

ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 8. TEXAS JUDICIAL COUNCIL

CHAPTER 174. INDIGENT DEFENSE POLICIES AND STANDARDS

SUBCHAPTER A. MINIMUM CONTINUING LEGAL EDUCATION REQUIREMENTS

1 TAC §174.1

The Texas Indigent Defense Commission (Commission) is a permanent Standing Committee of the Texas Judicial Council. The Commission adopts an amendment to §174.1, concerning Minimum Continuing Legal Education Requirements. The rule is adopted without changes to the proposed text as published in the October 20, 2017, issue of the *Texas Register* (42 TexReg 5755), and will not be republished. The amendment is adopted to update a reference to one of the Commission's grant administration rules.

In addition to amending the rule to reflect the recent legislative change, the commission has reviewed the section pursuant to Government Code §2001.039 and has determined that the need for the rule continues to exist but that the proposed change to the current rule is appropriate.

No comments were received regarding the adoption of the amendment.

The amended rule is adopted under the Texas Government Code §79.034(a)(2), which authorizes the Commission to develop policies and standards related to minimum education requirements for attorneys providing legal representation to indigent defendants.

No other statutes, articles, or codes are affected by the adopted amendment.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 21, 2017.

TRD-201705367

Wesley Shackelford

Deputy Director

Texas Judicial Council

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Proposal publication date: October 20, 2017

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SUBCHAPTER B. CONTRACT DEFENDER PROGRAM REQUIREMENTS

The Texas Indigent Defense Commission (Commission) is a permanent Standing Committee of the Texas Judicial Council. The Commission adopts amendments to Subchapter B, concerning Contract Defender Program Requirements, §§174.10 - 174.12, 174.16, and 174.21. The rules are adopted without changes to the proposed text as published in the October 20, 2017, issue of the *Texas Register* (42 TexReg 5755), and will not be republished. The amendments are adopted to correct references to the Commission, limit applicability of the rules to contracts of more than one week in duration, exclude the application of the rules to managed assigned counsel programs, require at least 30 days for attorneys to respond to a notification of the opportunity to apply for a contract unless it is an emergency, change the reference of extension to renewal of a contract, and refer to caseload guidelines published by the Commission.

In addition to amending the rule to reflect the recent legislative change, the commission has reviewed the section pursuant to Government Code §2001.039 and has determined that the need for the rule continues to exist but that the proposed change to the current rule is appropriate.

No comments were received regarding the adoption of the amendment.

DIVISION 1. DEFINITIONS

1 TAC §174.10

The amendments are adopted under the Texas Government Code §79.034(a)(7), which authorizes the Commission to develop policies and standards for providing legal representation to indigent defendants under a contract defender program.

No other statutes, articles, or codes are affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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DIVISION 2. APPLICATION OF STANDARDS AND CONTRACTING PROCEDURES

1 TAC §174.11, §174.12

The amendments are adopted under the Texas Government Code §79.034(a)(7), which authorizes the Commission to develop policies and standards for providing legal representation to indigent defendants under a contract defender program.

No other statutes, articles, or codes are affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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DIVISION 3. REQUIRED ELEMENTS OF A CONTRACT FOR INDIGENT DEFENSE SERVICES (EACH COMPONENT BELOW SHALL BE INCLUDED IN A CONTRACT FOR INDIGENT DEFENSE SERVICES AND SHALL SERVE AS THE BASIS FOR THE NOA)

1 TAC §174.16, §174.21

The amendments are adopted under the Texas Government Code §79.034(a)(7), which authorizes the Commission to develop policies and standards for providing legal representation to indigent defendants under a contract defender program.

No other statutes, articles, or codes are affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. POLICY MONITORING REQUIREMENTS

DIVISION 2. POLICY MONITORING PROCESS AND BENCHMARKS

1 TAC §174.28

The Texas Indigent Defense Commission (Commission) is a permanent Standing Committee of the Texas Judicial Council. The Commission adopts amendments to Texas Administrative Code, Title 1, Part 8, Chapter 174, Subchapter A, §174.28, concerning policy monitoring requirements. The amendments to §174.28 are adopted with changes to the proposed text as published in the October 20, 2017, issue of the *Texas Register* (42 TexReg 5757). The adopted revision deletes a reference to §173.303 because the proposed amendment to that section was not adopted by the Commission. The rule as adopted provides that attorneys appointed to represent indigent defendants must be on an approved for an appointment list. The adopted amendments also provide that in analyzing the distribution of appointments among qualified attorneys, the Commission will not consider appointments to attorneys who are added to the list during the year, removed from the list during the year, or permanently removed themselves from the list.

