines based on reasons of conscience, including religious beliefs; and

(B) prohibit an employee or contractor who is exempt from the required vaccines from having contact with residents during a public health disaster, as defined in Texas Health and Safety Code §81.003.

(c) A facility's infection prevention and control program must include a policy to minimize the risk for transmission of tuberculosis (TB).

(1) A facility must screen a new employee for TB within two weeks of employment, according to CDC screening guidelines and any additional guidance from HHSC.

(A) The facility must provide annual TB education to employees that includes the following:

(i) TB risk factors;

(ii) the signs and symptoms of TB disease; and

(iii) TB infection control policies and procedures.

(B) The facility may request evidence of TB screening and annual TB education from all persons who provide services under an outside resource contract.

(2) The facility's policies and procedures for resident TB screening must ensure compliance with the recommendations of a resident's attending physician and consistency with CDC guidelines. Residents have the right to refuse TB screening in accordance with §553.287 of this subchapter (relating to Rights).

§553.279. Restraints and Seclusion.

(a) Use of restraints.

(1) All restraints for purposes of behavioral management, staff convenience, or resident discipline are prohibited. Seclusion is prohibited.

(2) As provided in §553.287(a) of this subchapter (relating to Rights), a facility may use physical or chemical restraints only:

(A) if the use is authorized in writing by a physician and specifies:

(i) the circumstances under which a restraint may be used; and

(ii) the duration for which the restraint may be used; or

(B) if the use is necessary in an emergency to protect the resident or others from injury.

(3) For all situations outside of a behavioral emergency, a restraint must only be administered by an individual who is licensed, certified, or otherwise authorized to administer health care, including a physician, registered nurse, and licensed vocational nurse.

(4) A behavioral emergency is a situation in which severely aggressive, destructive, violent, or self-injurious behavior exhibited by a resident:

(A) poses a substantial risk of imminent probable death of, or substantial bodily harm to, the resident or others;

(B) has not abated in response to attempted preventive de-escalatory or redirection techniques;

(C) could not reasonably have been anticipated; and

(D) is not addressed in the resident's service plan.

(5) In the event of a behavioral emergency, the facility must use only an acceptable restraint hold. An acceptable restraint hold is a hold in which the resident's limbs are held close to the body to limit or prevent movement and that does not violate the provisions of paragraph (6) of this subsection. A restraint hold must be used for the shortest period of time necessary to ensure the protection of the resident and others.

(6) A restraint must not be administered under any circumstance if it:

(A) obstructs the resident's airway, including a procedure that places anything in, on, or over the resident's mouth or nose;

(B) impairs the resident's breathing by putting pressure on the resident's torso;

(C) interferes with the resident's ability to communicate; or

(D) places the resident in a prone or supine position.

(7) After the use of restraint, the facility must:

(A) with the resident's or the resident's legally authorized representative's consent, make an appointment with the resident's physician no later than the end of the first working day after the use of restraint and document in the resident's record that the appointment was made; or

(B) if the resident refuses to see the physician, document the refusal in the resident's record.

(8) As soon as possible but no later than 24 hours after the use of restraint, the facility must notify the following persons, as applicable, that the resident has been restrained:

(A) the resident's legally authorized representative; or

(B) an individual actively involved in the resident's care, unless the release of this information would violate other law.

(9) Under the Health Insurance Portability and Accountability Act, if the facility is a "covered entity" as defined in 45 CFR §160.103, any notification provided under paragraph (8) of this paragraph must be to a person to whom the facility is allowed to release information under 45 CFR §164.510.

(10) In order to decrease the frequency of the use of restraint, facility staff must be aware of and adhere to the findings of the resident evaluation required for each resident in §553.259(b) of this subchapter (relating to Admission Policies and Procedures).

(11) A facility may adopt policies that allow less use of restraint than allowed by the rules of this chapter.

(12) A facility may not discharge or otherwise retaliate against:

(A) an employee, resident, or other person because the employee, resident, or other person files a complaint, presents a grievance, or otherwise provides in good faith information relating to the misuse of restraint or seclusion at the facility; or

(B) a resident because someone on behalf of the resident files a complaint, presents a grievance, or otherwise provides in good faith information relating to the misuse of restraint or seclusion at the facility.

(b) Bed rails.

(1) A facility must not use bed rails for purposes of restraint.

(2) A facility must not use full bed rails. Grab bars, quarter rails, and half rails may be used if they do not hinder the resident's ability to enter or exit the bed.

(3) A facility must not use bed rails for residents who exhibit wandering behaviors, present a risk for elopement, or have a cognitive impairment that would increase the risk of injury with the use of bed rails.

(4) A facility must document discussion with the resident, legally authorized representative, or interested party, as appropriate, on the use of possible alternatives to bed rails, such as low beds and floor mats, prior to installing a bed rail.

(5) A facility must review the risks and benefits of bed rails with the resident or resident's legally authorized representative, as appropriate, and obtain signed informed consent prior to installation.

(6) A facility that allows the use of bed rails for resident safety or resident convenience must evaluate:

(A) the resident's ability to utilize the bed rail for convenience, such as getting in and out of the bed safely, risk of entrapment, and ability to maneuver around the bed rail;

(B) mattress size and fit to ensure no gapping exists between the bed rail that could cause a resident's head or limbs to become caught;

(C) the bed's dimensions to ensure they are appropriate for the resident's size and weight; and

(D) the manufacturer's recommendations and specifications for installing and maintaining the bed rails.

(7) The facility must review and document the installation, use, and maintenance of bed rails at least every 30 days.

(c) Self-release seat belts.

(1) For the purposes of this subsection, a "self-release seat belt" is a seat belt on a resident's wheelchair that the resident can demonstrate the ability to fasten and release without assistance. A self-release seat belt is not a restraint.

(2) Except as provided in paragraph (3) of this subsection, a facility must allow a resident to use a self-release seat belt if:

(A) the resident or the resident's legally authorized representative requests that the resident use a self-release seat belt;

(B) the resident consistently demonstrates the ability to fasten and release the self-release seat belt without assistance;

(C) the use of the self-release seat belt is documented in and complies with the resident's individual service plan; and

(D) the facility receives written authorization, signed by the resident or the resident's legally authorized representative, as applicable, for the resident to use the self-release seat belt.

(3) A facility that advertises as a restraint-free facility is not required to allow a resident to use a self-release seat belt if the facility:

(A) provides a written statement to all residents that the facility is restraint-free and is not required to allow a resident to use a self-release seat belt; and

(B) makes reasonable efforts to accommodate the concerns of a resident who requests a self-release seat belt in accordance with paragraph (2) of this subsection.

(4) A facility is not required to continue to allow a resident to use a self-release seat belt in accordance with paragraph (2) of this subsection if:

(A) the resident cannot consistently demonstrate the ability to fasten and release the seat belt without assistance;

(B) the use of the self-release seat belt does not comply with the resident's individual service plan; or

(C) the resident or the resident's legal guardian revokes in writing the authorization for the resident to use the self-release seat belt.

§553.281. Health Maintenance Activities.

(a) A facility may allow an attendant to perform a health maintenance activity (HMA) for a resident if:

(1) the activity is performed for a resident with a functional disability as defined in §553.3 of this chapter (relating to Definitions); and

(2) an RN acting on behalf of the facility has conducted and documented an assessment of the resident's health status and all other relevant factors in accordance with Texas Administrative Code, Title 22 §225.6 (relating to RN Assessment of the Client) and 22 TAC §225.8(a)(2) (relating to Health Maintenance Activities Not Requiring Delegation).

(3) The facility must ensure that:

(A) the resident, the resident's legally authorized representative, or other adult chosen by the resident, as applicable, is able

and agrees in writing to direct an attendant to perform the task without RN supervision;

(B) the activity addresses a condition that is stable and predictable, as defined in §553.3 of this chapter; and

(C) the activity is performed for a resident who could perform the task on his or her own but for a functional disability that prevents it.

(b) The RN must reassess a resident's status any time there is a change in the resident's condition that may affect his or her physical or cognitive abilities, or the stability or predictability of the resident's condition and, at a minimum:

(1) at least once annually; or

(2) at least once every six months if the resident has been diagnosed with Alzheimer's disease or a related disorder or resides in an Alzheimer's certified facility or unit.

§553.283. RN Delegation of Care Tasks.

If the RN determines under §553.281 of this subchapter (relating to Health Maintenance Activities) that an activity does not qualify as a health maintenance activity, an attendant may perform that activity for the resident if:

(1) the RN has determined in accordance with Texas Administrative Code (TAC), Title 22, Chapter 225 (relating to RN Delegation to Personnel and Tasks Not Requiring Delegation in Independent Living Environments for Clients with Stable and Predictable Conditions) that:

(A) the activity can be delegated to an attendant; and

(B) the activity is allowable in an assisted living facility in accordance with §553.7 of this chapter (relating to Assisted Living Facility Services); and

(2) the RN has properly delegated the task to an attendant in accordance with 22 TAC Chapter 225.

§553.285. Resident Records and Retention.

(a) Resident records.

(1) Records that pertain to a resident must be treated as confidential and properly safeguarded from unauthorized use, loss, and destruction. A resident record is any record pertaining to the resident by name or other unique identifier.

(2) Resident records must be retained for five years after services end.

(3) Resident records must contain:

(A) information contained in the facility's standard and customary admission form;

(B) a record of the resident's evaluations, any RN assessments related to health maintenance activities or RN delegated tasks, and counseling related to self-administration of medication;

(C) the resident's service plan;

(D) physician's orders, if any;

(E) advance directives, if any;

(F) medication administration records, if the facility provides medication administration or supervision to the resident;

(G) documentation of a health examination by a physician performed within 30 days before admission or 14 days after admission, unless:

(i) a transferring facility has a physical examination in the medical record; or

(ii) the resident is a Christian Scientist;

(H) documentation of services provided by health care professionals applicable to the resident's medical needs; and

(I) a copy of the most recent court order appointing a guardian of a resident or a resident's estate and letters of guardianship that the facility received in response to the request made in accordance with subsection (c) of this section.

(b) Resident charges and finances.

(1) The facility must keep a financial record on all charges billed to the resident for care and these records must be available to HHSC. A financial record must be made available to a resident upon request.

(A) If a resident entrusts the handling of any personal finances to the facility, the facility must maintain a financial record to document accountability for receipts and expenditures, and these records must be available to HHSC.

(B) Receipts for payments from a resident or on behalf of a resident must be made available within two working days of the date requested.

(2) A facility must give residents 30 days' written notice before implementing a price increase for anything for which residents are charged.

(c) Guardianship record requirements.

(1) A facility must request, from a resident's legally authorized representative or responsible party, a copy of:

(A) the current court order appointing a guardian for the resident or the resident's estate; and

(B) current letters of guardianship for the resident.

(2) A facility must request the court order and letters of guardianship when the facility:

(A) admits an individual; and

(B) becomes aware a guardian is appointed after the facility admits a resident.

(3) A facility must request an updated copy of the court order and letters of guardianship at each annual evaluation and retain documentation of any change.

(4) A facility must make at least one follow-up request within 30 days after the facility makes a request in accordance with paragraphs (2) or (3) of this subsection if the facility has not received:

(A) a copy of the court order and letters of guardianship;  
or

(B) a response that there is no court order or letters of guardianship.

(5) A facility must keep in the resident's record:

(A) documentation of the results of the request for the court order and letters of guardianship; and

(B) a copy of the court order and letters of guardianship.

(d) Release of resident records.

(1) A resident's records must be available to the resident, the resident's legally authorized representative, and HHSC staff.

(2) A resident's records must only be released with the resident's written consent, except:

(A) to another provider, if the resident transfers residency;

(B) if the release is required by law; and

(C) to HHSC staff during surveys.

(3) The facility must provide a resident or, if applicable, the resident's legally authorized representative with a hard or electronic copy of all or any portion of the resident's records within two working days of the date of written or spoken request.

(e) Destruction of Records.

(1) When resident records are destroyed after the retention period, the facility must shred or incinerate the records in a manner that protects confidentiality.

(2) At the time of destruction, the facility must document in a log the following for each record destroyed:

(A) resident name;

(B) resident record number, if used;

(C) the resident's Social Security number and date of birth, if available; and

(D) date and signature of the person carrying out destruction.

§553.287. Rights.

(a) Residents' rights.

(1) A facility must ensure that the facility's policies and procedures:

(A) enable residents to exercise their rights;

(B) promote the highest practicable quality of life for all residents and do not deliberately or inadvertently prohibit a resident from exercising the rights stated in this section or by the rights of citizenship; and

(C) ensure that a resident, in exercising his or her rights, does not impede the rights of others in the facility.

(2) A facility must ensure the Residents' Bill of Rights is:

(A) provided in writing to each resident or resident's legally authorized representative; and

(B) posted in English and Spanish in a prominent place in the facility accessible by residents and visitors.

(3) A resident has all the rights, benefits, responsibilities, and privileges stated in the Constitution and laws of this state and the United States, except where lawfully restricted.

(4) A resident has the right to be free of interference, coercion, discrimination, and reprisal in exercising these civil rights.

(5) A resident has the right to be free from physical and mental abuse, including corporal punishment, physical restraints and seclusion, and chemical restraints that are administered for the purpose of discipline or convenience and not required to treat the resident's medical symptoms.

(6) A resident has the right to participate in activities of social, religious, and community groups unless the participation interferes with the rights of others.

(7) A resident has the right to practice the religion of the resident's choice or abstain from religious activities.

(8) A resident with an intellectual disability and who is represented by a court-appointed guardian may participate in a behavior modification program that involves the use of restraints, in accordance with §553.279(a) of this subchapter (relating to Restraints and Seclusion), or adverse stimuli only with the informed consent of the guardian.

(9) A resident has the right to be treated with respect, courtesy, consideration, and recognition of his or her dignity and individuality, without regard to race, religion, national origin, sex, age, disability, marital status, or source of payment. This means that the resident has the right to:

(A) make individualized choices regarding personal affairs, care, benefits, schedules and activities, and services;

(B) be free from abuse, neglect, and exploitation;

(C) if protective measures are required and the resident has not been adjudicated cognitively impaired, designate a guardian or legally authorized representative to ensure the right to quality stewardship of the resident's affairs; and

(D) protection of the resident's personal image. A facility employee must not share or post to the internet or social media any photographs or video of a resident without the resident's or the resident's legally authorized representative's written consent.

(10) A resident has the right to a safe, clean, and decent living environment that:

(A) provides adequate personal space and privacy;

(B) is free of pests;

(C) is free of electrical and structural hazards;

(D) has clean bathrooms, kitchen, and bedrooms; and

(E) has clean linens and towels.

(11) A resident has the right to communicate with staff and others in the resident's native language for the purpose of acquiring or providing any type of treatment, care, or services.

(12) A resident has the right to make a complaint about the resident's care or treatment.

(A) A resident's complaint may be made anonymously or communicated by a person designated by the resident.

(B) The facility must promptly respond to resolve each resident complaint.

(C) The facility must not discriminate or take other punitive action against a resident who makes a complaint.

(D) The facility must not impede a resident's right to make a formal complaint to HHSC or require that complaints be made to the facility prior to lodging a formal complaint with HHSC.

(E) The facility must not impede resident access to the State Ombudsman, a certified ombudsman, or an ombudsman intern or require that complaints be made to the facility prior to making a complaint to the Ombudsman Program but may inform the resident of the role of the Ombudsman Program to help resolve complaints.

(13) A resident has the right to receive and send unopened mail. If mail is not directly delivered to residents by a postal worker, the facility must ensure that the resident's:

(A) outgoing mail is posted via the carrier of the resident's choice; and

(B) incoming mail and packages are delivered to the resident within 24 hours of delivery at the facility.

(14) A resident has the right to unrestricted direct, unaccompanied communication in person and via telecommunications, including personal visitation with any person of the resident's choice, including family members, outside resources, and representatives of advocacy groups and community service organizations, at any reasonable hour or in case of emergency or personal crisis, at no monetary cost to the resident or visitor.

(A) A resident has the right to retain a personal cellular or Internet device, such as a cellphone, computer, and tablet.

(B) The facility must ensure a resident is given:

(i) personal privacy while attending to personal needs; and

(ii) a private place for receiving visitors or associating with other residents via communication devices or in person.

(C) The facility must ensure a resident's right to privacy includes any medical treatment, written communications, telephone conversations, meeting with visitors, and access to resident councils.

(15) A resident has the right to make unimpeded contacts and cultivate relationships with individual community members and social groups to achieve the highest level of independence, autonomy, and interaction with the community of which the resident is capable.

(16) A resident has the right to manage his or her own financial affairs.

(A) The resident may authorize in writing another person to manage his or her money.

(B) The resident may choose the way his or her money is managed, including a money management program, a representative payee program, a financial power of attorney, a trust, or a similar method, and the resident may choose the least restrictive of these methods.

(C) The resident must be given, upon request of the resident or the resident's legally authorized representative, but at least quarterly, an accounting of financial transactions made on his or her behalf by the facility should the facility accept the resident's written delegation of this responsibility to the facility in conformance with state law.

(17) A resident has the right to review and obtain copies of the resident's records in accordance with §553.285 of this subchapter (relating to Resident Records and Retention).

(18) A resident has the right to choose and retain:

(A) an attending physician and other medical and health care practitioners; and

(B) at least one essential caregiver, in accordance with Chapter 570 of this title (relating to Long-term Care Provider Rules During a Public Health Emergency or Disaster).

(19) A resident has the right to be fully informed in advance about treatment, care, and services provided by the facility.

(20) A resident has the right to participate in developing his or her individual service plan that describes the resident's medical, nursing, and psychological needs and how the needs will be met.

(21) A resident has the right to refuse medical treatment or services. The facility must ensure the resident is advised by the

person providing treatment or services of the possible consequences of refusing treatment or services.

(22) A resident has the right to request a shared room with a spouse or other consenting individual who resides in the facility.

(23) A resident has the right to retain and use personal possessions, including clothing and furnishings, as space permits and with consideration of the health and safety of other residents.

(24) A resident has the right to determine his or her dress, hair style, and other personal effects according to individual preference.

(25) A resident has the right to retain and use personal property and belongings, such as photographs, mementos, and memorabilia, and food and snacks in properly sealed and resealable containers.

(26) A resident has the right to refuse to perform services for the facility, except as contracted for by the resident and manager.

(27) A resident has the right to be informed by the facility, no later than the 30th day after admission:

(A) whether the resident is entitled to benefits under Medicare or Medicaid related to the services provided by the facility; and

(B) which items and services may be covered by these benefits, including items or services for which the resident may not be charged.

(28) A resident has the right to not be transferred or discharged without notice or due process in accordance with §553.263 of this subchapter (relating to Resident Transfer and Discharge).

(29) A resident has the right to have access to the State Ombudsman and a certified ombudsman.

(30) A resident has the right to execute an advance directive, under Texas Health and Safety Code, Chapter 166, or designate an agent in advance of need to make decisions regarding the resident's health care should the resident become incapacitated.

(b) Provider rights.

(1) A facility must post a Providers' Bill of Rights in a prominent place in the facility in both English and Spanish.