No comments were received regarding the adoption of the amendment.

The amendments are adopted under the Texas Government Code §79.037(a) and (b), which requires the Commission to monitor the effectiveness of the county's indigent defense policies, standards, and procedures and to ensure compliance by the county with the requirements of state law relating to indigent defense.

No other statutes, articles, or codes are affected by the proposed amendments.

§174.28. *On-Site Monitoring Process.*

(a) Purpose. The process promotes local compliance with the requirements of the Fair Defense Act and Commission rules and provides technical assistance to improve processes where needed.

(b) Monitoring Process. The policy monitor examines the local indigent defense plans and local procedures and processes to determine if the jurisdiction meets the statutory requirements and rules adopted by the Commission. The policy monitor also attempts to randomly select samples of actual cases from the period of review by using a 15% confidence interval for a population at a 95% confidence level.

(c) Core Requirements. On-site policy monitoring focuses on the six core requirements of the Fair Defense Act and related rules. Policy monitoring may also include a review of statutorily required reports to the Office of Court Administration and Commission. This rule establishes the process for evaluating policy compliance with a requirement and sets benchmarks for determining whether a county is in substantial policy compliance with the requirement. For each of these elements, the policy monitor shall review the local indigent defense plans and determine if the plans are in compliance with each element.

(1) Prompt and Accurate Magistration.

(A) The policy monitor shall check for documentation indicating that the magistrate or county has:

(i) Informed and explained to an arrestee the rights listed in Article 15.17(a), Code of Criminal Procedure, including the right to counsel;

(ii) Maintained a process to magistrate arrestees within 48 hours of arrest;

(iii) Maintained a process for magistrates not authorized to appoint counsel to transmit requests for counsel to the appointing authority within 24 hours of the request; and

(iv) Maintained magistrate processing records required by Article 15.17(a), (e), and (f), Code of Criminal Procedure, and records documenting the time of arrest, time of magistration, whether the person requested counsel, and time for transferring requests for counsel to the appointing authority.

(B) A county is presumed to be in substantial compliance with the prompt magistration requirement if magistration in at least 98% of the policy monitor's sample is conducted within 48 hours of arrest.

(2) Indigence Determination. The policy monitor checks to see if procedures are in place that comply with the indigent defense plan and the Fair Defense Act.

(3) Minimum Attorney Qualifications. The policy monitor shall check that attorney appointment lists are maintained according to the requirements set in the indigent defense plans. Only attorneys approved for an appointment list are eligible to receive appointments.

(4) Prompt Appointment of Counsel.

(A) The policy monitor shall check for documentation of timely appointment of counsel in criminal and juvenile cases.

(i) Criminal Cases. The policy monitor shall determine if counsel was appointed or denied for arrestees within one working day of receipt of the request for counsel in counties with a population of 250,000 or more, or three working days in other counties. If the policy monitor cannot determine the date the appointing authority received a request for counsel, then the timeliness of appointment will be based upon the date the request for counsel was made plus 24 hours for the transmittal of the request to the appointing authority plus the time allowed to make the appointment of counsel.

(ii) Juvenile Cases. The policy monitor shall determine if counsel was appointed prior to the initial detention hearing for eligible in-custody juveniles. If counsel was not appointed, the policy monitor shall determine if the court made a finding that appointment of counsel was not feasible due to exigent circumstances. If exigent circumstances were found by the court and the court made a determination to detain the child, then the policy monitor shall determine if counsel was appointed for eligible juveniles immediately upon making this determination. For out-of-custody juveniles, the policy monitor shall determine if counsel was appointed within five working days of service of the petition on the juvenile.

(B) A county is presumed to be in substantial compliance with the prompt appointment of counsel requirement if, in each level of proceedings (felony, misdemeanor, and juvenile cases), at least 90% of indigence determinations in the policy monitor's sample are timely.

(5) Attorney Selection Process. The policy monitor shall check for documentation indicating:

(A) In the case of a contract defender program, that all requirements of §§174.10 - 174.25 of this title are met;

(B) In the case of a managed assigned counsel program, that counsel is appointed according to the entity's plan of operation;

(C) That attorney selection process actually used matches what is stated in the indigent defense plans; and

(D) For assigned counsel and managed assigned counsel systems, the number of appointments in the policy monitor's sample per attorney at each level (felony, misdemeanor, juvenile, and appeals) during the period of review and the percentage share of appointments represented by the top 10% of attorneys accepting appointments. A county is presumed to be in substantial compliance with the fair, neutral, and non-discriminatory attorney appointment system requirement if, in each level of proceedings (felony, misdemeanor, and juvenile cases), the percentage of appointments received by the top 10% of recipient attorneys does not exceed three times their respective share. The top 10% of recipient attorneys is the whole attorney portion of the appointment list that is closest to 10% of the total list. For this analysis, the monitor will include attorneys who may have been temporarily unavailable for part of the year but will exclude attorneys who were not on an appointment list for any part of the time period under review.

(6) Payment Process. The policy monitor shall check for documentation indicating that the county has established a process for collecting and reporting itemized indigent defense expense and case information.

(d) Report.

(1) Report Issuance. The policy monitor shall issue a report to the authorized official within 60 days of the on-site monitoring visit to a county, unless a documented exception is provided by the director, with an alternative deadline provided, not later than 120 days from the on-site monitoring visit. The report shall contain recommendations to address areas of noncompliance.

(2) County Response. Within 60 days of the date the report is issued by the policy monitor, the authorized official shall respond in writing to each finding of noncompliance, and shall describe the proposed corrective action to be taken by the county. The county may request the director to grant an extension of up to 60 days.

(3) Follow-up Reviews. The policy monitor shall conduct follow-up reviews of counties where the report included noncompliance findings. The follow-up review shall occur within a reasonable time but not more than two years following receipt of a county's response to the report. The policy monitor shall review a county's implementation of corrective actions and shall report to the county and to the Commission any remaining issues not corrected. Within 30 days of the date the follow-up report is issued by the policy monitor, the authorized official shall respond in writing to each recommendation, and shall describe the proposed corrective action to be taken by the county. The county may request the director to grant an extension of up to 30 days.

(4) Failure to Respond to Report. If a county fails to respond to a monitoring report or follow-up report within the required time, then a certified letter will be sent to the authorized official, financial officer, county judge, local administrative district court judge, local administrative statutory county court judge, and chair of the juvenile board notifying them that all further payments will be withheld if no response to the report is received by the Commission within 10 days of receipt of the letter. If funds are withheld under this section, then the funds will not be reinstated until the Commission or the Policies and Standards Committee approves the release of the funds.

(5) Noncompliance. If a county fails to correct any noncompliance findings, the Commission may impose a remedy under §173.307 of this title.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-201705373

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TITLE 22. EXAMINING BOARDS

PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 72. APPLICATIONS AND APPLICANTS

22 TAC §72.9

The Texas Board of Chiropractic Examiners (Board) adopts amendments to Chapter 72, §72.9, concerning Reexaminations, without changes to the proposed text as published in the September 29, 2017, issue of the *Texas Register* (42 TexReg 5210); the amendment will not be republished.

The rule amendment proposal reflects a 2017 Sunset Commission recommendation to allow applicants an unlimited number of times, within a calendar year, to take the Board's jurisprudence exam in order to achieve a passing score.

This rule was proposed for publication at the Board's quarterly meeting on August 17, 2017. The proposed language was published in the Rules Committee and Board agenda. Comment on the proposal was sought during the Rules Committee and the Board meeting prior to this publication in the Register. No comments were received.

GOVERNMENT GROWTH IMPACT: Board staff has determined that the proposed new sections do not have a government growth impact pursuant to Texas Government Code, §2001.0221.

This amended rule is adopted under Texas Occupations Code §201.152, relating to rules and Subchapter G of the Chiropractic Act, License Requirements. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic in order to protect public health and safety. Subchapter L provides the framework to authorize the Board to impose administrative penalties.

No other statutes, articles, or codes are affected by the amendment.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 29, 2017.