(2) A provider of assisted living services has the right to:

(A) be shown consideration and respect that recognizes the dignity and individuality of the provider and the facility;

(B) terminate a resident's contract for just cause after a written 30-day notice or immediately in accordance with §553.263 of this subchapter (relating to Resident Transfer and Discharge);

(C) present grievances, file complaints, or provide information to state agencies or other persons without threat of reprisal or retaliation;

(D) refuse to perform services for the resident or the resident's family other than those contracted for by the resident and the provider;

(E) contract with members of the local community in order to achieve the highest level of independence, autonomy, interaction, and services to residents;

(F) access information and medical records concerning a resident referred to the facility, which must remain confidential as provided by law;

(G) refuse a person referred to the facility if the referral is inappropriate;

(H) maintain an environment free of illegal drugs and weapons per Texas Penal Code §§30.05 - 30.07, which allows a facility to ban firearms in the facility by giving proper notice by way of a sign at all entrances; and

(I) be made aware of a resident's problems, including self-abuse, violent behavior, alcoholism, or drug abuse.

(c) Resident and family councils.

(1) A facility must have a policy that allows residents and families to form and participate in resident and family council meetings and activities.

(2) A facility must not prohibit residents from attending resident and family council meetings.

(3) A facility must assist a resident to attend a family council meeting in the facility if requested by the resident.

(4) A facility must not use resident or family council meetings and activities in place of facility activities required in §553.273 of this subchapter (relating to Activities Program).

(d) HHSC and local authority access to residents. A facility must allow an employee of HHSC, or an employee of a local authority, into the facility as necessary to provide services to a resident:

(1) during the provision of emergency and medical services; and

(2) during a facility survey, inspection or investigation, or enforcement action.

(e) Authorized electronic monitoring (AEM).

(1) A facility must permit a resident, or the resident's guardian or legally authorized representative, to monitor the resident's room using an electronic monitoring device.

(2) A facility may not refuse to admit an individual and may not discharge a resident because of a request to conduct authorized electronic monitoring.

(3) The HHSC Information Regarding an Authorized Electronic Monitoring form must be signed by or on behalf of all new residents upon admission. The form must be completed and signed by or on behalf of all current residents. A copy of the form must be maintained in the active portion of a resident's record. Figure: 26 TAC §553.287(e)(3)

(4) A resident, or the resident's guardian or legally authorized representative, who wishes to conduct AEM must request AEM by giving a completed, signed, and dated HHSC Request for Authorized Electronic Monitoring form to the manager or designee. A copy of the form must be maintained in the resident's record.

(A) If a resident has the capacity to request AEM and has not been judicially declared to lack the required capacity, only the resident may request AEM, notwithstanding the terms of any durable power of attorney or similar instrument.

(B) If a resident has been judicially declared to lack the capacity required to request AEM, only the guardian of the resident may request AEM.

(C) If a resident does not have the capacity to request AEM but has not been judicially declared to lack the required capacity, only the legally authorized representative of the resident may request AEM.

(i) A resident's practitioner makes the determination regarding the resident's capacity to request AEM. Documentation of the determination must be in the resident's record.

(ii) When a resident's practitioner determines the resident lacks the capacity to request AEM, a person from the following list, in order of priority, may act as the resident's legally authorized representative for the limited purpose of requesting AEM:

(I) a person named in the resident's medical power of attorney or other advance directive;

(II) the resident's spouse;

(III) an adult child of the resident who has the waiver and consent of all other qualified adult children of the resident to act as the sole decision-maker;

(IV) a majority of the resident's reasonably available adult children;

(V) the resident's parents; or

(VI) the individual clearly identified to act for the resident by the resident before the resident became incapacitated or the resident's nearest living relative.

(5) A resident, or the resident's guardian or legally authorized representative, who wishes to conduct AEM must also obtain the consent of any other residents residing in the room using the HHSC Consent to Authorized Electronic Monitoring form. When complete, the form must be given to the manager or designee. A copy of the form must be maintained in the active portion of the resident's record. AEM cannot be conducted without the consent of all residents residing in the room.

(A) Consent to AEM may be given only by:

(i) the other resident or residents in the room;

(ii) the guardian of the other resident, if the resident has been judicially declared to lack the required capacity; or

(iii) the legally authorized representative of the other resident, determined by following the same procedure established under paragraph (4)(C) of this subsection.

(B) Another resident residing in the room may condition consent on:

(i) pointing the camera away from the consenting resident's bed and personal space, when the proposed electronic monitoring is a video surveillance camera; and

(ii) limiting or prohibiting the use of an electronic monitoring device.

(C) AEM must be conducted in accordance with any limitation placed on the monitoring as a condition of the consent given by or on behalf of another resident residing in the room. The resident's roommate, or the roommate's guardian or legally authorized representative, assumes responsibility for ensuring AEM is conducted according to the designated limitations.

(D) If AEM is being conducted in a resident's room, and another resident is moved into the room who has not yet consented to AEM, the monitoring must cease until the new resident, or the resident's guardian or legally authorized representative, consents.

(6) When the completed HHSC Request for Authorized Electronic Monitoring form and the HHSC Consent to Authorized Electronic Monitoring form, if applicable, have been given to the manager or designee, AEM may begin.

(A) Anyone conducting AEM must post and maintain a conspicuous notice at the entrance to the resident's room. The notice must state that the room is being monitored by an electronic monitoring device.

(B) The resident, or the resident's guardian or legally authorized representative, must pay for all costs associated with conducting AEM, including installation in compliance with life safety and electrical codes, maintenance, removal of the equipment, posting and removal of the notice, or repair following removal of the equipment and notice, other than the cost of electricity.

(C) The facility must meet residents' requests to have a video camera obstructed to protect their dignity.

(D) The facility must make reasonable physical accommodation for AEM, which includes providing:

(i) a reasonably secure place to mount the video surveillance camera or other electronic monitoring device; and

(ii) access to power sources for the video surveillance camera or other electronic monitoring device.

(7) A facility must, regardless of whether AEM is being conducted, post an 8 1/2-inch by 11-inch notice at the main facility entrance. The notice must be entitled "Electronic Monitoring" and must state, in large, easy-to-read type, "The rooms of some residents may be monitored electronically by or on behalf of the residents. Monitoring may not be open and obvious in all cases."

(8) A facility may:

(A) require an electronic monitoring device to be installed in a manner that is safe for residents, employees, or visitors who may be moving about the room, and meet all local and state regulations;

(B) require AEM to be conducted in plain view; and

(C) place a resident in a different room to accommodate a request for AEM.

(9) A facility may not discharge a resident because covert electronic monitoring is being conducted by or on behalf of a resident. If a facility discovers a covert electronic monitoring device and it is no longer covert as defined in §553.3 of this chapter (relating to Definitions), the resident must meet all the requirements for AEM before monitoring is allowed to continue.

(10) All instances of abuse or neglect must be reported to HHSC, as required by §553.293 of this subchapter (relating to Abuse, Neglect, or Exploitation and Incidents Reportable to HHSC by Facilities). For purposes of the duty to report abuse or neglect, the following apply.

(A) A person who is conducting electronic monitoring on behalf of a resident is considered to have viewed or listened to a recording made by the electronic monitoring device on or before the 14th day after the date the recording is made.

(B) If a resident who has capacity to determine that the resident has been abused or neglected and who is conducting electronic monitoring gives a recording made by the electronic monitoring device to a person and directs the person to view or listen to the recording to determine whether abuse or neglect has occurred, the person to whom the resident gives the recording is considered to have viewed or listened to the recording on or before the seventh day after the date the person receives the recording.

(C) A person is required to report abuse based on the person's viewing of or listening to a recording only if the incident of



abuse is acquired on the recording. A person is required to report neglect based on the person's viewing of or listening to a recording only if it is clear from viewing or listening to the recording that neglect has occurred.

(D) If abuse or neglect of the resident is reported to the facility and the facility requests a copy of any relevant recording made by an electronic monitoring device, the person who possesses the recording must provide the facility with a copy at the facility's expense. The cost of the copy must not exceed the community standard. If the contents of the recording are transferred from the original technological format, a qualified professional must do the transfer.

(E) A person who sends more than one recording to HHSC must identify each recording on which the person believes an incident of abuse or evidence of neglect may be found. Tapes or recordings should identify the place on the recording that an incident of abuse or evidence of neglect may be found.

§553.289. Access to Residents and Records by the State Long-Term Care Ombudsman Program.

(a) A resident has the right to be visited by the State Ombudsman, a certified ombudsman, or an ombudsman intern.

(b) In accordance with 42 United States Code (U.S. Code) §3058g (b)(1)(A) and 45 CFR §1324.11(e)(2), a facility must allow:

(1) the State Ombudsman, a certified ombudsman, and an ombudsman intern to have:

(A) immediate, private, and unimpeded access to enter the facility at any time during the facility's regular business hours or regular visiting hours;

(B) immediate, private, and unimpeded access to a resident; and

(C) immediate and unimpeded access to the name and contact information of the resident's legally authorized representative, if the State Ombudsman, a certified ombudsman, or an ombudsman intern determines the information is needed to perform a function of the Ombudsman Program; and

(2) the State Ombudsman and a certified ombudsman to have immediate, private, and unimpeded access to enter the facility at a time other than regular business hours or visiting hours, if the State Ombudsman or a certified ombudsman determines access may be required by the circumstances to be investigated.

(c) A facility, in accordance with 42 U.S. Code §3058g (b)(1)(B) and 45 CFR §1324.11(e)(2), must allow the State Ombudsman and a certified ombudsman to have immediate access to:

(1) all files, records, and other information concerning a resident, including an incident report involving the resident, if:

(A) the State Ombudsman or certified ombudsman has the consent of the resident or legally authorized representative;

(B) the resident is unable to communicate consent to access and has no legally authorized representative; or

(C) such access is necessary to investigate a complaint and the following occurs:

(i) the resident's legally authorized representative refuses to give consent to access to the records, files, and other information;

(ii) the State Ombudsman or certified ombudsman has reasonable cause to believe that the legally authorized representative is not acting in the best interests of the resident; and

(iii) if it is the certified ombudsman seeking access to the records, files, or other information, the certified ombudsman obtains the approval of the State Ombudsman to access the records, files, or other information without the legally authorized representative's consent; and

(2) the administrative records, policies, and documents of the facility to which the residents or general public have access.

(d) The rules adopted under the Health Insurance Portability and Accountability Act of 1996, 45 CFR part 164, subparts A and E, do not preclude a facility from releasing protected health information or other identifying information regarding a resident to the State Ombudsman or a certified ombudsman if the requirements of subsections (b)(1)(C) and (c)(1) of this section are otherwise met. The State Ombudsman and a certified ombudsman are each a "health oversight agency" as that phrase is defined in 45 CFR §164.501.

§553.291. Postings.

(a) A facility must prominently and conspicuously post for display in a public area of the facility that is readily available to residents, employees, and visitors:

(1) the license issued under this chapter;

(2) an Alzheimer's certificate if the facility is Alzheimer's certified or has an Alzheimer's certified unit;

(3) a sign prescribed by HHSC that specifies complaint procedures established under these rules and specifies how complaints may be filed with HHSC;

(4) a notice in the form prescribed by HHSC stating that inspection and related reports are available at the facility for public inspection and providing HHSC toll-free telephone number that may be used to obtain information concerning the facility;

(5) a copy of the most recent inspection report relating to the facility;

(6) Residents' Bill of Rights;

(7) Providers' Bill of Rights;

(8) the facility's emergency evacuation floor plan, unless the facility is a one-story facility licensed for fewer than 17 residents;

(9) the menu for resident daily meals and snacks for the current week;

(10) the resident daily activities schedule for the current month;

(11) the telephone number of the managing local ombudsman and the toll-free number of the Ombudsman Program, 1-800-252-2412;

(12) the facility's 24-hour staffing pattern for the current month; and

(13) a sign stating: "Cases of Suspected Abuse, Neglect, or Exploitation must be reported to HHSC by calling 1-800-458-9858."

(b) A facility must post emergency telephone numbers, including for fire, police, emergency medical services, and poison control center services, conspicuously at or near facility maintained telephones.

(c) A facility must, regardless of whether authorized electronic monitoring is being conducted, post an 8 1/2-inch by 11-inch notice at the main facility entrance. The notice must be entitled "Electronic Monitoring" and must state, in large, easy-to-read type, "The rooms of

some residents may be monitored electronically by or on behalf of the residents. Monitoring may not be open and obvious in all cases."

(d) Whenever a resident room is being electronically monitored, the facility must post and maintain a conspicuous notice at the entrance to the resident's room, stating that an electronic monitoring device is monitoring the room.

§553.292. Advertisements, Solicitations, and Promotional Material.

A facility must use its state-issued facility identification number in all advertisements, solicitations, and promotional materials, including the facility's website, social media accounts, yellow pages, brochures, and business cards.

§553.293. Abuse, Neglect, or Exploitation and Incidents Reportable to HHSC by Facilities.

(a) An employee of the facility who has cause to believe that the physical or mental health or welfare of a resident has been or may be adversely affected by abuse, neglect, or exploitation or that the resident has died due to abuse or neglect, exploitation, or an unknown reason, must report the abuse, neglect, or exploitation to:

(1) HHSC Consumer Rights and Services section at 1-800-458-9858, via the online portal, or via the HHSC website; and

(2) the applicable law enforcement agency described in this paragraph:

(A) a municipal law enforcement agency, if the facility is located within the territorial boundaries of a municipality; or

(B) the sheriff's department of the county in which the facility is located if the facility is not located within the territorial boundaries of a municipality.

(b) A facility must develop and implement policies regarding abuse, neglect, and exploitation and incidents that facilities must report to HHSC such as a missing resident, drug diversion, or the injury or death of a resident from an unknown source. Such policies must address the following:

(1) prevention of abuse, neglect, and exploitation including the prevention of additional abuse, neglect, and exploitation during an active investigation;

(2) identification of abuse, neglect, exploitation, or reportable incident in accordance with this subsection;

(3) reporting of abuse, neglect, exploitation, or incident, as described in this subsection, including timeframes for reporting internally and to HHSC, the Texas Department of Family and Protective Services, or law enforcement;

(4) notifications to applicable individuals, such as a resident's legally authorized representative, regarding the initiation and conclusion of an investigation for abuse, neglect, exploitation, or reportable incident; and

(5) investigation procedures, required documentation, and internal reporting chain of command.

(c) The following information must be reported to HHSC:

(1) name, age, and address of the resident;

(2) name and address of the person responsible for the care of the resident, if available;

(3) nature and extent of the elderly or disabled person's condition;

(4) basis of the reporter's knowledge; and

(5) any other relevant information.

(d) A facility must immediately, no later than 24 hours upon learning of an incident or receiving a complaint, make an oral report to HHSC or electronic report via the online portal of:

(1) alleged abuse, neglect, or exploitation;

(2) a missing resident;

(3) drug diversion;

(4) fire;

(5) a resident's injury or death from an unknown source; or

(6) a resident's credible verbal threats or physical actions that pose a serious or immediate threat to the health, safety, or welfare of staff or other residents.

(e) A facility must thoroughly investigate an incident, as described in subsection (d) of this section, by collecting evidence such as interviews and documents to allow the individual assigned to oversee investigations to determine what actions are necessary for the protection of residents.

(f) A facility must submit a report of the investigation on Form 3613A, SNF, NF, ICF/IID, ALF, DAHS including ISS providers and PPECC Provider Investigation Report with Cover Sheet, to HHSC state office no later than the fifth calendar day after the oral report.

(g) A facility must prevent further potential abuse, neglect, exploitation, or mistreatment of residents while an investigation is in progress, which may include immediate suspension of any alleged perpetrators employed by the facility.

(h) A facility must not retaliate against a person for filing a complaint, presenting a grievance, or providing in good faith information relating to personal care services provided by the facility.

(i) A facility must require staff, as a condition of employment with the facility, to sign a statement indicating that the employee may be criminally liable for a failure to report abuse, neglect, exploitation, or reportable incident, in accordance with this section.

§553.295. Emergency Preparedness and Response.

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

(1) Designated emergency contact--A person whom a resident, or a resident's legally authorized representative, identifies in writing for the facility to contact in the event of a disaster or emergency.

(2) Disaster or emergency--An impending, emerging, or current situation that:

(A) interferes with normal activities of a facility and its residents;

(B) may:

(i) cause injury or death to a resident or staff member of the facility; or

(ii) cause damage to facility property;

(C) requires the facility to respond immediately to mitigate or avoid the injury, death, damage, or interference; and

(D) except as it relates to an epidemic or pandemic, or to the extent it is incident to another disaster or emergency, does not include a situation that arises from the medical condition of a resident, such as cardiac arrest, obstructed airway, or cerebrovascular accident.

(3) Emergency management coordinator (EMC)--The person appointed by the local mayor or county judge to plan, coordinate,

and implement public health emergency preparedness planning and response within the local jurisdiction.

(4) Emergency preparedness coordinator (EPC)--The facility staff person with the responsibility and authority to direct, control, and manage the facility's response to a disaster or emergency.

(5) Evacuation summary--A current summary of the facility's emergency preparedness and response plan that includes:

(A) the name, address, and contact information for each receiving facility or pre-arranged evacuation destination identified by the facility under subsection (g)(3)(B) of this section;

(B) the procedure for safely transporting residents and any other individuals evacuating a facility;

(C) the name or title, and contact information of the facility staff member to contact for evacuation information;

(D) the facility's primary mode of communication to be used during a disaster or emergency and the facility's supplemental or alternate mode of communication;

(E) the facility's procedure for notifying persons referenced in subsection (g)(5) of this section as soon as practicable about facility actions affecting residents during a disaster or emergency, including an impending or actual evacuation, and for maintaining ongoing communication with them for the duration of the disaster, emergency, or evacuation;

(F) a statement about training that is available to a resident, the resident's legally authorized representative, and each designated emergency contact for the resident, on procedures under the facility's plan that involve or impact each of them, respectively; and

(G) the facility's procedures for when a resident evacuates with a person other than a facility staff member.

(6) Plan--A facility's emergency preparedness and response plan.

(7) Receiving facility--A separate licensed assisted living facility:

(A) from which the facility has documented acknowledgement, from an identified authorized representative, as described in subsection (i)(2)(C) of this section; and

(B) to which the facility has arranged in advance of a disaster or emergency to evacuate some or all of the facility's residents, on a temporary basis, due to a disaster or emergency if, at the time of evacuation:

(i) the receiving facility can safely receive and accommodate the residents; and

(ii) the receiving facility has any necessary licensure or emergency authorization required to do so.

(8) Risk assessment--The process of evaluating, documenting, and examining potential disasters or emergencies that pose the highest risk to the facility, and assessing their foreseeable impacts, based on the facility's geographical location, structural conditions, resident needs and characteristics, and other influencing factors, in order to develop an effective emergency preparedness and response plan.

(b) A facility must conduct and document a risk assessment that meets the definition in subsection (a)(8) of this section for potential internal and external emergencies or disasters relevant to the facility's operations and location, and that pose the highest risk to a facility, such as:

(1) a fire or explosion;

(2) a power, telecommunication, or water outage; contamination of a water source; or significant interruption in the normal supply of any essential, such as food or water;

(3) a wildfire;

(4) a hazardous materials accident;

(5) an active or threatened terrorist or shooter, a detonated bomb or bomb threat, or a suspicious object or substance;

(6) a flood or a mudslide;

(7) a hurricane or other severe weather conditions;

(8) an epidemic or pandemic;

(9) a cyberattack; and

(10) a loss of all or a portion of the facility.

(c) A facility must develop and maintain a written emergency preparedness and response plan based on its risk assessment under subsection (b) of this section that is adequate to protect facility residents and staff in a disaster or emergency.