TRD-201705409

Courtney L. Ebeier

General Counsel

Texas Board of Chiropractic Examiners

Effective date: January 18, 2018

Proposal publication date: September 29, 2017

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CHAPTER 73. CHIROPRACTIC FACILITIES

22 TAC §§73.1 - 73.5

The Texas Board of Chiropractic Examiners (Board) adopts the repeal of Chapter 73, §§73.1 - 73.5, concerning Chiropractic Facilities, without changes to the proposed text as published in the September 29, 2017, issue of the *Texas Register* (42 TexReg 5211) and will not be republished.

Chapter 73 established requirements and procedures related to the regulation of chiropractic facilities. The Chapter is repealed to reflect implementation of 2017 Sunset legislation, SB 304, which ceases the Board's statutory requirement to register chiropractic facilities, effective of September 1, 2017.

GOVERNMENT GROWTH IMPACT STATEMENT: Board staff has determined that the repeal of this chapter, affecting the Board's requirement to regulate chiropractic facilities, will result in a reduction of fees paid to the state, reduce the Board's staff by one-half of a full time employee (FTE) and reduce the Board's requirement to regulate non-chiropractor facility owners. Repeal of Chapter 73 does not have a government growth impact pursuant to Texas Government Code, §2001.0221.

Board received stakeholder comments at a meeting held on June 28, 2017, to discuss the statutory change which necessitated the proposed repeal. No additional comments were received after publication of the proposed repeal of these sections in the *Texas Register*.

The repeal is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to regulate the practice of chiropractic in order to protect the public health and safety.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 29, 2017.

TRD-201705410

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Effective date: January 18, 2018

Proposal publication date: September 29, 2017

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CHAPTER 75. LICENSES AND RENEWAL

22 TAC §75.2

The Texas Board of Chiropractic Examiners (Board) adopts amendments to Chapter 75, §75.2, concerning Renewal of

Chiropractic License, without changes to the proposed text as published in the September 29, 2017, issue of the *Texas Register* (42 TexReg 5211); the amendment will not be republished.

The rule amendment proposal reflects a 2017 Sunset Commission recommendation to extend the annual license renewal period to a two-year cycle, which reflects the license period of other similar health professional licensing agencies.

GOVERNMENT GROWTH IMPACT: Board staff has determined that the proposed new sections do not have a government growth impact pursuant to Texas Government Code, §2001.0221.

This rule was proposed for publication at the Board's quarterly meeting on August 17, 2017. The proposed language was published in the Rules Committee and Board agenda. Comment on the proposal was sought during the Rules Committee and Board meeting prior to this publication in the Texas Register. No comments were received.

This amended rule is adopted under Texas Occupations Code §201.152, relating to rules and Subchapter G of the Chiropractic Act, License Requirements. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic in order to protect the public health and safety. Subchapter L provides the framework to authorize the Board to impose administrative penalties.

No other statutes, articles, or codes are affected by the amendment.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 29, 2017.

TRD-201705411
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Effective date: March 1, 2018
Proposal publication date: September 29, 2017
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22 TAC §75.4

The Texas Board of Chiropractic Examiners (Board) adopts amendments to Chapter 75, §75.4, concerning Inactive Chiropractic License Status, without changes to the proposed text as published in the September 29, 2017, issue of the *Texas Register* (42 TexReg 5213); the amendment will not be republished.

The rule amendment proposal reflects a 2017 Sunset Commission recommendation to change the annual license renewal period to a two-year cycle, which reflects the license period of other similar health professional licensing agencies.

This rule was proposed for publication at the Board's meeting on August 17, 2017. The proposed language was published in the Rules Committee and Board agenda. Comment on the proposal was sought during the Rules Committee and Board meetings prior to this publication in the Register. No comments were received.

GOVERNMENT GROWTH IMPACT: Board staff has determined that the proposed new sections do not have a government growth impact, pursuant to Texas Government Code, §2001.0221.

This amended rule is adopted under Texas Occupations Code §201.152, relating to rules and Subchapter G of the Chiropractic Act, License Requirements. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic in order to protect the public health and safety. Subchapter L provides the framework to authorize the Board to impose administrative penalties.