(1) The plan must address the eight core functions of emergency management, which are:

(A) direction and control;

(B) warning;

(C) communication;

(D) sheltering arrangements;

(E) evacuation;

(F) transportation;

(G) health and medical needs; and

(H) resource management.

(2) A facility must prepare for a disaster or emergency based on its plan and follow each plan procedure and requirement, including contingency procedures, at the time it is called for in the event of a disaster or emergency. In addition to meeting the other requirements of this section, the emergency preparedness plan must:

(A) document the contact information for the EMC for the area, as identified by the office of the local mayor or county judge;

(B) include a process to communicate with the EMC, both as a preparedness measure and in anticipation of and during a developing and occurring disaster or emergency; and

(C) include the location of a current list of the facility's resident population, which must be maintained as required under subsection (g)(3) of this section, that identifies:

(i) residents with Alzheimer's disease or related disorders;

(ii) residents who have an evacuation waiver approved under §553.261 of this subchapter (relating to Inappropriate Placement in a Type A or Type B Facility); and

(iii) residents with mobility limitations or other special needs who may need specialized assistance, either at the facility or in case of evacuation.

(3) A facility must notify the EMC of the facility's emergency preparedness and response plan, take actions to coordinate its

planning and emergency response with the EMC, and document communications with the EMC regarding plan coordination.

(d) A facility must:

(1) maintain a current printed copy of the plan in a central location that is accessible to all staff, residents, and residents' legally authorized representatives at all times;

(2) at least annually and after an event described in subparagraphs (A) - (D) of this paragraph, review the plan, its evacuation summary, if any, and the contact lists described in subsection (g)(3) of this section, and update each:

(A) to reflect changes in information, including when an evacuation waiver is approved under §553.261 of this subchapter;

(B) within 30 days or as soon as practicable following:

(i) a disaster or emergency if a shortcoming identified in the plan during the facility's response;

(ii) a drill if, based on the drill, a shortcoming in the plan is identified; and

(iii) a change in a facility policy or HHSC rule that would impact the plan;

(3) document reviews and updates conducted under paragraph (2) of this subsection, including the date of each review and dated documentation of changes made to the plan based on a review;

(4) provide residents and the residents' legally authorized representatives with a written copy of the plan or an evacuation summary, as defined in subsection (a)(5) of this section, upon admission, on request, and when the facility makes a significant change to a copy of the plan or evacuation summary it has provided to a resident or a resident's legally authorized representative;

(5) provide the information described in subsection (a)(5)(A) of this section to a resident or legally authorized representative who requests that information;

(6) notify each resident, next of kin, or legally authorized representative, in writing, how to register for evacuation assistance with the Texas Information and Referral Network (2-1-1 Texas); and

(7) register as a provider with 2-1-1 Texas to assist the state in identifying persons who may need assistance in a disaster or emergency. In doing so, the facility is not required to identify or register individual residents for evacuation assistance.

(e) Core Function One: Direction and Control. The facility's plan must contain a section for direction and control that:

(1) designates the EPC, as defined in (a)(4) of this section, and an alternate EPC, who is the facility staff person with the responsibility and authority to act as the EPC if the EPC is unable to serve in that capacity; and

(2) assigns responsibilities to staff members by designated function or position and describes the facility's system for ensuring that each staff member clearly understands the staff member's own role and how to execute it, in the event of a disaster or emergency.

(f) Core Function Two: Warning. A facility's plan must contain a section for warning that identifies:

(1) applicable procedures, methods, and responsibility for the facility to communicate with the EMC and other outside organizations, based on facility coordination with them, to notify the EPC or alternate EPC, as applicable, of a disaster or emergency;

(2) who, including during off hours, weekends, and holidays, the EPC or alternate EPC, as applicable, will notify of a disaster or emergency, and the methods and procedures for notification;

(3) the facility's procedure for keeping all persons present in the facility informed of the facility's present plan for responding to a potential or current disaster or emergency impacting or threatening the area where the facility is located; and

(4) procedures for monitoring local news and weather reports regarding a disaster or potential disaster or emergency, taking into consideration factors such as:

(A) location-specific natural disasters;

(B) whether a disaster is likely to be addressed or forecast in the reports; and

(C) the conditions, natural or otherwise, under which designated staff become responsible for monitoring news and weather reports for a disaster or emergency.

(g) Core Function Three: Communication. A facility's plan must contain a section for communication that:

(1) identifies the facility's primary mode of communication to be used during an emergency and the facility's supplemental or alternate mode of communication, and procedures for communication if telecommunication is affected by a disaster or emergency;

(2) includes instructions on when to call 911;

(3) includes the location of a list of current contact information, where it is easily accessible to staff, for each of the following:

(A) the legally authorized representative and designated emergency contacts for each resident;

(B) each receiving facility and pre-arranged evacuation destination, including alternate pre-arrangements, together with the written acknowledgement for each, as defined in subsection (a)(7) of this section;

(C) home and community support services agencies and independent health care professionals that deliver health care services to residents in the facility;

(D) personal contact information for facility staff; and

(E) the facility's resident population, which must identify residents who may need specialized assistance at the facility or in case of evacuation, as described in subsection (c)(2)(C) of this section;

(4) provides a method for the facility to communicate information to the public about its status during an emergency; and

(5) describes the facility's procedure for notifying at least the following persons, as applicable and as soon as practicable, about facility actions affecting residents during an emergency, including an impending or actual evacuation, and for maintaining ongoing communication for the duration of the emergency or evacuation:

(A) all facility staff members, including off-duty staff;

(B) each facility resident;

(C) any legally authorized representative of a resident;

(D) each resident's designated emergency contacts;

(E) each home and community support services agency or independent health care professional that delivers health care services to a facility resident;

(F) each receiving facility or evacuation destination to be used, if there is an impending or actual evacuation;

(G) the driver of a vehicle transporting residents or staff, medication, records, food, water, equipment, or supplies during an evacuation, and the employer of a driver who is not a facility staff person: and

(H) the EMC.

(h) Core Function Four: Sheltering Arrangements. A facility's plan must contain a section for sheltering arrangements that:

(1) describes the procedure for making and implementing a decision to remain in the facility during a disaster or emergency, that includes:

(A) the arrangements, staff responsibilities, and procedures for accessing and obtaining medication, records, equipment and supplies, water and food, including food to accommodate an individual who has a medical need for a special diet;

(B) facility arrangements and procedures for providing, in areas used by residents during a disaster or emergency, power and ambient temperatures that are safe under the circumstances, but which may not be less than 68 degrees Fahrenheit or more than 82 degrees Fahrenheit; and

(C) if necessary, sheltering facility staff or emergency staff involved in responding to an emergency and, as necessary and appropriate, their family members; and

(2) includes a procedure for notifying HHSC Regulatory Services regional office for the area in which the facility is located and, in accordance with subsection (g)(5) of this section, the EMC, immediately after the EPC or alternate EPC, as applicable, decides to remain in the facility during a disaster or emergency.

(i) Core Function Five: Evacuation.

(1) A facility has the discretion to determine when an evacuation is necessary for the health and safety of residents and staff. However, a facility must evacuate if the county judge of the county in which the facility is located or the mayor of the municipality in which the facility is located mandates it by an evacuation order issued independently or concurrently with the governor.

(2) A facility's plan must contain a section for evacuation that:

(A) identifies evacuation destinations and routes, including at least each pre-arranged evacuation destination and receiving facility described in subparagraph (C) of this paragraph, and includes a map that shows each identified destination and route;

(B) describes the procedure for making and implementing a decision to evacuate some or all residents to one or more receiving facilities or pre-arranged evacuation destinations, with contingency procedures, and a plan for any pets or service animals that reside in the facility;

(C) describes the process for the facility to notify each applicable receiving facility or pre-arranged destination of the facility's plan to evacuate and to verify with the applicable destination that it is available, ready, and not legally restricted at the time from receiving the evacuated residents, and can do so safely;

(D) includes the procedure and the staff responsible for:

(i) notifying HHSC Regulatory Services regional office for the area in which the facility is located and, in accordance with subsection (g)(5) of this section, the EMC, immediately after the

EPC or alternate EPC, as applicable, makes a decision to evacuate, or as soon as feasible thereafter, if it is not safe to do so at the time of decision;

(ii) ensuring that sufficient facility staff with qualifications necessary to meet resident needs accompany evacuating residents to the receiving facility, pre-arranged evacuation destination, or other destination to which the facility evacuates, and remain with the residents, providing any necessary care, for the duration of the residents' stay in the receiving facility or other destination to which the facility evacuates;

(iii) ensuring that residents and facility staff present in the building have been evacuated;

(iv) accounting for and tracking the location of residents, facility staff, and transport vehicles involved in the facility evacuation, both during and after the facility evacuation, through the time the residents and facility staff return to the evacuated facility;

(v) accounting for residents absent from the facility at the time of the evacuation and residents who evacuate on their own or with a third party, and notifying them that the facility has been evacuated;

(vi) overseeing the release of resident information to authorized persons in an emergency to promote continuity of a resident's care;

(vii) contacting the EMC to find out if it is safe to return to the geographical area after an evacuation;

(viii) making or obtaining, as appropriate, a comprehensive determination whether and when it is safe to re-enter and occupy the facility after an evacuation;

(ix) returning evacuated residents to the facility and notifying persons listed in subsection (g)(5) of this section who were not involved in the return of the residents; and

(x) notifying the HHSC Regulatory Services regional office for the area in which the facility is located immediately after each instance when some or all residents have returned to the facility after an evacuation.

(j) Core Function Six: Transportation. A facility's plan must contain a section for transportation that:

(1) identifies:

(A) current arrangements for access to a sufficient number of vehicles to safely evacuate all residents;

(B) facility staff designated during an evacuation to drive a vehicle owned, leased, or rented by the facility;

(C) notification procedures to ensure designated staff's availability at the time of an evacuation; and

(D) methods for maintaining communication with vehicles, staff, and drivers transporting facility residents or staff during evacuation, in accordance with subsection (g)(5)(A) and (G) of this section;

(2) includes procedures for safely transporting residents, facility staff, and any other individuals evacuating a facility; and

(3) includes procedures for the safe and secure transport of, and staff's timely access to, the following resident items needed during an evacuation: oxygen, medications, records, food, water, equipment, and supplies.

(k) Core Function Seven: Health and Medical Needs. A facility's plan must contain a section for health and medical needs that:

(1) identifies special services that residents use, such as dialysis, oxygen, or hospice services;

(2) identifies procedures to enable each resident, notwithstanding an emergency, to continue to receive from the appropriate provider the services identified under paragraph (1) of this subsection; and

(3) identifies procedures for the facility to notify home and community support services agencies and independent health care professionals that deliver services to residents in the facility of an evacuation in accordance with subsection (g)(5)(E) of this section.

(l) Core Function Eight: Resource Management. A facility's plan must contain a section for resource management that:

(1) identifies a plan for identifying, obtaining, transporting, and storing medications, records, food, water, equipment, and supplies needed for both residents and evacuating staff during an emergency;

(2) identifies facility staff, by position or function, who are assigned to access or obtain the items under paragraph (1) of this subsection and other necessary resources, and ensures their delivery to the facility, as needed, or their transport in the event of an evacuation;

(3) describes the procedure to ensure medications are secure and maintained at the proper temperature throughout an emergency; and

(4) describes procedures and safeguards to protect the confidentiality, security, and integrity of resident records throughout an emergency and any evacuation of residents.

(m) Receiving Facility. To act as a receiving facility, as defined in paragraph (a)(7) of this section, a facility's plan must include procedures for accommodating a temporary emergency placement of one or more residents from another assisted living facility, only in an emergency and only if:

(1) the facility does not exceed its licensed capacity, unless pre-approved in writing by HHSC and the excess is not more than 10 percent of the facility's licensed capacity;

(2) the facility ensures that the temporary emergency placement of one or more residents evacuated from another assisted living facility does not compromise the health or safety of any evacuated or facility resident, facility staff, or any other individual;

(3) the facility is able to meet the needs of all evacuated residents and any other persons it receives on a temporary emergency basis while continuing to meet the needs of its own residents, and of any of its own staff or other individuals it is sheltering at the facility during an emergency, in accordance with its plan under subsection (h) of this section;

(4) the facility maintains a log of each additional individual being housed in the facility that includes the individual's name, address, and the date of arrival and departure; and

(5) the receiving facility ensures that each temporarily placed resident has at arrival, or as soon after arrival as practicable and no later than necessary to protect the health of the resident, each of the following necessary to the resident's continuity of care:

(A) necessary practitioner's orders for care;

(B) medications;

(C) a service plan;

(D) existing advance directives; and

(E) contact information for each legally authorized representative and designated emergency contact of an evacuated resident, and a record of any notifications that have already occurred.

(n) Emergency preparedness and response plan training. The facility must:

(1) provide staff training on the emergency preparedness plan at least annually;

(2) train a facility staff member on the staff member's responsibilities under the plan:

(A) prior to the staff member assuming job responsibilities; and

(B) when a staff member's responsibilities under the plan change;

(3) conduct at least one unannounced annual drill with facility staff for severe weather or another emergency identified by the facility as likely to occur, based on the results of the risk assessment required by subsection (b) of this section;

(4) offer training and document, for each, the provision or refusal of such training, to each resident or legally authorized representative, if any, and each designated emergency contact, on procedures under the facility's plan that involve or impact each of them, respectively; and

(5) document the facility's compliance with each paragraph of this subsection at the time it is completed.

(o) Self-reported incidents relating to a disaster or emergency.

(1) A facility must report a fire to HHSC as follows:

(A) by calling 1-800-458-9858 immediately after the fire or as soon as practicable during an extended fire; and

(B) by submitting a completed HHSC Form 3707, Fire Report for Long Term Care Facilities within 15 calendar days after the fire.

(2) A facility must report to HHSC a death or serious injury of a resident, or threat to resident health or safety, resulting from an emergency or disaster as follows:

(A) by calling 1-800-458-9858 immediately after the incident, or, if the incident is of extended duration, as soon as practicable after the injury, death, or threat to the resident; and

(B) by conducting an investigation of the emergency and resulting resident injury, death, or threat, and submitting a completed HHSC Form 3613-A, SNF, NF, ICF/IID, ALF, DAHS and PPECC Provider Investigation Report with Cover Sheet. The facility must submit the completed form within five working days after making the telephone report required by paragraph (2)(A) of this subsection.

(p) Emergency Response System.

(1) The facility manager and designee must enroll in an emergency communication system in accordance with instructions from HHSC.

(2) A facility must respond to requests for information received through the emergency communication system in the format established by HHSC.

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-3161



**26 TAC §§553.261, 553.263, 553.265, 553.267, 553.269, 553.271 - 553.273, 553.275**

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively.

The repeals implement Texas Government Code §531.0055 and §531.033 and Texas Health and Safety Code §247.025 and §247.026.

§553.261. *Coordination of Care.*

§553.263. *Health maintenance activities.*

§553.265. *Resident Records and Retention.*

§553.267. *Rights.*

§553.269. *Access to Residents and Records by the State Long-Term Care Ombudsman Program.*

§553.271. *Postings.*

§553.272. *Advertisements, Solicitations, and Promotional Material.*

§553.273. *Abuse, Neglect, or Exploitation Reportable to HHSC by Facilities.*

§553.275. *Emergency Preparedness and Response.*

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-3161



**SUBCHAPTER F. ADDITIONAL LICENSING STANDARDS FOR CERTIFIED ALZHEIMER'S ASSISTED LIVING FACILITIES**

**26 TAC §§553.301, 553.303, 553.305, 553.307, 553.309**

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 rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively.

The amendments implement Texas Government Code §531.0055 and §531.033 and Texas Health and Safety Code §247.025 and §247.026.

§553.301. *Manager or Supervisor Qualifications and Training.*

(a) The manager of a [the] certified Alzheimer's facility or the supervisor of a [the] certified Alzheimer's unit must be 21 years of age or older, and have:

(1) an associate [associate's] degree in nursing or health care management;

(2) a bachelor's degree in psychology, gerontology, nursing, or a related field; or

(3) proof of graduation from an accredited high school or certification of equivalency of graduation and at least one year of experience working with persons with dementia.

(b) In addition to the manager training requirements in §553.253 of this chapter (relating to Employee Qualifications and Training), the [The] manager of an Alzheimer's certified facility or the supervisor of an Alzheimer's certified unit must complete six hours of annual continuing education regarding dementia care.

§553.303. *Staff Training.*

(a) In addition to the staff training requirements under §553.253 of this division [chapter] (relating to Employee Qualifications and Training), all staff members must receive four hours of dementia-specific orientation prior to assuming any job responsibilities. Training must cover, at a minimum, the following topics:

(1) basic information about the causes, progression, recognition, and management of Alzheimer's disease and related disorders;

(2) managing dysfunctional, disruptive, or maladaptive behavior[;] and the causes of these behaviors;

(3) identifying and alleviating safety risks to residents with Alzheimer's disease and related disorders; and[-]

(4) basic infection prevention and control principles.

(b) In addition to the staff training requirements under §553.253 of this division [chapter], attendants must receive 16 hours of on-the-job supervision and training for care and services of individuals residing in the Alzheimer's certified unit before providing care in the unit [within the first 16 hours of employment following orientation]. Training must cover:

(1) providing assistance with the activities of daily living to individuals with a diagnosis of Alzheimer's disease or similar cognitive limitations;

(2) emergency and evacuation procedures specific to the residents residing in the Alzheimer's certified unit [dementia population];

(3) managing dysfunctional, disruptive, or maladaptive behavior; [and]

(4) behavior management, including prevention of aggressive behavior and de-escalation techniques, [fall prevention,] or alternatives to restraints;[-]

(5) fall and accident prevention; and

(6) sexual relationships and consent.

(c) In addition to the staff training requirements under §553.253 of this division [chapter], attendants must annually complete 12 hours of in-service education regarding Alzheimer's disease and related disorders that meets the following criteria.

(1) One hour of annual training must address behavior management, including prevention of aggressive behavior and de-escalation techniques and alternatives to restraints.

(2) One hour of annual training must address [; or] fall and accident prevention [; or alternatives to restraints].

(3) One hour of annual training must address elopement prevention.

(4) The remaining nine hours of in-service training may include the following topics:

[Training for these subjects must be competency-based. Subject matter must address the unique needs of the facility. Additional suggested topics include:]

(A) [(4)] assessing resident capabilities and developing and implementing service plans;

(B) [(2)] promoting resident dignity, independence, individuality, privacy, and choice;

(C) [(3)] planning and facilitating activities appropriate for the dementia resident;

(D) [(4)] communicating with families and other persons interested in the resident;

(E) [(5)] resident rights and principles of self-determination;

(F) [(6)] care of elderly persons with physical, cognitive, behavioral, and social disabilities;

(G) [(7)] medical and social needs of the resident;

(H) [(8)] common psychotropics and side effects; and

(I) [(9)] local community resources.

(d) Training on the requirements in subsection (c) of this section must be competency-based and include competency verification through return demonstration or written or oral assessment as applicable. Subject matter must address the unique needs of the facility.

#### §553.305. *Staffing.*

(a) A facility must employ sufficient staff to provide services for, [and] meet the needs of, and ensure the health and safety of residents residing in the Alzheimer's certified facility or unit based on each resident's: [its Alzheimer's residents.]

(1) cognitive and physical acuity;

(2) behavioral health concerns; and

(3) wandering and elopement precautions.