No other statutes, articles, or codes are affected by the amendment.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-201705412
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Effective date: March 1, 2018
Proposal publication date: September 29, 2017
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PART 9. TEXAS MEDICAL BOARD

CHAPTER 182. USE OF EXPERTS

22 TAC §182.8

The Texas Medical Board (Board) adopts an amendment to §182.8, concerning Expert Physician Reviewers, without changes to the proposed text as published in the November 3, 2017, issue of the *Texas Register* (42 TexReg 6113) and will not be republished.

The amendment removes language from subsection (c) which requires that a report, prepared by an expert reviewer, include the expert's general qualifications; the rule is further amended to add language requiring the expert's specialty areas be included in such reports.

No comments were received regarding adoption of the rule.

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-201705388

Scott Freshour
Interim Executive Director
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Effective date: January 16, 2018
Proposal publication date: November 3, 2017
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CHAPTER 188. PERFUSIONISTS

22 TAC §188.5, §188.9

The Texas Medical Board (Board) adopts amendments to §188.5, concerning Procedural Rules for Licensure Applicants, and §188.9, concerning License Renewal, without changes to the proposed text as published in the November 3, 2017, issue of the *Texas Register* (42 TexReg 6114) and will not be republished.

The amendment to §188.5 removes language from subsection (a)(6) requiring a "sworn" application. This change is in accordance with and pursuant to the passage of SB 674 (85th Regular Session), which amended §603.252 of the Texas Occupations Code.

The amendment to §188.9 removes the reference to "affidavit" which infers that an application for renewal is a "sworn" application. This change is in accordance with and pursuant to the passage of SB 674 (85th Regular Session), which amended §603.252 of the Texas Occupations Code.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §§603.151, 603.152 and 603.252, which provide authority for the Board to adopt rules as necessary to: regulate the practice of perfusion; enforce Chapter 603 of the Texas Occupations Code; and perform its duties under Chapter 603 of the Texas Occupations Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 189. COMPLIANCE PROGRAM

22 TAC §189.15

The Texas Medical Board (Board) adopts amendment to §189.15, concerning Determination of Successful Completion of an Order, without changes to the proposed text as published in the November 3, 2017, issue of the *Texas Register* (42 TexReg 6115) and will not be republished.

The adoption amends the language in subsection (d) to clarify the provisions related to tolling and extension of an Order's time period resulting from tolling. The amendments also add a new subsection (e) to include a description of "partial tolling" and new subsection (f) to delineate the terms, requirements or conditions that may not be tolled.

No comments were received regarding adoption of the rule.

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 193. STANDING DELEGATION ORDERS

22 TAC §193.8

The Texas Medical Board (Board) adopts an amendment to §193.8, concerning Prescriptive Authority Agreements: Minimum Requirements, without changes to the proposed text as published in the November 3, 2017, issue of the *Texas Register* (42 TexReg 6115) and will not be republished.

The amendment changes the requirements set forth in paragraphs (9) - (11) and adds a new paragraph (12), relating to the frequency physicians must meet with physician assistants to whom they delegate and supervise. These changes are in accordance with, and pursuant to, the passage of SB 1625 (85th Regular Session), which amended §157.0512 of the Texas Occupations Code.

No comments were received regarding adoption of the rule.

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 194. MEDICAL RADIOLOGIC
TECHNOLOGY
SUBCHAPTER B. NON-CERTIFIED
TECHNICIANS SUPERVISED BY PHYSICIANS

22 TAC §§194.34 - 194.43

The Texas Medical Board (Board) adopts the repeal of Chapter 194, Subchapter B, §§194.34 - 194.43, concerning Medical Radiologic Technology, without changes to the proposed text as published in the November 3, 2017, issue of the *Texas Register* (42 TexReg 6117) and will not be republished.

The repeal of Chapter 194, Subchapter B is adopted in accordance with Senate Bill No. 674, which repealed requirements under §601.252 of the Texas Occupations Code related to the Medical Board's registration of non-certified technicians (NCT) who are employed by physicians. The Medical Board provides agency resources to support the general registry for NCTs performing radiologic procedures in Texas. The repeal will eliminate inefficiencies related to Medical Board's resources allocated to supporting a second registry for a subset of NCTs working for physicians, which creates inefficiencies and potential duplication across the agency's departments and provides no benefit to the agency, NCT profession or the public.

No comments were received regarding adoption of the rules.