(b) In a large facility or unit licensed for [facilities or units with] 17 or more residents, two staff members must be present and

[immediately] available at all times to respond to resident needs upon request or as necessary when residents are present.

#### §553.307. *Admission Procedures, Evaluation [Assessment], and Service Plan.*

(a) Alzheimer's Assisted Living Disclosure Statement form. A facility must use the Alzheimer's Assisted Living Disclosure Statement form and amend the form if changes in the operation of the facility affect the information in the form.

(b) Pre-admission. The facility must establish procedures, such as an application process, interviews, and home visits, to ensure that the placement of prospective residents is appropriate and that their needs can be met.

(1) Prior to admitting a resident, facility staff must discuss and explain the Alzheimer's Assisted Living Disclosure Statement form with the legally authorized representative [family] or responsible party.

(2) The facility must give the Alzheimer's Assisted Living Disclosure Statement form to any individual seeking information about the facility's care or treatment of residents with Alzheimer's disease and related disorders.

(c) Evaluation [Assessment]. The facility must conduct a resident evaluation [make a comprehensive assessment] of a [each] resident within 14 days after admission and annually thereafter. The evaluation [assessment] must include the items listed in §553.259(b)[(4)] of this division [chapter] (relating to Admission Policies and Procedures).

(d) Service plan. Facility staff, with input from the family, if available, must develop an individualized service plan for each resident, based upon the resident evaluation [assessment], within 14 days after admission. The service plan must address the individual needs, preferences, and strengths of the resident. The service plan must be designed to help the resident maintain the highest possible level of physical, cognitive, and social functioning. The service plan must be updated annually and upon a significant change in condition, based on an evaluation [assessment] of the resident.

#### §553.309. *Activities Program.*

(a) A facility must encourage socialization, cognitive awareness, self-expression, and physical activity in a planned and structured activities program. Activities must be individualized, based upon the resident evaluation [assessment], and appropriate for each resident's abilities.

(b) The activities [activity] program must contain a balanced mixture of activities addressing cognitive, recreational, and activity of daily living (ADL) needs.

(1) Cognitive activities include arts, crafts, storytelling, poetry readings, writing, music, reading, discussion, reminiscences, and reviews of current events.

(2) Recreational activities include all socially interactive activities, such as board games and cards, and physical exercise. Care of pets is encouraged.

(3) Self-care ADLs include grooming, bathing, dressing, oral care, and eating. Occupational ADLs include cleaning, dusting, cooking, gardening, and yard work. Residents must be allowed to perform self-care ADLs as long as they are able, to promote independence and self-worth.

(c) The facility must encourage but never force residents [Residents must be encouraged, but never forced,] to participate in activities. Residents who choose not to participate in a large group



activity must be offered at least one small group or one-on-one activity per day.

(d) A facility [Facilities] must have an employee who is responsible for leading activities.

(1) A facility licensed for [Facilities with] 16 or fewer residents must designate an employee to plan, supply, implement, and record activities.

(2) A facility licensed for [Facilities with] 17 or more residents must employ, at a minimum, an activity director for 20 hours weekly. The activity director must be a qualified professional who:

(A) is a qualified therapeutic recreation specialist or an activities professional who is eligible for certification as a therapeutic recreation specialist, a therapeutic recreation assistant, or an activities professional by a recognized accrediting body, such as the National Council for Therapeutic Recreation Certification ~~or~~ the National Certification Council for Activity Professionals ~~;~~ or the Consortium for Therapeutic Recreation/Activities Certification, Inc.;

(B) has two years of experience in a social or recreational program within the last five years, one year of which was full-time in an activities program in a health care setting; or

(C) has completed an activity director training course approved by the National Association for Activity Professionals or the National Therapeutic Recreation Society.

(e) The activity director or designee must review each resident's medical and social history, preferences, and dislikes, in determining appropriate activities for the resident. Activities must be tailored to each resident's unique requirements and skills.

(f) The activities program must provide opportunities for group and individual settings. On weekdays, each resident must be offered at least one cognitive activity, two recreational activities, and three ADL activities each day. The cognitive and recreational activities (structured activities) must be at least 30 minutes in duration, with a minimum of six and a half hours of structured activity for the entire week. At least an hour and a half of structured activities must be provided during the weekend and must include at least one cognitive activity and one physical activity.

(g) The activity director or designee must create a monthly activities schedule. Structured activities should occur at the same time and place each week to ensure a consistent routine within the facility.

(h) The activity director or designee must annually attend at least six hours of continuing education regarding Alzheimer's disease or related disorders.

(i) Special equipment and supplies necessary to accommodate persons with a physical disability or other persons with special needs must be provided as appropriate.

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**26 TAC §553.311**

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 rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively.

The repeal implements Texas Government Code §531.0055 and §531.033 and Texas Health and Safety Code §247.025 and §247.026.

§553.311. *Physical Plant Requirements for Alzheimer's Units.*

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◆ ◆ ◆  
**SUBCHAPTER G. INSPECTIONS,  
INVESTIGATIONS, AND INFORMAL  
DISPUTE RESOLUTION**

**26 TAC §§553.327, 553.328, 553.331**

The amendments and new section are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively.

The amendments and new section implement Texas Government Code §531.0055 and §531.033 and Texas Health and Safety Code §247.025 and §247.026.

§553.327. *Inspections, Investigations, and Other Visits.*

(a) HHSC inspection and survey personnel perform inspections and surveys, follow-up visits, complaint investigations, investigations of abuse or neglect, and other contact visits from time to time as they deem appropriate, or as required for carrying out the responsibilities of licensing.

(b) In addition to the inspections required under Subchapter B of this chapter (relating to Licensing), HHSC may inspect [~~inspects~~] a facility [~~at least~~] once every two years after the initial inspection.

(c) An inspection may be conducted by an individual surveyor or by a team, depending on the purpose of the inspection or survey, size of facility, and service provided by the facility, and other factors.

(d) To determine standard compliance which cannot be verified during regular working hours, HHSC, with the least possible interference to staff and residents, may conduct night or weekend inspections to cover specific aspects of a facility's operation.

(e) Generally, HHSC conducts routine and nonroutine inspections, surveys, complaint investigations, and other visits made for the purpose of determining the appropriateness of resident care and day-to-day operations of a facility on an unannounced basis, unless there is justification for an exception.

(f) Certain visits may be announced, including, but not limited to, conditions when certain emergencies arise, such as fire, windstorm, or malfunctioning or nonfunctioning of electrical or mechanical systems.

(g) When HHSC conducts a complaint investigation, HHSC notifies the facility of the complaint received and a summary of the complaint, without identifying the source of the complaint. A complaint is an allegation received by HHSC regarding:

- (1) abuse, neglect, or exploitation of a resident; or
- (2) a violation of state standards.

(h) The facility must make all books, records, and other documents maintained by or on behalf of a facility accessible to HHSC upon request.

(1) HHSC is authorized to photocopy documents, photograph residents, and use any other available recording devices to preserve all relevant evidence of conditions found during an inspection, survey, or investigation that HHSC reasonably believes threaten the health and safety of a resident.

(2) Records and documents which may be requested and photocopied or otherwise reproduced include, but are not limited to, admission sheets, medication profiles, observation notes, medication refusal notes, and menu records.

(3) When the facility is requested to furnish the copies, the facility may charge HHSC at the rate not to exceed the rate charged by HHSC for copies. Collection must be by billing HHSC. The procedure of copying is the responsibility of the administrator or his designee. If copying requires removal of the records from the facility, a representative of the facility will be expected to accompany the records and ensure [~~assure~~] their order and preservation.

(4) HHSC protects the copies for privacy and confidentiality in accordance with recognized standards of medical records practice, applicable state laws, and HHSC policy.

(5) If a facility maintains electronic records, it must have a mechanism for printing all documentation if a surveyor or investigator requests a printed copy.

§553.328. Plan of Removal.

(a) During an onsite inspection, if HHSC finds a that a violation has created an immediate threat to the health and safety of a resident, a facility must submit sufficient documentation and present evidence showing that satisfactory action has been taken to resolve the immediacy of the identified threat by immediately submitting a plan of removal.

(b) The plan of removal must include:

(1) a description of steps the facility will take to remove the immediacy of the violation;

(2) a description of how affected or potentially affected residents will be identified;

(3) the immediate actions or changes the facility will make to ensure the violation does not reoccur and the staff responsible for oversight and implementation of the actions;

(4) the steps to be taken to monitor the changes; and

(5) a timeline for implementing all actions identified by the facility in the plan of removal.

(c) The facility must provide a plan of removal upon request from HHSC.

(d) The facility must implement all actions identified in the plan of removal.

§553.331. Determinations and Actions (Investigation Findings).

(a) HHSC determines if a facility meets HHSC licensing rules, including physical plant and facility operation requirements, by conducting inspections, surveys, investigations, and onsite [~~on-site~~] visits.

(b) HHSC lists violations of licensing rules on a report of contact. The report of contact includes a specific reference to a licensing rule that has been violated.

(c) At the conclusion of an inspection, survey, investigation, or onsite [~~on-site~~] visit, an HHSC surveyor conducts an exit conference to advise the facility of the findings resulting from the inspection, survey, investigation, or onsite [~~on-site~~] visit.

(d) At the exit conference, the surveyor provides a copy of the report of contact described in subsection (b) of this section to the facility.

(e) If, after the initial exit conference, an HHSC surveyor cites an additional licensing rule violation, the surveyor conducts another exit conference regarding the newly identified violations and updates the report of contact with a specific reference to the licensing rule that has been violated.

(f) HHSC provides to the facility a written statement of violations from an inspection, survey, investigation, or onsite [~~on-site~~] visit on HHSC Form 3724, Statement of Licensing Violations and Plan of Correction, within 10 days after the final exit conference. The statement of violations includes a clear and concise summary in nontechnical language of each licensing rule violation. The statement of violations does not include names of residents or staff, statements that identify a resident, or other prohibited information.

(g) A facility must submit an acceptable plan of correction to the HHSC regional director for the HHSC surveyor within 10 working days after receiving the statement of violations described in subsection (f) of this section. An acceptable plan of correction must address:

(1) how corrective action will be accomplished for a resident affected by a violation of a licensing rule;

(2) how the facility will identify other residents who may be affected by the violation of the licensing rule;

(3) how the corrective action the facility implements will ensure the violation does not reoccur;

(4) how the facility will monitor its corrective action to ensure the violation is being corrected and will not reoccur; and

(5) dates when corrective action will be completed.

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## SUBCHAPTER H. ENFORCEMENT DIVISION 1. GENERAL INFORMATION

### 26 TAC §§553.351, §553.353

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively.

The repeals implement Texas Government Code §531.0055 and §531.033 and Texas Health and Safety Code §247.025 and §247.026.

*§553.351. When may HHSC take an enforcement action?*

*§553.353. What enforcement actions may HHSC take?*

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### 26 TAC §553.351

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 rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the

quality of care and protection of assisted living facility residents' health and safety, respectively.

The new section implements Texas Government Code §531.0055 and §531.033 and Texas Health and Safety Code §247.025 and §247.026.

§553.351. Enforcement General Information.

(a) HHSC may take enforcement action when a facility is in violation of:

(1) the sections of this chapter;

(2) the Texas Health and Safety Code, Chapter 247;

(3) an order adopted under Texas Health and Safety Code, Chapter 247; or

(4) a license issued under Texas Health and Safety Code, Chapter 247.

(b) HHSC may take the following enforcement actions:

(1) suspend a license;

(2) order immediate closing of all or part of the facility;

(3) revoke a license;

(4) refer the violation to the Office of the Attorney General for involuntary appointment of a trustee, injunction, or for the assessment of civil penalties; or

(5) assess administrative penalties.

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## DIVISION 2. ACTIONS AGAINST A LICENSE: SUSPENSION

**26 TAC §§553.401, 553.403, 553.405, 553.407, 553.409, 553.411, 553.413, 553.415, 553.417, 553.419, 553.421, 553.423, 553.425, 553.427, 553.429, 553.431, 553.433, 553.435, 553.437, 553.439**

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively.

The repeals implement Texas Government Code §531.0055 and §531.033 and Texas Health and Safety Code §247.025 and §247.026.

- §553.401. *When may HHSC suspend a facility's license?*
- §553.403. *Does HHSC provide notice of a license suspension and the opportunity for a hearing to the applicant, license holder, or a controlling person?*
- §553.405. *May HHSC suspend a license at the same time another enforcement action is occurring?*
- §553.407. *How does HHSC notify a license holder of a proposed suspension?*
- §553.409. *What information does HHSC provide the license holder concerning a proposed suspension?*
- §553.411. *Does the license holder have an opportunity to show compliance with all requirements for keeping the license before HHSC begins proceedings to suspend a license?*
- §553.413. *How does a license holder request an opportunity to show compliance?*
- §553.415. *How much time does a license holder have to request an opportunity to show compliance?*
- §553.417. *What must the request for an opportunity to show compliance contain?*
- §553.419. *How does HHSC conduct the opportunity to show compliance?*
- §553.421. *Does HHSC give the license holder a written affirmation or reversal of the proposed action?*
- §553.423. *How does HHSC notify a license holder of its final decision to suspend a license?*
- §553.425. *May the facility request a formal hearing?*
- §553.427. *How long does a license holder have to request a formal hearing?*
- §553.429. *If a license holder does not appeal, when does the suspension take effect?*
- §553.431. *If a license holder appeals, when does the suspension take effect?*
- §553.433. *May a facility operate during a suspension?*
- §553.435. *How long is the suspension?*
- §553.437. *How does HHSC decide to remove the suspension?*
- §553.439. *Must the license be returned to HHSC during a license suspension?*

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## 26 TAC §553.401

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 rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively.

The new section implements Texas Government Code §531.0055 and §531.033 and Texas Health and Safety Code §247.025 and §247.026.

### §553.401. Suspension Actions Against a License.

(a) HHSC may suspend a facility's license when the applicant, license holder, or a controlling person violates:

(1) Texas Health and Safety Code, Chapter 247; a section, standard, or order adopted under Texas Health and Safety Code, Chapter 247; or term of a license issued under Chapter 247 in a repeated or substantial manner; or

(2) §553.751 of this subchapter (relating to Administrative Penalties).

(b) HHSC provides written notice of a license suspension and the opportunity for a hearing to the applicant, license holder, or a controlling person.

(c) HHSC may suspend a license at the same time another enforcement action is occurring.

(d) HHSC notifies a license holder of a proposed suspension by certified and first-class mail.

(e) HHSC provides the license holder with the facts or conduct alleged to warrant the suspension.

(f) The license holder has an Opportunity to Show Compliance (OSC) with all requirements for keeping the license before HHSC begins proceedings to suspend a license.

(g) A license holder must send a written request for an OSC to HHSC Regulatory Enforcement.

(h) A request for an OSC must be postmarked within 10 calendar days after the date of HHSC notice letter and must be received in the office of HHSC Regulatory Enforcement within 10 calendar days after the postmark.

(i) The request to show compliance must contain specific documentation showing how the facts or conduct that support the proposed suspension are incorrect.

(j) HHSC limits its review to documentation submitted by the license holder and information used by HHSC as the basis for its proposed action. The review is not conducted as an adversarial hearing.

(k) HHSC gives the license holder a written affirmation or reversal of the proposed action.

(l) HHSC notifies the facility license holder by certified and first-class mail of its final decision to suspend a license.

(m) The facility may request a formal hearing.

(n) The license holder has 15 calendar days from receipt of the certified and first-class mail notice to request a formal hearing.

(o) If a license holder does not appeal, the suspension takes effect after the deadline for an appeal passes.

(p) If a license holder appeals, the status of the license remains in effect until after the appeal is complete.

(q) A facility may continue to operate as long as the suspension is under appeal.

(r) The suspension remains in effect until HHSC determines that the reason for the suspension no longer exists, but no longer than the license expiration date.

(s) HHSC conducts an onsite inspection to decide whether to remove the suspension.

(t) The license must be returned to HHSC during a license suspension.

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### DIVISION 3. ACTIONS AGAINST A LICENSE: REVOCATION

**26 TAC §§553.451, 553.453, 553.455, 553.457, 553.459, 553.461, 553.463, 553.465, 553.467, 553.469, 553.471, 553.473, 553.475, 553.477, 553.479, 553.481, 553.483**

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively.

The repeals implement Texas Government Code §531.0055 and §531.033 and Texas Health and Safety Code §247.025 and §247.026.

*§553.451. When may HHSC revoke a license?*

*§553.453. Does HHSC provide notice of a license revocation and opportunity for a hearing to the applicant, license holder, or controlling person?*

*§553.455. May HHSC take more than one enforcement action at a time against a license?*

*§553.457. How does HHSC notify a license holder of a proposed revocation?*

*§553.459. What information does HHSC provide the license holder concerning a proposed revocation?*

*§553.461. Does the license holder have an opportunity to show compliance with all requirements for keeping the license before HHSC begins proceedings to revoke a license?*

*§553.463. How does a license holder request an opportunity to show compliance?*

*§553.465. How much time does a license holder have to request an opportunity to show compliance?*

*§553.467. What must the request for the opportunity to show compliance contain?*

*§553.469. How does HHSC conduct the opportunity to show compliance?*

*§553.471. Does HHSC give the license holder a written affirmation or reversal of the proposed action?*

*§553.473. Does the license holder have an opportunity for a formal hearing?*

*§553.475. How long does a license holder have to request a formal hearing?*

*§553.477. When does the revocation take effect if the license holder does not appeal?*

*§553.479. When does the revocation take effect if the license holder appeals the revocation?*

*§553.481. May a facility operate during a revocation?*

*§553.483. What happens to a license if it is revoked?*

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### **26 TAC §553.451**

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 rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively.

The new section implements Texas Government Code §531.0055 and §531.033 and Texas Health and Safety Code §247.025 and §247.026.

*§553.451. Revocation Actions Against a License.*

(a) HHSC may revoke a license when the applicant, license holder, or a controlling person:

(1) violates section §553.751 of this subchapter (relating to Administrative Penalties);

(2) violates Texas Health and Safety Code, Chapter 247; a section, standard or order adopted under Texas Health and Safety Code, Chapter 247; or term of a license issued under Texas Health and Safety Code, Chapter 247 in a repeated or substantial manner;

(3) submits false statements on a license application;

(4) submits false statements on license application attachments;

- (5) submits misleading statements on a license application;
  - (6) submits misleading statements on license application attachments;
  - (7) uses subterfuge or other evasive means to obtain a license;
  - (8) conceals a material fact on a license application that would have been the basis for denying a license under §553.17 of this chapter (relating to Criteria for Licensing);
  - (9) fails to disclose information, as required by Subchapter B of this chapter (relating to Licensing) that would have been the basis to deny a license in §553.17 of this chapter; or
  - (10) violates Texas Health and Safety Code §247.021.
- (b) HHSC provides written notice of a license revocation and opportunity for a hearing to the applicant, license holder, or controlling person.
  - (c) HHSC may take more than one enforcement action at a time against a license.
  - (d) HHSC notifies a license holder by certified and first-class mail of a proposed revocation.
  - (e) HHSC provides the license holder with the facts or conduct alleged to warrant the proposed revocation.
  - (f) The license holder has an Opportunity to Show Compliance (OSC) with all requirements for keeping the license before HHSC begins proceedings to revoke a license.
  - (g) A license holder must send a written request for an OSC to HHSC Regulatory Enforcement.
  - (h) A request for an OSC must be postmarked within 10 calendar days after the date of the HHSC notice letter and must be received in the office of HHSC Regulatory Enforcement within 10 calendar days after the postmark.
  - (i) A request for the OSC must contain specific documentation showing how the facts or conduct that support the proposed revocation are incorrect.
  - (j) HHSC conducts its review of limited documentation submitted by the license holder and information used by HHSC as the basis for its proposed action. The review is not conducted as an adversarial hearing.
  - (k) HHSC gives the license holder a written affirmation or reversal of the proposed action.
  - (l) The license holder has an opportunity for a formal hearing.
  - (m) The license holder has 15 calendar days from receipt of the certified and first-class mail notice to request a hearing.
  - (n) The revocation takes effect if the license holder does not appeal after the deadline for an appeal passes.
  - (o) The revocation does not take effect until the appeal is complete.
  - (p) A facility may continue to operate as long as the revocation is under appeal.
  - (q) If revoked, the license must be returned to HHSC.
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#### DIVISION 4. ACTIONS AGAINST A LICENSE: TEMPORARY RESTRAINING ORDERS AND INJUNCTIONS

##### 26 TAC §553.501, §553.503

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively.