The repeal is adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure. The repeal are further adopted under the authority of Texas Occupations Code Annotated, Chapter 601, as amended by Senate Bill 674 (85th Legislature Regular Session) (2017).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 27, 2017.

TRD-201705387
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TITLE 25. HEALTH SERVICES

**PART 1. DEPARTMENT OF STATE
HEALTH SERVICES**

**CHAPTER 97. COMMUNICABLE DISEASES
SUBCHAPTER G. VACCINATION STAMPS**

25 TAC §§97.151 - 97.156

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (DSHS), adopts amendments to §97.151, concerning Purpose and Scope; §97.152, concerning Definitions; §97.153, concerning Criteria for Issuing Uniform Stamps to Physicians; §97.154, concerning Criteria for Operating as a Vaccination Center; §97.155, concerning Format of the Uniform Stamp; and §97.156, concerning Denial, Suspension, or Revocation of a Uniform Stamp. The amendments are adopted without changes to the proposed text as published in the October 6, 2017, issue of the *Texas Register* (42 TexReg 5370), and therefore will not be republished.

BACKGROUND AND JUSTIFICATION

The purpose of the adopted amendments is to update the protocols for providers who administer yellow fever vaccine and issue vaccination certificates for persons who travel to countries outside the United States, and to clarify the rules. Sections 97.151 - 97.156 have been reviewed and DSHS has determined that reasons for adopting the sections continue to exist because rules on this subject are required by federal law and provide guidance for the ongoing vaccination stamp program (program).

COMMENTS

The 30-day comment period ended on November 6, 2017. During this period, DSHS did not receive any comments regarding the proposed vaccination stamp rules.

STATUTORY AUTHORITY

The adopted amendments are informed by U.S. Public Health Services (PHS) requirements: Code of Federal Regulations, Title 42-Public Health, Part 71-Foreign Quarantine, §71.3, Designation of Yellow Fever Vaccination Centers; Validation Stamps; and PHS publications entitled, Division of Quarantine Circular No. 106; Advisory Memorandum No. 66; and Advisory Memorandum No. 72. The amendments are authorized by Texas Government Code, §531.0055, and Texas Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-201705444

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Effective date: January 18, 2018
Proposal publication date: October 6, 2017
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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER V. FRANCHISE TAX

34 TAC §3.595

The Comptroller of Public Accounts adopts the repeal of §3.595, concerning margin: transition, without changes to the proposed text as published in the November 17, 2017, issue of the *Texas Register* (42 TexReg 6483). This section is being repealed because it covers the transition from using taxable capital and earned surplus as the basis for calculating the franchise tax to calculating the franchise tax based on taxable margin. The section specifically addresses franchise tax reports originally due on May 15, 2008. This report year is now outside the four-year statute of limitations for assessments and refund claims. See Tax Code, §111.107(a) (When Refund or Credit Is Permitted) and §111.201 (Assessment Limitation).

The repeal is adopted under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2 (State Taxation).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 21, 2017.

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Lita Gonzalez
General Counsel
Comptroller of Public Accounts
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Proposal publication date: November 17, 2017
For further information, please call: (512) 475-2220



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 6. LICENSE TO CARRY HANDGUNS

SUBCHAPTER A. GENERAL PROVISIONS

37 TAC §6.1

The Texas Department of Public Safety (the department) adopts amendments to §6.1, concerning Definitions. This rule is adopted without changes to the proposed text as published in the October 27, 2017, issue of the *Texas Register* (42 TexReg 5991) and will not be republished.

The changes to §6.1 are intended to clarify the meaning of terms used in the administrative rules.

No comments were received regarding the adoption of this rule.

This rule is adopted 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 §411.197 which authorizes the director to adopt rules to administer this subchapter.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 22, 2017.

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D. Phillip Adkins
General Counsel
Texas Department of Public Safety
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Proposal publication date: October 27, 2017
For further information, please call: (512) 424-5848



SUBCHAPTER B. ELIGIBILITY AND APPLICATION PROCEDURES FOR A LICENSE TO CARRY A HANDGUN

37 TAC §6.14, §6.16

The Texas Department of Public Safety (the department) adopts amendments to §6.14 and §6.16, concerning Eligibility and Application Procedures for a License to Carry a Handgun without changes to the proposed text as published in the October 27, 2017 issue of the *Texas Register* (42 TexReg 5992) and will not be republished.

Amendments to §6.14 and §6.16 are made as a result of 85th Legislative Session, HB 3784 and SB 16 respectively. Additional changes have been made to §6.14 to clarify proficiency requirements.

No comments were received regarding the adoption of these rules.

These amendments are adopted 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 §411.197, which authorizes the director to adopt rules to administer this subchapter.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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D. Phillip Adkins

General Counsel

Texas Department of Public Safety

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SUBCHAPTER C. QUALIFIED HANDGUN INSTRUCTOR LICENSE

37 TAC §§6.32, 6.40, 6.42

The Texas Department of Public Safety (the department) adopts amendments to §§6.32, 6.40, and 6.42, concerning Qualified Handgun Instructor License. These rules are adopted without changes to the proposed text as published in the October 27, 2017, issue of the *Texas Register* (42 TexReg 5992) and will not be republished.

Amendments to §6.32 and §6.40 are made as a result of 85th Legislative Session, HB 3784. The amendment to §6.42 is made to clarify a record retention obligation of instructors.

No comments were received regarding the adoption of these rules.

These rules are adopted 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 §411.197, which authorizes the director to adopt rules to administer this subchapter.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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37 TAC §6.39

The Texas Department of Public Safety (the department) adopts the repeal of §6.39, concerning Prior Notice of Training Required. This repeal is adopted without changes to the proposed text as published in the October 27, 2017, issue of the *Texas Register* (42 TexReg 5993) and will not be republished.

The department has determined the requirement imposed by this rule is unnecessary to the effective administration of the statute.

No comments were received regarding the adoption of this repeal.

This repeal is adopted 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 §411.197, which authorizes the director to adopt rules to administer this subchapter.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER E. APPROVED ONLINE COURSE PROVIDERS

37 TAC §§6.81 - 6.92

The Texas Department of Public Safety (the department) adopts new §§6.81 - 6.92, concerning Approved Online Course Providers without changes to the proposed text as published in the October 27, 2017, issue of the *Texas Register* (42 TexReg 5994) and will not be republished.

The proposal of new §§6.81 - 6.92 is necessary to implement the requirements of the 85th Legislative Session, HB 3784, which adds approved online course providers for the classroom instruction part of the handgun proficiency course.

No comments were received regarding the adoption of these rules.

These new rules are adopted 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 §411.197, which authorizes the director to adopt rules to administer this subchapter.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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General Counsel

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CHAPTER 15. DRIVER LICENSE RULES

SUBCHAPTER B. APPLICATION
REQUIREMENTS--ORIGINAL, RENEWAL,
DUPLICATE, IDENTIFICATION CERTIFICATES

37 TAC §15.44

The Texas Department of Public Safety (the department) adopts amendments to §15.44, concerning Driver License Photograph. This rule is adopted without changes to the proposed text as published in the October 27, 2017, issue of the *Texas Register* (42 TexReg 5996) and will not be republished.

This amendment strikes the word color according to House Bill 1345 and House Bill 3050 enacted by the 85th Texas Legislature.

No comments were received regarding the adoption of this rule.

This rule is adopted 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.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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D. Phillip Adkins

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Texas Department of Public Safety

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SUBCHAPTER K. INTERAGENCY
AGREEMENTS

37 TAC §15.172

The Texas Department of Public Safety (the department) adopts amendments to §15.172, concerning Issuance by Counties and Municipalities. This rule is adopted without changes to the proposed text as published in the October 27, 2017, issue of the *Texas Register* (42 TexReg 5996) and will not be republished.

These amendments add municipalities as authorized entities to issue certain renewal and duplicate driver licenses and identification cards according to House Bill 3050 enacted by the 85th Texas Legislature.

No comments were received regarding the adoption of this rule.