The repeals implement Texas Government Code §531.0055 and §531.033 and Texas Health and Safety Code §247.025 and §247.026.

*§553.501. Why does HHSC refer a facility to the Office of the Attorney General or local prosecuting authority for a temporary restraining order or an injunction?*

*§553.503. To whom does HHSC refer a facility that is operating without a license?*

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##### 26 TAC §553.501

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 rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the

quality of care and protection of assisted living facility residents' health and safety, respectively.

The new section implements Texas Government Code §531.0055 and §531.033 and Texas Health and Safety Code §247.025 and §247.026.

§553.501. Temporary Restraining Order and Injunctions Against a License.

(a) HHSC refers a facility to the Office of the Attorney General or local prosecuting authority for a temporary restraining order or an injunction when:

(1) a violation creates an immediate threat or threat to the health and safety of residents;

(2) a facility is operating without a license; or

(3) HHSC is denied entry to a facility that is alleged to be operating without a license.

(b) HHSC will refer a facility that is operating without a license to the:

(1) district attorney;

(2) county attorney;

(3) city attorney; or

(4) Attorney General.

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**DIVISION 5. ACTIONS AGAINST A LICENSE:  
EMERGENCY LICENSE SUSPENSION AND  
CLOSING ORDER**

**26 TAC §§553.551, 553.553, 553.555, 553.557, 553.559, 553.561, 553.563, 553.565, 553.567, 553.569, 553.571, 553.573, 553.575, 553.577, 553.579, 553.581, 553.583, 553.585, 553.587, 553.589, 553.591, 553.593, 553.595, 553.597**

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively.

The repeals implement Texas Government Code §531.0055 and §531.033 and Texas Health and Safety Code §247.025 and §247.026.

§553.551. *When may HHSC suspend a license or order an immediate closing of all or part of a facility?*

§553.553. *How does HHSC notify a facility of a license suspension or immediate closing of all or part of a facility?*

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§553.561. *Where can a license holder find information about administrative hearings?*

§553.563. *Does a request for an administrative hearing suspend the effectiveness of the order?*

§553.565. *Does anything happen to a resident's rights or freedom of choice during an emergency relocation?*

§553.567. *Who does HHSC notify if all or part of a facility is closed?*

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§553.571. *Who decides where to relocate a resident?*

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§553.579. *Is a receiving facility allowed to temporarily exceed its licensed capacity?*

§553.581. *Under what conditions is a receiving facility allowed to temporarily exceed its licensed capacity?*

§553.583. *What requirements must a facility meet to obtain a temporary waiver?*

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§553.587. *Does HHSC monitor a facility with a temporary waiver?*

§553.589. *What records, reports, and supplies are sent to the receiving facility for transferred residents?*

§553.591. *May a resident return to the closed facility if it reopens within 90 calendar days?*

§553.593. *Do the relocated residents have any special admission rights at the closed facility?*

§553.595. *What options does a relocated resident have?*

§553.597. *Are relocated residents who return to the facility considered new admissions?*

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 §553.551**

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 rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively.

The new section implements Texas Government Code §531.0055 and §531.033 and Texas Health and Safety Code §247.025 and §247.026.

§553.551. Emergency License Suspension and Closing Order Actions Against a License.

(a) HHSC may suspend a license or order an immediate closing of all or part of a facility when:

(1) the facility is operating in violation of the licensure rules; and

(2) the violation creates an immediate threat to the health and safety of a resident.

(b) HHSC will notify a facility of a license suspension or immediate closing of all or part of a facility by a notice hand-delivered to a facility staff member.

(c) An order suspending a license or closing all or part of a facility is effective immediately upon receipt of the hand-delivered written notice or on a later date specified in the order.

(d) An order suspending a license or closing all or part of a facility is valid for 10 calendar days after the effective date of the order.

(e) A license holder may request a hearing.

(f) License holders can find information about administrative hearings in Texas Administrative Code, Title 1, Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act); Texas Government Code, Chapter 2001; and 1 TAC Chapter 155 (relating to Rules of Procedure).

(g) A request for an administrative hearing does not suspend the effectiveness of the order.

(h) A resident's rights or freedom of choice is not affected during an emergency relocation.

(i) If all or part of a facility is closed, HHSC notifies:

(1) the local health department director;

(2) the city or county health authority; and

(3) representatives of the appropriate state agencies.

(j) If all or part of the facility is closed, a facility must notify each resident and, as applicable, his or her:

(1) guardian or legally authorized representative; and

(2) attending physician.

(k) The resident or resident's legally authorized representative, guardian, or responsible party may designate a preference for a specific facility or for other arrangements regarding where to relocate a resident.

(l) HHSC arranges to relocate residents to other facilities in the area.

(m) HHSC considers residents' relocation preferences.

(n) The following apply when a resident chooses a facility for relocation.

(1) The facility must be in good standing with HHSC.

(2) If the facility is certified under 42 United States Code, Chapter 7, Subchapters XVIII and XIX, it must be in good standing under its contract.

(3) The facility must be able to meet the needs of the resident.

(o) A receiving facility is allowed to temporarily exceed its licensed capacity.

(p) A receiving facility may be allowed to temporarily exceed its licensed capacity to prevent substantial transportation of a resident.

(q) A receiving facility must ensure that acceptance of a resident under a temporary waiver:

(1) does not compromise the health and safety of residents; and

(2) can be accommodated by facility attendants and dietary services staff.

(r) A facility may have a temporary waiver until residents can be transferred to a permanent location.

(s) HHSC may monitor a facility with a temporary waiver to ensure compliance with applicable rules.

(t) The following reports, records, and supplies must be inventoried by the closing facility and sent to the receiving institution for each transferred resident:

(1) a copy of the current physician's orders for:

(A) medication;

(B) treatment;

(C) diet; and

(D) special services required;

(2) personal information, such as name and address of a resident's guardian, legally authorized representative, or responsible party;

(3) the name and phone number of the resident's attending physician;

(4) Medicare and Medicaid identification number, if applicable;

(5) Social Security number;

(6) other identification information as deemed necessary and available;

(7) a copy of the resident's current evaluation and service plan;

(8) all medications dispensed in the resident's name that:

(A) have current physician's orders;

(B) have not passed the expiration date or been discontinued by physician orders; and

(C) the resident takes on a regular or as needed basis;

(9) the resident's personal belongings, clothing, and toilet articles; and

(10) resident trust fund accounts maintained by the closing facility.

(u) A relocated resident has the first right to return to the closed facility if it reopens within 90 calendar days.



(v) A relocated resident may choose to:

(1) return to the reopened facility;

(2) remain in the receiving facility if that facility agrees to admit the resident; or

(3) choose other accommodations.

(w) A relocated resident who returns to the facility must be treated as a new admission, and all procedures regarding new admissions apply.

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## DIVISION 6. ACTIONS AGAINST A LICENSE: CIVIL PENALTIES

### 26 TAC §553.601, §553.603

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively.

The repeals implement Texas Government Code §531.0055 and §531.033 and Texas Health and Safety Code §247.025 and §247.026.

*§553.601. When may HHSC refer a facility to the Office of the Attorney General for assessment of civil penalties?*

*§553.603. What is the amount of the civil penalty that can be assessed for operating without a license?*

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**26 TAC §553.601**

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The new section implements Texas Government Code §531.0055 and §531.033 and Texas Health and Safety Code §247.025 and §247.026.

*§553.601. Civil Penalties.*

(a) HHSC may refer a facility to the Office of the Attorney General for assessment of civil penalties for a violation that threatens the health and safety of a resident.

(b) A civil penalty of \$1,000 to \$10,000 per day may be assessed for operating a facility without a license.

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## DIVISION 7. TRUSTEES: INVOLUNTARY APPOINTMENT OF A TRUSTEE

### 26 TAC §§553.651, 553.653, 553.655, 553.657, 553.659, 553.661

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively.

The repeals implement Texas Government Code §531.0055 and §531.033 and Texas Health and Safety Code §247.025 and §247.026.

*§553.651. When may HHSC petition a court for the involuntary appointment of a trustee to operate a facility?*

§553.653. *When may HHSC disburse emergency assistance funds?*

§553.655. *Must a facility reimburse HHSC for emergency assistance funds?*

§553.657. *When is reimbursement for emergency assistance funds due to HHSC?*

§553.659. *Who is responsible for reimbursement?*

§553.661. *What happens if a facility does not reimburse HHSC in one year?*

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## 26 TAC §553.651

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 rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively.

The new section implements Texas Government Code §531.0055 and §531.033 and Texas Health and Safety Code §247.025 and §247.026.

§553.651. *Involuntary Appointment of a Trustee.*

(a) HHSC may petition a court for the involuntary appointment of a trustee to operate a facility when one or more of the following conditions exist:

(1) the facility is operating without a license;

(2) the facility's license has been suspended or revoked;

(3) an imminent threat to the health and safety of the residents exists and license suspension or revocation procedures are pending against the facility;

(4) an emergency exists that presents an immediate threat to the health and safety of the residents; or

(5) the facility is closing, whether voluntarily or through an emergency closure order, and arrangements for relocation of the residents to other licensed institutions have not been made before closure.

(b) HHSC may disburse emergency assistance funds when a court order is given.

(c) A facility will reimburse HHSC for emergency assistance funds.

(d) Reimbursement for emergency assistance funds is due not later than one year after the date the trustee received the funds.

(e) The owner of the facility at the time the trustee was appointed is responsible for reimbursement.

(f) If a facility does not reimburse emergency assistance funds to HHSC in one year, HHSC refers the license holder to the Office of the Attorney General. HHSC also may deny a Medicaid provider contract.

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## DIVISION 8. TRUSTEES: APPOINTMENT OF A TRUSTEE BY AGREEMENT

### 26 TAC §§553.701, 553.703, 553.705, 553.707, 553.709, 553.711

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively.

The repeals implement Texas Government Code §531.0055 and §531.033 and Texas Health and Safety Code §247.025 and §247.026.

*§553.701. May a facility request the appointment of a trustee to assume operation of a facility?*

*§553.703. Who may make the request?*

*§553.705. What are the requirements for a trustee agreement?*

*§553.707. When does an agreement for a trustee terminate?*

*§553.709. What happens if the controlling person wants to terminate the agreement, but HHSC determines termination of the agreement is not in the best interest of the residents?*

*§553.711. When HHSC appoints a trustee, is the facility always required to pay assessed civil money penalties?*

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## 26 TAC §553.701

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 rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively.

The new section implements Texas Government Code §531.0055 and §531.033 and Texas Health and Safety Code §247.025 and §247.026.

### §553.701. Appointment of a Trustee by Agreement.

(a) A facility may request the appointment of a trustee to assume operation of a facility.

(b) A person holding a controlling interest in a facility may request that HHSC assume the operation of the facility through the appointment of a trustee.

(c) A trustee agreement must:

(1) specify all terms and conditions of the trustee's appointment and authority; and

(2) preserve all legal rights of the residents.

(d) An agreement for a trustee terminates at the time specified in the agreement or upon receipt of notice of intent to terminate sent by HHSC or by the person holding a controlling interest in the facility.

(e) If the controlling person wants to terminate the agreement but HHSC determines termination of the agreement is not in the best interest of the residents, HHSC may petition a court for an involuntary appointment of a trustee under the terms of §553.651 of this subchapter (relating to Involuntary Appointment of a Trustee).

(f) When HHSC appoints a trustee, the facility is required to pay the assessed the civil money penalties.

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## DIVISION 9. ADMINISTRATIVE PENALTIES

### 26 TAC §553.751

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively.

The amendment implements Texas Government Code §531.0055 and §531.033 and Texas Health and Safety Code §247.025 and §247.026.

### *§553.751. Administrative Penalties.*

(a) Assessment of an administrative penalty. HHSC may assess an administrative penalty if a license holder:

(1) violates:

(A) Texas Health and Safety Code, Chapter 247;

(B) a rule, standard, or order adopted under Texas Health and Safety Code, Chapter 247; or

(C) a term of a license issued under Texas Health and Safety Code, Chapter 247;

(2) makes a false statement of material fact that the license holder knows or should know is false:

(A) on an application for issuance or renewal of a license;

(B) in an attachment to the application; or

(C) with respect to a matter under investigation by HHSC;

(3) refuses to allow an HHSC representative to inspect:

(A) a book, record, or file that a facility must maintain; or

(B) any portion of the premises of a facility;

(4) willfully interferes with the work of, or retaliates against, an HHSC representative or the enforcement of this chapter;

(5) willfully interferes with, or retaliates against, an HHSC representative preserving evidence of a violation of Texas Health and Safety Code, Chapter 247; a rule, standard, or order adopted under Texas Health and Safety Code, Chapter 247; or a term of a license issued under Texas Health and Safety Code, Chapter 247;

(6) fails to pay an administrative penalty not later than the 30th calendar day after the penalty assessment becomes final;

(7) fails to notify HHSC of a change of ownership before the effective date of the change of ownership;

(8) willfully interferes with the State Ombudsman, a certified ombudsman, or an ombudsman intern performing the functions of the Ombudsman Program as described in Chapter 88 of this title (relating to State Long-Term Care Ombudsman Program); or

(9) retaliates against the State Ombudsman, a certified ombudsman, or an ombudsman intern:

(A) with respect to a resident, employee of a facility, or other person filing a complaint with, providing information to, or otherwise cooperating with the State Ombudsman, a certified ombudsman, or an ombudsman intern; or

(B) for performing the functions of the Ombudsman Program as described in Chapter 88 of this title.

(b) Criteria for assessing an administrative penalty. HHSC considers the following in determining the amount of an administrative penalty:

(1) the gradations of penalties established in subsection (d) of this section;

(2) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the situation, and the hazard or potential hazard created by the situation to the health or safety of the public;

(3) the history of previous violations;

(4) deterrence of future violations;

(5) the license holder's efforts to correct the violation;

(6) the size of the facility and of the business entity that owns the facility; and

(7) any other matter that justice may require.

(c) Late payment of an administrative penalty. A license holder must pay an administrative penalty within 30 calendar days after the penalty assessment becomes final. If a license holder fails to timely pay the administrative penalty, HHSC may assess an administrative penalty under subsection (a)(6) of this section, which is in addition to the penalty that was previously assessed and not timely paid.

(d) Administrative penalty schedule. HHSC uses the schedule of appropriate and graduated administrative penalties in this subsection to determine which violations warrant an administrative penalty. Figure: 26 TAC §553.751(d) (No change.)

(e) Administrative penalty assessed against a resident. HHSC does not assess an administrative penalty against a resident, unless the resident is also an employee of the facility or a controlling person.

(f) Proposal of administrative penalties.

(1) HHSC issues a preliminary report stating the facts on which HHSC concludes that a violation has occurred after HHSC has:

(A) examined the possible violation and facts surrounding the possible violation; and

(B) concluded that a violation has occurred.

(2) HHSC may recommend in the preliminary report the assessment of an administrative penalty for each violation and the amount of the administrative penalty.

(3) HHSC provides a written notice of the preliminary report to the license holder not later than 10 calendar days after the date on which the preliminary report is issued. The written notice includes:

(A) a brief summary of the violation;

(B) the amount of the recommended administrative penalty;

(C) a statement of whether the violation is subject to correction in accordance with subsection (g) of this section and, if the violation is subject to correction, a statement of:

(i) the date on which the license holder must file with HHSC a plan of correction for approval by HHSC; and

(ii) the date on which the license holder must complete the plan of correction to avoid assessment of the administrative penalty; and

(D) a statement that the license holder has a right to an administrative hearing on the occurrence of the violation, the amount of the penalty, or both.

(4) Not later than 20 calendar days after the date on which a license holder receives a written notice of the preliminary report, the license holder may:

(A) give HHSC written consent to the preliminary report, including the recommended administrative penalty; or

(B) make a written request to HHSC for an administrative hearing.

(5) If a violation is subject to correction under subsection (g) of this section, the license holder must submit a plan of correction to HHSC for approval not later than 10 calendar days after the date on which the license holder receives the written notice described in paragraph (3) of this subsection.

(6) If a violation is subject to correction under subsection (g) of this section, and after the license holder reports to HHSC that the violation has been corrected, HHSC inspects the correction or takes any other step necessary to confirm the correction and notifies the facility that:

(A) the correction is satisfactory and HHSC is not assessing an administrative penalty; or

(B) the correction is not satisfactory, and a penalty is recommended.

(7) Not later than 20 calendar days after the date on which a license holder receives a notice that the correction is not satisfactory and that a penalty is recommended under paragraph (6)(B) of this subsection, the license holder may:

(A) give HHSC written consent to HHSC report, including the recommended administrative penalty; or

(B) make a written request to HHSC for an administrative hearing.

(8) If a license holder consents to the recommended administrative penalty or does not timely respond to a notice sent under paragraph (3) of this subsection (written notice of the preliminary report) or paragraph (6)(B) of this subsection (notice that the correction is not satisfactory and recommendation of a penalty):

(A) HHSC assesses the recommended administrative penalty;

(B) HHSC gives written notice of the decision to the license holder; and

(C) the license holder must pay the penalty not later than 30 calendar days after the written notice given in subparagraph (B) of this paragraph.

(g) Right [Opportunity] to correct.

(1) HHSC allows a license holder to correct a violation before assessing an administrative penalty, except a violation described in paragraph (2) of this subsection. To avoid assessment of a penalty, a license holder must correct a violation not later than 45 calendar days

after the date the facility receives the written notice described in subsection (f)(3) of this section.

(2) HHSC does not allow a license holder to avoid a penalty assessment based on its correction of a violation:

(A) described by subsection (a)(2)-(9) of this section;

(B) of Texas Health and Safety Code §260A.014 or §260A.015;

(C) relating [related] to advance directives as described in §553.259(d) of this chapter (relating to Admission Policies and Procedures);

(D) that is the second or subsequent violation of:

(i) a right of the same resident under §553.287 [§553.267] of this chapter (relating to Rights);

(ii) the same right of all residents under §553.287 [§553.267] of this chapter; or

(iii) §553.255 of this chapter (relating to All Staff Policy for Residents with Alzheimer's Disease or a Related Disorder) that occurs before the second anniversary of the date of a previous violation of §553.255 of this chapter;

(E) that is written because of an inappropriately placed resident, except as described in §553.261 [§553.259(e)] of this chapter (relating to Inappropriate Placement in a Type A or Type B Facility);

(F) that is a pattern of violation that results in actual harm;

(G) that is widespread in scope and results in actual harm;

(H) that is widespread in scope, constitutes a potential for more than minimal harm, and relates to:

(i) resident evaluation [assessment] as described in §553.259(b) of this chapter;

(ii) staffing, including staff training, as described in §553.253 of this chapter (relating to Employee Qualifications and Training);

(iii) medication administration as described in §553.267 [§553.261(a)] of this chapter (relating to Medications [Coordination of Care]);

(iv) infection control as described in §553.277 [§553.261(f)] of this chapter (relating to Infection Prevention and Control);

(v) restraints as described in §553.279 [§553.261(g)] of this chapter (relating to Restraints and Seclusion); or

(vi) emergency preparedness and response as described in §553.295 [§553.275] of this chapter (relating to Emergency Preparedness and Response); or

(I) is an immediate threat to the health or safety of a resident.

(3) Maintenance of violation correction.

(A) A license holder that corrects a violation must maintain the correction. If the license holder fails to maintain the correction until at least the first anniversary of the date the correction was made, HHSC may assess and collect an administrative penalty for the subsequent violation.

(B) An administrative penalty assessed under this paragraph is equal to three times the amount of the original administrative penalty that was assessed but not collected.

(C) HHSC is not required to offer the license holder a right [opportunity to correct] the subsequent violation.

(h) Hearing on an administrative penalty. If a license holder timely requests an administrative hearing as described in subsection (f)(3) or (7) of this section, the administrative hearing is held in accordance with HHSC rules at Texas Administrative Code, Title 1, [1 FAC] Chapter 357, Subchapter I (relating to Hearings under the Administrative Procedure Act).

(i) HHSC may charge interest on an administrative penalty. The interest begins the day after the date the penalty becomes due and ends on the date the penalty is paid in accordance with Texas Health and Safety Code §247.0455(e).

(j) Amelioration of a violation.

(1) In lieu of demanding payment of an administrative penalty, the commissioner may allow a license holder to use, under HHSC supervision, any portion of the administrative penalty to ameliorate the violation or to improve services, other than administrative services, in the facility affected by the violation. Amelioration is an alternate form of payment of an administrative penalty, not an appeal, and does not remove a violation or an assessed administrative penalty from a facility's history.

(2) A license holder cannot ameliorate a violation that HHSC determines constitutes immediate jeopardy to the health or safety of a resident.

(3) HHSC offers amelioration to a license holder not later than 10 calendar days after the date a license holder receives a final notification of the recommended assessment of an administrative penalty that is sent to the license holder after an informal dispute resolution process but before an administrative hearing.

(4) A license holder to whom amelioration has been offered must:

(A) submit a plan for amelioration not later than 45 calendar days after the date the license holder receives the offer of amelioration from HHSC; and

(B) agree to waive the license holder's right to an administrative hearing if HHSC approves the plan for amelioration.

(5) A license holder's plan for amelioration must:

(A) propose changes to the management or operation of the facility that will improve services to or quality of care of residents;

(B) identify, through measurable outcomes, the ways in which and the extent to which the proposed changes will improve services to or quality of care of residents;

(C) establish clear goals to be achieved through the proposed changes;

(D) establish a timeline [time line] for implementing the proposed changes; and

(E) identify specific actions the license holder will take to implement the proposed changes.

(6) A license holder's plan for amelioration may include proposed changes to:

(A) improve staff recruitment and retention;

(B) offer or improve dental services for residents; and

(C) improve the overall quality of life for residents.

(7) HHSC may require that an amelioration plan propose changes that would result in conditions that exceed the requirements of this chapter.

(8) HHSC approves or denies a license holder's amelioration plan not later than 45 calendar days after the date HHSC receives the plan. If HHSC approves the amelioration plan, any pending request the license holder has submitted for an administrative hearing must be withdrawn by the license holder.

(9) HHSC does not offer amelioration to a license holder:

(A) more than three times in a two-year period; or

(B) more than one time in a two-year period for the same or a similar violation.

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## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

#### CHAPTER 51. EXECUTIVE

#### SUBCHAPTER E. LEAVE POOLS

##### 31 TAC §51.143

The Texas Parks and Wildlife Department proposes new 31 TAC §51.143, concerning Peace Officer Legislative Leave Pool. The most recent session of the Texas Legislature enacted Senate Bill 922, which amended Parks and Wildlife Code, Chapter 11, by adding new §11.0183, which requires the department to allow a peace officer commissioned by the department to voluntarily transfer up to eight hours of compensatory time or annual leave per year to a leave pool for use as leave for legislative activities conducted on behalf of a law enforcement association. Senate Bill 922 requires the commission to adopt rules and prescribe procedures relating to the operation of the legislative leave pool.

The proposed new rule would set forth the purpose of the leave pool, designate a pool administrator, and require the pool administrator, with the advice and consent of the executive director of the agency, to develop and implement operating procedures consistent with the requirements of the proposed new rule and relevant law governing operation of the pool.

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

governments as a result of administering or enforcing the rule as proposed.

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

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

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

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

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

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

Comments on the proposed rule may be submitted to Patty David, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4808; email: [patricia.david@tpwd.texas.gov](mailto:patricia.david@tpwd.texas.gov) or via the department website at [www.tpwd.texas.gov](http://www.tpwd.texas.gov).

The new rule is proposed under the authority of Parks and Wildlife Code, §11.0183, which requires the commission to adopt rules to create and administer a peace officer legislative leave pool.

The proposed new rule affects Parks and Wildlife Code, Chapter 11.

§51.143. Peace Officer Legislative Leave Pool.

A leave pool is established to provide peace officers commissioned by the department with the opportunity to use annual leave or compensatory time donated to the pool for use as legislative leave on behalf of a law enforcement association.

(1) The director of human resources is designated as the pool administrator.

(2) The pool administrator, with the advice and consent of the executive director, will establish operating procedures consistent with the requirements of this section and relevant law governing operation of the pool.

(3) Donations to the pool are strictly voluntary.

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

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James Murphy

General Counsel

Texas Parks and Wildlife Department

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For further information, please call: (512) 389-4775



## SUBCHAPTER O. ADVISORY COMMITTEES

### 31 TAC §51.673

The Texas Parks and Wildlife Department proposes new 31 TAC §51.673, concerning the Oyster Advisory Committee (OAC).

Parks and Wildlife Code, §11.0162, authorizes the Chairman of the Texas Parks and Wildlife Commission (the Commission) to "appoint committees to advise the commission on issues under its jurisdiction." Under Parks and Wildlife Code, Chapter 76, the legislature has designated TPWD as the primary regulatory agency for public oyster beds and certificates of location (oyster leases), including the taking, possession, purchase, and sale of oysters. Government Code, Chapter 2110, requires that rules be adopted regarding each state agency advisory committee. Unless otherwise provided by specific statute, the rules must state the purpose of the committee and describe the way the committee will report to the agency. The rules may also establish the date on which the committee will automatically be abolished, unless the advisory committee has a specific duration established by statute. Under this authority, the Commission has established a number of advisory committees to provide the department with informed opinion regarding various aspects and dimensions of the department's mission. These advisory committees perform a valuable service for the department and the people of Texas.

The department is the primary state agency responsible for the regulation and management of public and private oyster beds, including the taking, possession, purchase, and sale of oysters. Staff have determined that the creation of an advisory board for matters involving oysters would be helpful in assisting the department and the commission in determining and executing appropriate strategies to maximize the long-term health of oyster resources and the additional habitat and ecosystem services they provide.

Dr. Tiffany Hopper, Science and Policy Branch Chief, Coastal Fisheries Division, has determined that for each of the first five years that the rule as proposed is in effect, there will be no fiscal implications to state or local government as a result of administering the rule. There will be no impact on persons required to comply with the rule as proposed.

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

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

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

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

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

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

Comments on the proposed rule may be submitted to Michaela Cowan, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-8575; email: cfish@tpwd.texas.gov or via the department website at www.tpwd.texas.gov.

The new rule is proposed under Government Code, Chapter 2110, which requires the adoption of rules regarding state agency advisory committees.

The proposed new rule affects Government Code, Chapter 2110.

§51.673. Oyster Advisory Committee (OAC).

(a) The OAC is created to advise the department on all matters pertaining to oysters in Texas.

(b) The OAC shall be composed of up to 24 members of the public.

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

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

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

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James Murphy

General Counsel

Texas Parks and Wildlife Department

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## CHAPTER 57. FISHERIES

### SUBCHAPTER N. STATEWIDE RECREATIONAL AND COMMERCIAL FISHING PROCLAMATION

The Texas Parks and Wildlife Department proposes an amendment to 31 TAC §57.981, concerning Bag, Possession, and Length Limits, and the repeal of §57.983, concerning Spotted Seatrout - Special Provisions. The proposed amendment would alter the bag, possession, and length limits for spotted seatrout. The proposed repeal would eliminate a spotted seatrout harvest rule that expired on its own terms on August 31, 2023, and is no longer necessary.

In February of 2021, Winter Storm Uri caused a die-off of more than 3.8 million fish on the Texas Coast, with spotted seatrout mortality the highest reported among recreational game fish. An estimated 160,000 spotted seatrout were lost coastwide, with highest losses on the lower coast. On April 1, 2021, the department adopted an emergency rule (46 TexReg 2527) to protect seatrout populations by reducing harvest pressure, which had the additional benefit of accelerating recovery of spotted seatrout in the Laguna Madre system. The emergency rule expired on September 27, 2021. After post-freeze data analysis identified significant impacts in other coastal areas, the commission adopted new §57.983 (47 TexReg 1290) in January of 2022, which mirrored the provisions of the emergency rule (a three-fish daily bag limit, a minimum length limit of 17", and a maximum length limit of 23 inches, with no provision for the retention of oversize fish) but expanded its geographical extent. The new rule was intended to be temporary in nature; thus, it contained an expiration date of August 31, 2023.

Section 57.983 was intended to increase spotted seatrout spawning stock biomass and recruitment to the fishery as a means of recovery following the freeze event. According to modeled data that considers spotted seatrout life history, the

full benefit of the rule would take approximately seven years to be realized. Departmental data show continued impact to adult spotted seatrout populations since 2021. Coastwide spring gillnet data shows that the spotted seatrout population remains below the ten-year mean (a decline from recent historical average) and lower coastwide following the freeze event. Despite this, coastwide bag seine data shows increasing recruitment since 2021 to pre-freeze levels.

While the recruitment trends are encouraging, the department continues to receive comment from the regulated community indicating lingering concerns over the long-term sustainability of the fishery and advocating to make permanent the more restrictive bag and length limits of expired §57.983.

Upon expiration of §57.983, the harvest regulation for spotted seatrout in §57.981 (five-fish daily bag limit, 15" minimum length limit, 25" maximum length limit, with one fish longer than 25" allowed to be retained as part of the daily bag limit) resumed effect.

To gauge public satisfaction with the current spotted seatrout fishery and gather angler preferences for future spotted seatrout management, six public scoping meetings were held in Port Arthur, Texas City, Port Lavaca, Rockport, Corpus Christi, and Port Isabel from October 17 to October 19, 2023. A total of 281 people attended the scoping meetings, and over 275 comments were received during the meetings as well as via email. Of the comments received, only 4% of respondents opposed any changes to current limits. Additionally, of respondents who specified a specific slot length, 39% were in favor of a 17"-23" slot and 29% favored a 15"-20" slot. Eighty-three percent of comments that specified a bag limit were in favor of a three-fish bag.

Additionally, the department contracted with Texas A&M University to conduct an online survey in September 2023 to gauge public satisfaction with the current spotted seatrout fishery. A stratified random sample size of 10,000 recreational anglers in 32 counties who held one of 22 different license types (all of which were license types that allow anglers to saltwater fish) made up the sample population. The distribution of surveyed anglers among the 32 counties was determined based on encounters at creel surveys that targeted spotted seatrout. The sample also included a census (1,584 individuals) who held an all-water fishing guide license. Of the completed surveys received from recreational anglers, most supported a 15"-20" slot, three-fish bag limit, with one fish over the maximum size allowed, while a 17"-23" slot, five-fish bag limit, with one fish over the maximum size allowed was least supported. Of the completed surveys received from fishing guides, most supported a 15"-20" slot, three-fish bag limit, with one fish over the maximum size allowed, while a 17"-23" slot, five-fish bag limit, with one fish over the maximum size allowed was least supported.

The department also analyzed long-term data to inform the proposed amendment. In 2020, the year before the freeze, approximately 50% of anglers who landed any seatrout landed just one seatrout. This trend was even more pronounced when the emergency regulation was in place, with approximately 67% of anglers landing just one seatrout. The department also evaluated angler satisfaction as it related to bag size between years with the emergency regulations and those without. This evaluation showed that while satisfaction is positively correlated with number of fish caught, the satisfaction of reaching the bag limit was similar regardless of the three fish or five fish bag limit.



Based on the harvest and population data and the input of the regulated community, the department proposes to alter the current harvest rule by implementing a reduced daily bag limit (from five fish to three fish), retaining the current minimum length limit of 15", reducing the maximum length limit to 20" from 25", and continuing to allow the retention of one fish longer than 25" as part of the daily bag limit. The proposed amendment would be implemented on a coastwide basis.

The proposed repeal is necessary to repeal a harvest rule that is unnecessary because it has expired on its own term.

Mr. Dakus Geeslin, Deputy Director, Coastal Fisheries Division, has determined that for each of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state or local governments as a result of administering or enforcing the rule.

Mr. Geeslin also has determined that for each of the first five years that the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the proposed rule will be the dispensation of the agency's statutory duty to protect and conserve the fisheries resources of this state by protecting fisheries resources from depletion. In addition, the rule will increase the long-term sustainability of the resource, based on projected future impacts and expected changes to the fishery based on fishing pressure.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses, micro-businesses, or rural communities. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impacts to small businesses, micro-businesses, or rural communities. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that the proposed rule will not result in direct adverse impacts on small businesses, micro-businesses, or rural communities because spotted seatrout by statute cannot be harvested for commercial purposes and because the proposed rule regulates recreational license privileges that allow individual persons to pursue and harvest wildlife resources in this state and therefore does not directly affect small businesses, micro-businesses, or rural communities. Therefore, neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

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

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

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

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

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

Comments on the proposed amendment may be submitted to Michaela Cowan, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-8734; e-mail: [cfish@tpwd.texas.gov](mailto:cfish@tpwd.texas.gov) or via the department's website at <http://www.tpwd.texas.gov/>.

## DIVISION 2. STATEWIDE RECREATIONAL FISHING PROCLAMATION

### 31 TAC §57.981

The amendment and repeal are proposed under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

The proposed amendment and repeal affect Parks and Wildlife Code, Chapter 61.

*§57.981. Bag, Possession, and Length Limits.*

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

(c) There are no bag, possession, or length limits on game or non-game fish, except as provided in this subchapter.

(1) - (4) (No change.)

(5) Except as provided in subsection (d) of this section, the statewide daily bag and length limits shall be as follows.

(A) - (N) (No change.)

(O) Seatrout, spotted.

(i) Daily bag limit: 3 [~~5~~].

(ii) Minimum length limit: 15 inches.

(iii) Maximum length limit: 20 [~~25~~] inches.

(iv) Only one spotted seatrout greater than 25 inches may be retained per day. A spotted seatrout retained under this subclause counts as part of the daily bag and possession limit.

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

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James Murphy  
General Counsel

Texas Parks and Wildlife Department

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### 31 TAC §57.983

The repeal is proposed under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

The proposed repeal affects Parks and Wildlife Code, Chapter 61.

§57.983. *Spotted Seatrout - Special Bag, Possession, and Length Limits.*

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

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General Counsel

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## CHAPTER 65. WILDLIFE

### SUBCHAPTER B. DISEASE DETECTION AND RESPONSE

#### DIVISION 1. CHRONIC WASTING DISEASE (CWD)

### 31 TAC §65.81, §65.82

The Texas Parks and Wildlife Department proposes amendments to 31 TAC §65.81, concerning Containment Zones; Restrictions, and §65.82, concerning Surveillance Zones; Restrictions.

The proposed amendments would establish a chronic wasting disease (CWD) containment zone (CZ) in Coleman County and surveillance zones (SZs) in Kimble, Medina, Cherokee, Coleman, and Kerr counties in response to the continuing detection of CWD in deer breeding facilities, free-ranging populations, and a department research facility, and would heighten the department's surveillance efforts in those areas.

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

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

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

The department's response to the emergence of CWD in captive and free-ranging populations is guided by the department's CWD Management Plan (Plan) <https://tpwd.texas.gov/huntwild/wild/diseases/cwd/plan.phtml>. Developed in 2012 in consultation with the Texas Animal Health Commission (TAHC), other governmental entities and conservation organizations, and various advisory groups consisting of landowners, hunters, deer managers, veterinarians, and epidemiologists, the Plan sets forth the department's CWD management strategies and informs regulatory responses to the detection of the disease in captive and free-ranging cervid populations in the state of Texas. The Plan is intended to be dynamic; in fact, it must be so in order to accommodate the growing understanding of the etiology, pathology, and epidemiology of the disease and the potential management pathways that emerge as it becomes better understood through time. The Plan proceeds from the premise that disease surveillance and active management of CWD once it is

detected are absolutely critical to containing it on the landscape. Accordingly, the first step in the department's response to CWD detections is the timely establishment of management zones around locations where detection occurs. A CZ is "a department-defined geographic area in which CWD has been detected or the department has determined, using the best available science and data, that CWD detection is probable." Designation of a CZ imposes mandatory carcass movement restrictions, and if the department imposes mandatory check stations, all deer harvested within a CZ must be presented at a check station unless otherwise authorized by the department in writing. A SZ is "a department-defined geographic area in this state within which the department has determined, using the best available science and data, that the presence of CWD could reasonably be expected." Within a SZ, the movement of live deer is subject to restrictions and the presentation of harvested deer at a department check station is required. In addition, deer carcass movement restrictions set forth in §65.88 of Subchapter B, Division 1 apply.

Historically, when CWD has been detected in a deer breeding facility but not on any associated release sites, the department has considered the property on which the breeding facility is located to be a de facto CZ because it is surrounded by a fence capable of retaining deer at all times and is immediately subject to a quarantine and a herd plan administered by TAHC. In such cases, the department has designated only a SZ around the index facility. In cases where CWD is detected in a free-ranging deer or a release site associated with a positive facility, the department imposes a CZ.

The Texas Parks and Wildlife Commission has directed staff to develop guidelines or a standard operating procedure (SOP) with respect to the establishment and duration of SZs. The SOP distinguishes two scenarios: 1) the detection of CWD has been in a deer breeding facility but not at any release site associated with a breeding facility and 2) detection of CWD on a release site associated with a deer breeding facility where CWD has been detected. In the first scenario, the department will not establish a SZ if the following can be verified: 1) the disease was detected early (i.e., it has not been in the facility long); 2) the transmission mechanism and pathway are known; 3) the facility was promptly depopulated following detection; and 4) there is no evidence that free-ranging deer populations have been compromised. If any of these criteria is not satisfied, a SZ will be established, to consist of all properties that are wholly or partially located within two miles of the property containing the positive deer breeding facility. None of the discoveries necessitating this rulemaking satisfy all four criteria; thus, the department proposes the new surveillance zones described in this rulemaking.

On September 7, 2023, the department received confirmation that a six-year-old female white-tailed deer in a deer breeding facility located in Kimble County had been confirmed positive for CWD.

On October 19, 2023, the department received notification that a 14-month-old male white-tailed deer in a deer breeding facility located in Medina County was confirmed positive for CWD.

On November 14, 2023, the department received notification that a 4.4-year-old male white-tailed deer in a deer breeding facility located in Cherokee County was confirmed positive for CWD.

On December 6, 2023, department received notification that CWD was confirmed in a free-range 2.5-year-old male white-tailed deer taken by a hunter in Coleman County.

At the time this proposal was submitted to the *Texas Register* the department was awaiting confirmation of test results indicating that a 14-month-old male white-tailed deer in the department's research facility at the Kerr Wildlife Management Area in Kerr County was infected with CWD.

The proposed amendment to §65.81, concerning Containment Zones; Restrictions, would create a new CZ in Coleman County.

The proposed amendment to §65.82, concerning Surveillance Zones; Restrictions, would establish new surveillance zones in Kimble, Medina, Coleman, Cherokee, and Kerr counties. The department notes that the SZs will be removed when the department is satisfied that CWD has been contained and the risk of further spread is minimal. In the case of the suspected positive deer at the Kerr WMA, the department immediately euthanized and tested every deer at the facility. The department believes that imposition of a SZ is necessary because the transmission pathway and agent are unknown.

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

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

There could be adverse economic impact on persons required to comply with the rules as proposed. Such impacts would include any monetary and time costs incurred by persons transporting harvested deer to a department check station as required, which the department has estimated will be minimal.

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

For the purposes of this analysis, the department considers all deer breeders to be small or microbusinesses, which ensures

that the analysis captures all deer breeders possibly affected by the proposed rulemaking.

The department has determined that there are no deer breeding facilities located within the proposed new CZ in Coleman County; therefore, there would be no direct adverse economic impacts to the regulated community (i.e., permitted deer breeders) as a result of the creation of the proposed CZ in Coleman County.

The department has determined that there will be no adverse economic impacts to deer breeding facilities located within the proposed SZs. Under current rule, a deer breeding facility that is both within a SZ and MQ (Movement Qualified, which is the authorization to transfer deer) may transfer to or receive breeder deer from any other MQ deer breeding facility in this state and deer from a MQ deer breeding facility located outside a SZ may be released within a SZ if authorized by Division 2 of this subchapter. Thus, the zone designations will not result in adverse economic impacts to any deer breeders in the new SZs, provided the breeding facility enjoys MQ designation by the department. The proposed amendments will not affect deer breeding facilities designated NMQ (Non-Movement Qualified) as they cannot transfer deer under the provisions of other rules currently in effect.

To the extent that rules affect licensed hunters (by imposing check station and carcass movement restrictions), the department has determined that those components of the proposed rules involve regulation of various aspects of recreational license privileges that allow individual persons to pursue and harvest wildlife resources in this state and therefore do not directly affect small businesses, micro-businesses, or rural communities. Therefore, neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

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

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

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

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

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

Comments on the proposed rule may be submitted to Alan Cain, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, (830) 480-4038 (e-mail: alan.cain@tpwd.texas.gov); or via the department's website at www.tpwd.texas.gov.

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

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

*§65.81. Containment Zones; Restrictions.*

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

(1) Containment Zones.

(A) - (H) (No change.)

(I) Containment Zone 9. Containment Zone

9 is that portion of Coleman County lying within the area described by the following	latitude-longitude	coordinate
pairs: -99.29788709910;	32.00897313890;	-99.29703740030,
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(J) [(H)] Existing CZs may be modified and additional CZs may be designated as necessary by the executive director as provided in §65.84 of this title (relating to Powers and Duties of the Executive Director).

(2) (No change.)

§65.82. *Surveillance Zones; Restrictions.*

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

(1) Surveillance Zones.

(A) - (V) (No change.)

(W) Surveillance Zone 23. Surveillance Zone 23 is that portion of Kimble County lying within the area described by the following latitude/longitude pairs: -99.95180989610, 30.29840729940;  
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30.35651963180;	-99.85546328330,	30.35473872900;	29.30299524470;	-99.06823857120,	-99.30481186180;
-99.85637186830,	30.35300564650;	-99.85740917180,	-99.06745656650,	29.30658744970;	-99.06654371130,
30.35132780280;	-99.85857074690,	30.34971237970;	29.30831440260;	-99.06550390900,	29.30998532240;
-99.85985161610,	30.34816629120;	-99.86047057360,	-99.06434160790,	29.31159305070;	-99.06306178140,
30.34748954550;	-99.86049982450,	30.34745852080;	29.31313069970;	-99.06166990750,	29.31459168120;
-99.86052178950,	30.34742326130;	-99.86100495000;	-99.06017194480,	29.31596973540;	-99.05857430750,
30.34667428600;	-99.86216640830,	30.34505883080;	29.31725895740;	-99.05688387570,	-99.31845382270;
-99.86344715740,	30.34351270700;	-99.86373981000,	-99.05510777560,	29.31954921100;	-99.054336743140,
30.34318754740;	-99.86408949780,	30.34280464130;	29.32048377070;	-99.05333543510,	29.32049978770;
-99.86519138940,	30.34165962250;	-99.86535734670,	-99.05330860080,	29.32052191870;	-99.05223193030,
30.34149711410;	-99.86574783710,	30.34111759830;	29.32137180000;	-99.05054131050,	29.32256658240;
-99.86708424150,	30.33989216350;	-99.86837905370,	-99.04876510160,	29.32366188340;	-99.04691091230;
30.33882977010;	-99.86854522780,	30.33870050260;	29.32465300910;	-99.04498668650,	-99.32553571200;
-99.86857268570,	30.33867483580;	-99.86856615910,	-99.04300066870,	29.32630620910;	-99.04096136910,
30.33840357450;	-99.86854991850,	30.33733178010;	29.32696119810;	-99.03887752640,	29.32749787200;
-99.86854704550,	30.33691486320;	-99.86862146340,	-99.03675807120,	29.32791393040;	-99.03461208670,
30.33501215620;	-99.86883917940,	30.33311774490;	29.32820759020;	-99.03244877050,	29.32837759260;
-99.86889510360,	30.33276880930;	-99.86917243380,	-99.03106128140,	29.32842111610;	-99.02932843750,
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30.32590820030;	-99.87139238830,	30.32412720630;	29.32844257420;	-99.02308778620,	29.32841559840;
-99.87230039590,	30.32239401590;	-99.87333709000,	-99.02091766270,	29.32833650980;	-99.01875809610,
30.32071604810;	-99.87449802660,	30.31910048510;	29.32813317880;	-99.01661834220,	29.32780647680;
-99.87553862390,	30.31784364590;	-99.87612434800,	-99.01450757170,	29.32735780410;	-99.01243483060,
30.31649807390;	-99.87703219800,	30.31476485130;	29.32678908390;	-99.01040900150,	-99.32610275350;
-99.87806872700,	30.31308684650;	-99.87922949170,	-99.00843876560,	29.32530175460;	-99.00653256510,
30.31147124180;	-99.88050951780,	30.30992495220;	29.32438951990;	-99.00469856720,	29.32336995920;
-99.88190332120,	30.30845459570;	-99.88340493190,	-99.00294462890,	29.32224744170;	-99.00175050700,
30.30706646470;	-99.88500791910,	30.30576649980;	29.32137271610;	-99.00127811350,	29.32118062020;
-99.88670541930,	30.30456026400;	-99.88849016520;	-98.99937206150,	29.32026827900;	-98.99753821680,
30.30345291870;	-99.89035451680,	30.30244920230;	29.31924861600;	-98.99578443600,	29.31812600090;
-99.89229049470,	30.30155340960;	-99.89428981340,	-98.99411823140,	29.31690524460;	-98.99254673950,
30.30076937330;	-99.89634391710,	30.30010044800;	29.31559157820;	-98.99107669010,	29.31419063100;
-99.89844401630,	30.29954949570;	-99.90058112510,	-98.98971437750,	29.31270840580;	-98.98846563340,
30.29911887350;	-99.90274609970,	30.29881042390;	29.31115125340;	-98.98733580250,	29.30952584540;
-99.90492967750,	30.29862546640;	-99.90696497240,	-98.98632971890,	29.30783914540;	-98.98545116810,
30.29856499870;	-99.95165235240,	30.29840756090;	29.30609837920;	-98.98470545840,	-99.30431100390;
-99.95180989610,	30.29840729940.		-98.98409422480,	29.30248467580;	-98.98362059570,
			29.30062721750;	-98.98328659170,	29.29874658460;
			-98.98309363510,	29.29685083140;	-98.98304254390,
			29.29494807650;	-98.98306949550,	29.29237800430;
			-98.98316047730,	29.29047639780;	-98.98339313330;
			29.28858408030;	-98.98376645910,	-98.987670915410;
			-98.98427884810,	29.28485964670;	-98.98492809890;
			29.28304347620;	-98.98571142440,	29.28126841770;
			-98.98662546410,	29.27954206950;	-98.98766629860,
			29.27787182120;	-98.98882946630,	29.27626482200;
			-98.99010998280,	29.27472794980;	-98.99150236230;
			29.27326778210;	-98.99300064080,	29.27189056780;
			-98.99459840210,	29.27060220060;	-98.99628880510;
			29.26940819350;	-98.99806461290,	29.26831365590;
			-98.99991822420,	29.26732327120;	-99.00184170520;

(X) Surveillance Zone 24. Surveillance Zone 24 is that portion of Medina County lying within the area described by the following latitude/longitude pairs: -99.03678558950, 29.25833376500; -99.03895416000, 29.25841257850; -99.04111221690, 29.25861555820; -99.04325052700, 29.25894183550; -99.04535994180, 29.25939001470; -99.04743143580, 29.25995817830; -99.04945614540, 29.26064389550; -99.05142540670, 29.26144423250; -99.05333079230, 29.26235576510; -99.05516414760, 29.26337459310; -99.05691762550, 29.26449635730; -99.05858371990, 29.26571625760; -99.06015529780, 29.26702907400; -99.06162562980, 29.26842918870; -99.06298841910, 29.26991060990; -99.06423782830, 29.27146699770; -99.06536850430, 29.27309169090; -99.06637560160,

29.26644127690; -99.00382682410, 29.26567144660;  
-99.00586508600, 29.26501707430; -99.00794776900,  
29.26448095940; -99.01006596180, 29.26406539580;  
-99.01162613110, 29.26383960890; -99.01179748320,  
29.26381847520; -99.01196770780, 29.26379122190;  
-99.01362891870, 29.26356323280; -99.01364637160,  
29.26356123330; -99.01366080440, 29.26355239920;  
-99.01446528390, 29.26307518830; -99.01631862760,  
29.26208456480; -99.01824185560, 29.26120232240;  
-99.02022673720, 29.26043223590; -99.02226477830,  
29.25977760010; -99.02434725820, 29.25924121580;  
-99.02646526630, 29.25882537770; -99.02860974060,  
29.25853186500; -99.03077150600, 29.25836193330;  
-99.03282370140, 29.25831559100; -99.03666797700,  
29.25833304980; and -99.03678558950, 29.25833376500.

(Y) Surveillance Zone 25. Surveillance Zone 25 is that portion of Cherokee County lying within the area described by the following latitude/longitude pairs: -95.16551813760, 31.88499767200; -95.16585785040, 31.88501179520; -95.16883776280, 31.88514836070; -95.17072236840, 31.88527950140; -95.17293080210, 31.88554853500; -95.17511390170, 31.88594019510; -95.17726232710, 31.88645280610; -95.17936688570, 31.88708417460; -95.18141857260, 31.88783159950; -95.18340860800, 31.88869188260; -95.18532847560, 31.88966134300; -95.18716995850, 31.89073583260; -95.18892517440, 31.89191075370; -95.19058660920, 31.89318107840; -95.19214714940, 31.89454137080; -95.19360011230, 31.89598580950; -95.19493927480, 31.89750821270; -95.19615889990, 31.89910206470; -95.19725376150, 31.90076054380; -95.19821916660, 31.90247655120; -95.19905097560, 31.90424274160; -95.19974562040, 31.90605155420; -95.20030011920, 31.90789524570; -95.20071208980, 31.90976592290; -95.20097975990, 31.91165557650; -95.20110197480, 31.91355611550; -95.20107820230, 31.91545940210; -95.20090853530, 31.91735728590; -95.20059369180, 31.91924163940; -95.20013501150, 31.92110439250; -95.19953445040, 31.92293756700; -95.19915728340, 31.92389976250; -95.19815357340, 31.92631908540; -95.19779084440, 31.92715263060; -95.19691477030, 31.92890324420; -95.19590628340, 31.93060123560; -95.19476969690, 31.93223933070; -95.19350987350, 31.93381051170; -95.19213220490, 31.93530804740; -95.19064258830, 31.93672552140; -95.18904740160, 31.93805686040; -95.18735347570, 31.93929635960; -95.18556806570, 31.94043870790; -95.18369881940, 31.94147900990; -95.18175374480, 31.94241280770; -95.17974117550, 31.94323609950; -95.17766973520, 31.94394535700; -95.17554830050, 31.94453754050; -95.17338596280, 31.94501011200; -95.17119198940, 31.94536104630; -95.16897578340, 31.94558883920; -95.16674684340, 31.94569251440; -95.16451472300, 31.94567162760; -95.16228898930, 31.94552626830; -95.16007918180, 31.94525705950; -95.15789477180, 31.94486515490; -95.15574512140, 31.94435223440; -95.15363944330, 31.94372049610; -95.15292604870, 31.94347588710; -95.15225794440, 31.94323930920; -95.15201777130, 31.94315426200; -95.15112625370, 31.94283856320; -95.14978698470, 31.94233530500; -95.14779612430, 31.94147452330; -95.14587558800, 31.94050452620; -95.14403360410, 31.93942947040; -95.14227806340, 31.93825396290; -95.14061648540, 31.93698304090; -95.13905598640, 31.93562215030; -95.13760324830, 31.93417712230;

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31.92591770210; -95.13146253880, 31.92410854130;  
-95.13090928990, 31.92226456710; -95.13049864870,  
31.92039367750; -95.13023236530, 31.91850388500;  
-95.13020804960, 31.91825324460; -95.13003171160,  
31.91633466000; -95.12993523850, 31.91468469710;  
-95.12996044570, 31.91278142340; -95.13013153130,  
31.91088362950; -95.13044775380, 31.90899944150;  
-95.13090775080, 31.90713692680; -95.13150954440,  
31.90530405940; -95.13225054990, 31.90350868610;  
-95.13312758760, 31.90175849270; -95.13413689570,  
31.90006097120; -95.13527414690, 31.89842338770;  
-95.13653446720, 31.89685275140; -95.13791245650,  
31.89535578460; -95.13940221190, 31.89393889410;  
-95.14099735310, 31.89260814350; -95.14269104970,  
31.89136922770; -95.14447605040, 31.89022744850;  
-95.14634471390, 31.88918769150; -95.14828904190,  
31.88825440580; -95.15030071320, 31.88743158490;  
-95.15237111880, 31.88672274930; -95.15449139950,  
31.88613093190; -95.15665248290, 31.88565866480;  
-95.15884512270, 31.88530796850; -95.16105993790,  
31.88508034340; -95.16328745280, 31.88497676360; and  
-95.16551813760, 31.88499767200.

(Z) Surveillance Zone 26. Surveillance Zone 26 is that portion of the state within the boundaries of a line beginning at the intersection of U.S. Highway 283 and County Road 176 in Coleman County; thence east along County Road 176 to State Highway (S.H.) 206; thence east along S.H. 206 to County Road 170; thence south along County Road 170 to County Road 171; thence south along C.R. 171 to County Road 113 in Brown County; thence south along C.R. 113 to Farm to Market (F.M.) 585; thence south along F.M. 585 to County Road 108 in Brown County; thence southwest along C.R. 108 to County Road 127 in Coleman County; thence southwest along C.R. 127 to F.M. 568; thence west along F.M. 568 to U.S. Highway 84, thence north along U.S. 84 to S.H. 206, thence north along S.H. 206 to U.S. 283; thence north along U.S. 283 to County Road 176.

(AA) Surveillance Zone 27. Surveillance Zone 27 is that portion of Kerr County lying within the area described by the following latitude/longitude pairs: -99.49647162940, 30.02770889890; -99.49824552350, 30.02775690180; -99.49830569430, 30.02775992230; -99.49871806180, 30.02778284750; -99.50089431900, 30.02797800800; -99.50297295750, 30.02828277980; -99.50309565760, 30.02830425070; -99.50317396090, 30.02831803740; -99.50530236000, 30.02875862920; -99.50730312340, 30.02929252710; -99.50738500030, 30.02931683920; -99.50747498600, 30.02934368350; -99.50951914000, 30.03002217560; -99.51061645670, 30.03044292600; -99.51072350650, 30.03048598300; -99.51150839620, 30.03081401840; -99.51296305660, 30.03044505100; -99.51509590270, 30.03002091120; -99.51725604750, 30.02971902230; -99.51943424900, 30.02954067590; -99.52077798120, 30.02949271250; -99.52091216150, 30.02949027300; -99.52104594720, 30.02948099930; -99.52165876700, 30.02944344480; -99.52384570280, 30.02938936570; -99.52450410370, 30.02939747200; -99.52894164830, 30.02949005750; -99.53046957150, 30.02955235550; -99.53264593290, 30.02974697250; -99.53480301930, 30.03006499250; -99.53693160180, 30.03050505490; -99.53902257280, 30.03106527720; -99.54106698570, 30.03174326230; -99.54305609220, 30.03253610950;

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

(2) (No change.)

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

Filed with the Office of the Secretary of State on December 11, 2023.

TRD-202304678  
 James Murphy  
 General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: January 21, 2024

For further information, please call: (512) 389-4775



## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

## CHAPTER 25. SAFETY RESPONSIBILITY REGULATIONS

### 37 TAC §25.8

The Texas Department of Public Safety (the department) proposes an amendment to §25.8, concerning Reinstatement. The proposed amendment implements House Bill 3224, 88th Leg., R.S. (2023), by removing the reference to reinstating a suspended motor vehicle registration because the bill removed the ability to suspend a motor vehicle registration for a second conviction of failure to establish financial responsibility, and only a driver license may be suspended under that circumstance.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the section as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of this rule will be that a second conviction for failure to establish financial responsibility will not result in the suspension of vehicle registration.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks 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 the state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require the creation of new employee positions nor eliminate current employee positions; will not require an increase or decrease in future legislative appropriations to the agency; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create a new regulation. The proposed rulemaking does expand, limit, or repeal an existing regulation. The proposed rulemaking does increase or decrease the number of individuals subject to its applicability. During the first five years the proposed rule is in effect, the proposed rule should not impact positively or negatively the state's economy.

Comments on the proposal may be submitted to Cynthia Allison, Driver License Division, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-5233; or by email to [DLDrulecomments@dps.texas.gov](mailto:DLDrulecomments@dps.texas.gov). Com-

ments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Texas Transportation Code and Texas Transportation Code §601.021, which authorizes the department to administer and enforce Chapter 601 of the Texas Transportation Code.

Texas Government Code, §411.004(3); Texas Transportation Code, §521.005; and §601.021, are affected by this proposal.

#### §25.8. *Reinstatement.*

When a party's license is [and/or registrations have been] suspended, and proof of financial responsibility is a prerequisite for withdrawal of such suspension, a statutory reinstatement fee will be required prior to renewal or issuance of a license [and/or registrations]. When a party's license is [and/or registrations are] suspended in several cases and proof of financial responsibility is required in each case, only one statutory reinstatement fee will be required prior to renewal or issuance of a license.

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

Filed with the Office of the Secretary of State on December 8, 2023.

TRD-202304634

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: January 21, 2024

For further information, please call: (512) 424-5848



## CHAPTER 36. METALS RECYCLING ENTITIES

### SUBCHAPTER E. DISCIPLINARY PROCEDURES AND ADMINISTRATIVE PROCEDURES

#### 37 TAC §36.60

The Texas Department of Public Safety (the department) proposes amendments to §36.60, concerning Administrative Penalties. The proposed amendments remove obsolete language and modify the penalty schedule to implement changes made in rule §36.11 and in Senate Bill 224, 88th Leg., R.S. (2023), amending Occupations Code, Chapter 1956, Metal Recycling Entities.

The department previously proposed amendments to §36.60 in the September 8, 2023, issue of the *Texas Register* (48 TexReg 5011) and accepted comments through October 9, 2023. Written comments were submitted by Carol Alvarado, Texas State Senator, District 6, Jeff Leach, Texas State Representative, District 67, and Steve Bresnen, on behalf of PGM of Texas, all of whom expressed concerns that the administrative penalties proposed were not consistent with Senate Bill 224, which provided

for harsher penalties of fines up to \$10,000 to deter criminals and businesses from engaging in illegal activities related to catalytic converters. In response to these comments the department withdrew the previously published proposal and is now reintroducing it with increased penalties relating to certain catalytic converter transactions.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the section as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of this rule will be greater clarity in regulation of the metal recycling industry and compliance with legislation.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks 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 the state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require the creation of new employee positions nor eliminate current employee positions; will not require an increase or decrease in future legislative appropriations to the agency; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create a new regulation. The proposed rulemaking does not expand, limit, or repeal an existing regulation. The proposed rule does not increase or decrease the number of individuals subject to the rule's applicability. During the first five years the proposed rule is in effect the proposed rule should not impact positively or negatively the state's economy.

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Texas Department of Public Safety, P.O. Box 4087, MSC 0240, Austin, Texas 78773-0240, or by email to RSD.Rule.Comments@dps.texas.gov. Email submission only is preferred. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1956.013, which

authorizes the Public Safety Commission to adopt rules to administer Chapter 1956.

Texas Government Code, §411.004(3) and Texas Occupations Code, §1956.013, are affected by this proposal.

*§36.60. Administrative Penalties.*

~~[(a)]~~ In addition to or in lieu of discipline imposed pursuant to §36.52 of this title (relating to Advisory Letters, Reprimands and Suspensions of a Certificate of Registration) the department may impose an administrative penalty on a person who violates this Chapter or Subchapter A-2 or Subchapter A-3 of the Act, or who engages in conduct that would constitute an offense under §1956.040(e-2) or (e-4) of the Act.]

(a) ~~[(b)]~~ The figure in this section reflects the department's penalty schedule applicable to administrative penalties imposed under this section. For any violation not expressly addressed in the penalty schedule, the department may impose a penalty not to exceed \$500 for the first (1st) violation. For the second (2nd) violation within the preceding one (1) year period, the penalty may not exceed \$1,000.

Figure: 37 TAC §36.60(a)

~~Figure: 37 TAC §36.60(b)]~~

(b) ~~[(e)]~~ Upon receipt of a notice of administrative penalty under this section, a person may request a hearing before the department pursuant to §36.56 of this title (relating to Informal Hearing; Settlement Conference).

(c) ~~[(d)]~~ The failure to pay an administrative penalty that has become final, whether by the passage of the deadline to appeal or by final court disposition, whichever is later, shall result in suspension of the license with no further notice or right to appeal. The suspension takes effect when the appeal deadline has passed and remains in effect until the penalty is paid 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.

Filed with the Office of the Secretary of State on December 11, 2023.

TRD-202304672

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: January 21, 2024

For further information, please call: (512) 424-5848



## PART 7. TEXAS COMMISSION ON LAW ENFORCEMENT

### CHAPTER 215. TRAINING AND EDUCATIONAL PROVIDERS

#### 37 TAC §215.13

The Texas Commission on Law Enforcement (Commission) proposes amended 37 Texas Administrative Code §215.13, Risk Assessment. This proposed amended rule allows for a training provider's licensing exam passing rate to be calculated across all exam attempts, instead of only first attempts by students.

Mr. John P. Beauchamp, Interim Executive Director, has determined that for each year of the first five years this proposed

amended rule will be in effect, there will be no effect on state or local governments as a result of enforcing or administering the proposed amendment.

Mr. Beauchamp has determined that for each year of the first five years this proposed amended rule will be in effect, there will be a positive benefit to the public by encouraging further educational support for students while continuing to maintain minimum standards for licensing examinations. There will be no anticipated economic costs to persons required to comply with the proposed amendment.

Mr. Beauchamp has determined that for each year of the first five years this proposed amended rule will be in effect, there will be no anticipated costs to small businesses, microbusinesses, or individuals as a result of implementing the proposed amendment.

Mr. Beauchamp has determined the following:

- (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 subject to the rule's applicability; and
- (8) the proposed rule does not positively or adversely affect this state's economy.

The Commission will accept comments regarding the proposed amended rule. The comment period will last 30 days following the publication of this proposal in the *Texas Register*. Comments may be submitted electronically to [public.comment@tcole.texas.gov](mailto:public.comment@tcole.texas.gov) or in writing to Mr. John P. Beauchamp, Interim Executive Director, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The amended rule is proposed under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, and Texas Government Code §2001.028, Notice of Proposed Law Enforcement Rules.

The amended rule as proposed is in compliance with Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, and Texas Government Code §2001.028, Notice of Proposed Law Enforcement Rules.

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

*§215.13. Risk Assessment.*

(a) A training provider may be found at risk and placed on at-risk probationary status if:

(1) for those providing licensing courses, the passing rate on a licensing exam for all [first] attempts for any three consecutive

state fiscal years is less than 80 percent of the students attempting the licensing exam;

(2) courses taught by academic alternative providers are not conducted in compliance with Higher Education Program Guidelines accepted by the commission;

(3) commission required learning objectives are not taught;

(4) lesson plans for classes conducted are not on file;

(5) examination and other evaluative scoring documentation is not on file;

(6) the training provider submits false reports to the commission;

(7) the training provider makes repeated errors in reporting;

(8) the training provider does not respond to commission requests for information;

(9) the training provider does not comply with commission rules or other applicable law;

(10) the training provider does not achieve the goals identified in its application for a contract;

(11) the training provider does not meet the needs of the officers and law enforcement agencies served; or

(12) the commission has received sustained complaints or evaluations from students or the law enforcement community concerning the quality of training or failure to meet training needs for the service area.

(b) A training provider may be found at risk and placed on at-risk probationary status if:

(1) the contractor provides licensing courses and fails to comply with the passing rates in subsection (a)(1) of this section;

(2) lesson plans for classes conducted are not on file;

(3) examination and other evaluative scoring documentation is not on file;

(4) the provider submits false reports to the commission;

(5) the provider makes repeated errors in reporting;

(6) the provider does not respond to commission requests for information;

(7) the provider does not comply with commission rules or other applicable law;

(8) the provider does not achieve the goals identified in its application for a contract;

(9) the provider does not meet the needs of the officers and law enforcement agencies served; or

(10) the commission has received sustained complaints or evaluations from students or the law enforcement community concerning the quality of training or failure to meet training needs for the service area.

(c) An academic alternative provider may be found at risk and placed on at-risk probationary status if:

(1) the academic alternative provider fails to comply with the passing rates in subsection (a)(1) of this section;

(2) courses are not conducted in compliance with Higher Education Program Guidelines accepted by the commission;

- (3) the commission required learning objectives are not taught;
- (4) the program submits false reports to the commission;
- (5) the program makes repeated errors in reporting;
- (6) the program does not respond to commission requests for information;
- (7) the program does not comply with commission rules or other applicable law;
- (8) the program does not achieve the goals identified in its application for a contract;
- (9) the program does not meet the needs of the students and law enforcement agencies served; or
- (10) the commission has received sustained complaints or evaluations from students or the law enforcement community concerning the quality of education or failure to meet education needs for the service area.

(d) If at risk, the chief administrator of the sponsoring organization, or the training coordinator, must report to the commission in writing within 30 days what steps are being taken to correct deficiencies and on what date they expect to be in compliance.

(e) The chief administrator of the sponsoring organization, or the training coordinator, shall report to the commission the progress toward compliance within the timelines provided in the management response as provided in subsection (d) of this section.

(f) The commission shall place providers found at-risk on probationary status for one year. If the provider remains at-risk after a 12-month probationary period, the commission shall begin the revocation process. If a provider requests a settlement agreement, the commission may enter into an agreement in lieu of revocation.

(g) A training or educational program placed on at-risk probationary status must notify all students and potential students of their at-risk status.

(h) The effective date of this section is February 1, 2016.

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 December 11, 2023.

TRD-202304673

John Beauchamp

Interim Executive Director

Texas Commission on Law Enforcement

Earliest possible date of adoption: January 21, 2024

For further information, please call: (512) 936-7700



## CHAPTER 218. CONTINUING EDUCATION

### 37 TAC §218.3

The Texas Commission on Law Enforcement (Commission) proposes amended 37 Texas Administrative Code §218.3, Legislatively Required Continuing Education for Licensees. This proposed amended rule conforms with the amendments made to Texas Occupations Code §1701.253(q) and §1701.3525 made by Senate Bill 1852 (88R).

Mr. John P. Beauchamp, Interim Executive Director, has determined that for each year of the first five years this proposed amended rule will be in effect, there will be no effect on state or local governments as a result of enforcing or administering the proposed amendment.

Mr. Beauchamp has determined that for each year of the first five years this proposed amended rule will be in effect, there will be a positive benefit to the public by conforming with Texas Occupations Code §1701.253 and §1701.3525 to require active shooter response training for law enforcement personnel. There will be no anticipated economic costs to persons required to comply with the proposed amendment.

Mr. Beauchamp has determined that for each year of the first five years this proposed amended rule will be in effect, there will be no anticipated cost to small businesses, microbusinesses, or individuals as a result of implementing the proposed amendment.

Mr. Beauchamp has determined the following:

(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 subject to the rule's applicability; and

(8) the proposed rule does not positively or adversely affect this state's economy.

The Commission will accept comments regarding the proposed amended rule. The comment period will last 30 days following the publication of this proposal in the *Texas Register*. Comments may be submitted electronically to [public.comment@tcole.texas.gov](mailto:public.comment@tcole.texas.gov) or in writing to Mr. John P. Beauchamp, Interim Executive Director, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The amended rule is proposed under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, §1701.253, School Curriculum, §1701.3525, Active Shooter Response Training Required for Officers, and Texas Government Code §2001.028, Notice of Proposed Law Enforcement Rules.

The amended rule as proposed is in compliance with Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, §1701.253, School Curriculum, §1701.3525, Active Shooter Response Training Required for Officers, and Texas Government Code §2001.028, Notice of Proposed Law Enforcement Rules.

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

§218.3. *Legislatively Required Continuing Education for Licensees.*

(a) Each licensee shall complete the legislatively mandated continuing education in this chapter. Each appointing agency shall allow the licensee the opportunity to complete the legislatively mandated continuing education in this chapter. This section does not limit the number or hours of continuing education an agency may provide.

(b) Each training unit (2 years)

(1) Peace officers shall complete at least 40 hours of continuing education, to include the corresponding legislative update for that unit. Peace officers shall complete not less than 16 hours of training on responding to an active shooter as developed by the Advanced Law Enforcement Rapid Response Training Center at Texas State University-San Marcos.

(2) Telecommunicators shall complete at least 20 hours of continuing education to include cardiopulmonary resuscitation training.

(c) Each training cycle (4 years)

(1) Peace officers who have not yet reached intermediate proficiency certification shall complete: Cultural Diversity (3939), Special Investigative Topics (3232), Crisis Intervention (3843) and De-escalation (1849).

(2) Individuals licensed as reserve law enforcement officers, jailers, or public security officers shall complete Cultural Diversity (3939), unless the person has completed or is otherwise exempted from legislatively required training under another commission license or certificate.

(d) Assignment specific training

(1) Police chiefs: individuals appointed as "chief" or "police chief" of a police department shall complete:

(A) For an individual appointed to that individual's first position as chief, the initial training program for new chiefs provided by the Bill Blackwood Law Enforcement Management Institute, not later than the second anniversary of that individual's appointment or election as chief; and

(B) At least 40 hours of continuing education for chiefs each 24-month unit, as provided by the Bill Blackwood Law Enforcement Management Institute.

(2) Constables: elected or appointed constables shall complete:

(A) For an individual appointed or elected to that individual's first position as constable, the initial training program for new constables provided by the Bill Blackwood Law Enforcement Management Institute, not later than the second anniversary of that individual's appointment or election as constable.

(B) Each 48 month cycle, at least 40 hours of continuing education for constables, as provided by the Bill Blackwood Law Enforcement Management Institute and a 20 hour course of training in civil process to be provided by a public institution of higher education selected by the Commission.

(3) Deputy constables: each deputy constable shall complete a 20 hour course of training in civil process each training cycle. The commission may waive the requirement for this training if the constable, in the format required by TCOLE, requests exemption due to the deputy constable not engaging in civil process as part of their assigned duties.

(4) New supervisors: each peace officer assigned to their first position as a supervisor must complete new supervisor training within one year prior to or one year after appointment as a supervisor.

(5) School-based Law Enforcement Officers: School district peace officers and school resource officers providing law enforcement services at a school district must obtain a school-based law enforcement proficiency certificate within 180 days of the officer's commission or placement in the district or campus of the district.

(6) Eyewitness Identification Officers: peace officers performing the function of eyewitness identification must first complete the Eyewitness Identification training (3286).

(7) Courtroom Security Officers/Persons: any person appointed to perform courtroom security functions at any level shall complete the Courtroom Security course (10999) within 1 year of appointment.

(8) Body-Worn Cameras: peace officers and other persons meeting the requirements of Occupations Code 1701.656 must first complete Body-Worn Camera training (8158).

(9) Officers Carrying Epinephrine Auto-injectors: peace officers meeting the requirements of Occupations Code 1701.702 must first complete epinephrine auto-injector training.

(10) Jailer Firearm Certification: jailers carrying a firearm as part of their assigned duties must first obtain the Jailer Firearms certificate before carrying a firearm.

(11) University Peace Officers, Trauma-Informed Investigation Training: each university or college peace officer shall complete an approved course on trauma-informed investigation into allegations of sexual harassment, sexual assault, dating violence, and stalking.

(e) Miscellaneous training

(1) Human Trafficking: every peace officer first licensed on or after January 1, 2011, must complete Human Trafficking (3270), within 2 years of being licensed.

(2) Canine Encounters: every peace officer first licensed on or after January 1, 2016, must take Canine Encounters (4065), within 2 years of being licensed.

(3) Deaf and Hard of Hearing Drivers: every peace officer licensed on or after March 1, 2016, must complete Deaf and Hard of Hearing Drivers (7887) within 2 years of being licensed.

(4) Civilian Interaction Training: every peace officer licensed before January 1, 2018, must complete Civilian Interaction Training Program (CITP) within 2 years. All other peace officers must complete the course within 2 years of being licensed.

(5) Crisis Intervention Training: every peace officer licensed on or after April 1, 2018, must complete the 40 hour Crisis Intervention Training within 2 years of being licensed.

(6) Mental Health for Jailers: all county jailers must complete Mental Health for Jailers not later than August 31, 2021.

(f) The Commission may choose to accept an equivalent course for any of the courses listed in this chapter, provided the equivalent course is evaluated by commission staff and found to meet or exceed the minimum curriculum requirements of the legislatively mandated course.

(g) The commission shall provide adequate notice to agencies and licensees of impending non-compliance with the legislatively required continuing education.

(h) The chief administrator of an agency that has licensees who are in non-compliance shall, within 30 days of receipt of notice of non-compliance, submit a report to the commission explaining the reasons for such non-compliance.



(i) Licensees shall complete the legislatively mandated continuing education in the first complete training unit, as required, or first complete training cycle, as required, after being licensed.

(j) All peace officers must meet all continuing education requirements except where exempt by law.

(k) The effective date of this section is June 1, 2022.

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 December 11, 2023.

TRD-202304676

John Beauchamp

Interim Executive Director

Texas Commission on Law Enforcement

Earliest possible date of adoption: January 21, 2024

For further information, please call: (512) 936-7700



## CHAPTER 221. PROFICIENCY CERTIFICATES

### 37 TAC §221.46

The Texas Commission on Law Enforcement (Commission) proposes new 37 Texas Administrative Code §221.46 concerning Active Shooter Training for Schools. This proposed new rule conforms with the addition of Texas Occupations Code §1701.2515 made by Senate Bill 999 (88R).

Mr. John P. Beauchamp, Interim Executive Director, has determined that for each year of the first five years this proposed new rule will be in effect, there will be no effect on state or local governments as a result of enforcing or administering the proposed amendment.

Mr. Beauchamp has determined that for each year of the first five years this proposed new rule will be in effect, there will be a positive benefit to the public by conforming with Texas Occupations Code §1701.2515 to establish requirements to obtain a certificate to provide active shooter training to peace officers of students or employees at a public primary school, public secondary school, or institution of higher education. There will be no anticipated economic costs to persons required to comply with the proposed amendment.

Mr. Beauchamp has determined that for each year of the first five years this proposed new rule will be in effect, there will be no anticipated cost to small businesses, microbusinesses, or individuals as a result of implementing the proposed amendment.

Mr. Beauchamp has determined the following:

(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 subject to the rule's applicability; and

(8) the proposed rule does not positively or adversely affect this state's economy.

The Commission will accept comments regarding the proposed new rule. The comment period will last 30 days following the publication of this proposal in the *Texas Register*. Comments may be submitted electronically to public.comment@tcole.texas.gov or in writing to Mr. John P. Beauchamp, Interim Executive Director, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The new rule is proposed under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, §1701.2515, Certificate Required to Provide Active Shooter Training at Public Schools and Institutions of Higher Education, and Texas Government Code §2001.028, Notice of Proposed Law Enforcement Rules.

The new rule as proposed is in compliance with Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, §1701.2515, Certificate Required to Provide Active Shooter Training at Public Schools and Institutions of Higher Education, and Texas Government Code §2001.028, Notice of Proposed Law Enforcement Rules.

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

#### §221.46. Active Shooter Training for Schools.

(a) To qualify for an Active Shooter Training Instructor certificate under Texas Occupations Code § 1701.2515, an individual must possess a current TCOLE Instructor Proficiency Certificate, complete an active shooter training instructor course approved by the commission, and complete any required application. The certificate expires two years from the date of issuance. An individual may apply for renewal of the certificate by providing proof the applicant has completed eight hours of continuing education related to law enforcement response to active shooter events.

(b) To qualify as an Active Shooter Training Provider under Texas Occupations Code § 1701.2515, a training provider must complete an application and show proof that the training provider employs appropriate training staff that possess a current Active Shooter Training Instructor certificate described in subsection (a) of this section. The certificate expires two years from the date of issuance.

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 December 11, 2023.

TRD-202304677

John Beauchamp

Interim Executive Director

Texas Commission on Law Enforcement

Earliest possible date of adoption: January 21, 2024

For further information, please call: (512) 936-7700