This rule is adopted 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.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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D. Phillip Adkins

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

**PART 1. DEPARTMENT OF AGING
AND DISABILITY SERVICES**

**CHAPTER 97. LICENSING STANDARDS
FOR HOME AND COMMUNITY SUPPORT
SERVICES AGENCIES**

As required by Texas Government Code §531.0202(b), the Department of Aging and Disability Services (DADS) was abolished effective September 1, 2017, after all of its functions were transferred to the Health and Human Services Commission (HHSC) in accordance with Texas Government Code §531.0201 and §531.02011. Rules of the former DADS are codified in Title 40, Part 1, and will be repealed or administratively transferred to Title 26, Health and Human Services, as appropriate. Until such action is taken, the rules in Title 40, Part 1, govern functions previously performed by DADS that have transferred to HHSC. Texas Government Code §531.0055, requires the executive commissioner of HHSC to adopt rules for the operation and provision of services by the health and human services system, including rules in Title 40, Part 1.

Therefore, the executive commissioner of HHSC adopts amendments to §97.2, concerning Definitions; §97.13, concerning Application Procedures for an Initial License; §97.17, concerning Application Procedures for a Renewal License; and new §97.30, concerning Operation of an Inpatient Unit at Parent Agency. The amendment to §97.2 is adopted with changes to the proposed text as published in the October 6, 2017, issue of the *Texas Register* (42 TexReg 5393). The amendments to §97.13 and §97.17, and new §97.30 are adopted without changes to the proposed text as published in the October 6, 2017, issue of the *Texas Register* (42 TexReg 5393), and therefore will not be republished.

BACKGROUND AND JUSTIFICATION

The adoption amends Title 40, Chapter 97, Licensing Standards for Home and Community Support Services Agencies, by adding §97.30, which states the requirements that a home and community support services agency (HCSSA) or an applicant for a HCSSA license must meet to operate an inpatient unit at its parent agency. Specifically, the adopted rules require a HCSSA or an applicant for a HCSSA license to notify HHSC of its intent to operate the inpatient unit; request and allow a Life Safety Code inspection; obtain verification from HHSC that the inpatient unit

is in compliance with all requirements; and, unless the applicant is exempt from a health survey, request a health survey after providing services to one client. This new section is adopted in response to inquiries from HCSSAs about the requirements for operating an inpatient unit at a parent agency.

The adoption also amends definitions in §97.2, including the definition of "parent agency," a term currently used in Chapter 97 and adopted new §97.30. The adoption amends §97.13 and §97.17 to require an applicant for an initial or renewal license to comply with new §97.30 to operate an inpatient unit at its parent agency.

Other amendments to §§97.2, 97.13, and 97.17 are adopted to improve their accuracy and readability, and to use consistent terminology.

COMMENTS

The 30-day comment period ended November 5, 2017.

During this period, HHSC received one comment regarding the proposed rules from Texas Association for Homecare and Hospice. The commenter expressed agreement with the rule amendments. HHSC appreciates the positive feedback.

A minor edit was made to §97.2(125) to reflect the correct agency acronym.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §97.2

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies and Texas Health and Safety Code, §142.012, which requires the HHSC executive commissioner to adopt rules related to the licensure of a HCSSA.

§97.2. Definitions.

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

(1) Accessible and flexible services--Services that are delivered in the least intrusive manner possible and are provided in all settings where individuals live, work, and recreate.

(2) Administration of medication--The direct application of any medication by injection, inhalation, ingestion, or any other means to the body of a client. The preparation of medication is part of the administration of medication and is the act or process of making ready a medication for administration, including the calculation of a client's medication dosage; altering the form of the medication by crushing, dissolving, or any other method; reconstitution of an injectable medication; drawing an injectable medication into a syringe; preparing an intravenous admixture; or any other act required to render the medication ready for administration.

(3) Administrative support site--A facility or site where an agency performs administrative and other support functions but does not provide direct home health, hospice, or personal assistance services. This site does not require an agency license.

(4) Administrator--The person who is responsible for implementing and supervising the administrative policies and operations of a home and community support services agency and for administratively supervising the provision of all services to agency clients on a day-to-day basis.

(5) ADS--Alternate delivery site. A facility or site, including a residential unit or an inpatient unit:

(A) that is owned or operated by an agency providing hospice services;

(B) that is not the hospice's parent agency;

(C) that is located in the geographical area served by the hospice; and

(D) from which the hospice provides hospice services.

(6) Advanced practice nurse--An advanced practice registered nurse.

(7) Advanced practice registered nurse--A person licensed by the Texas Board of Nursing as an advanced practice registered nurse. The term is synonymous with "advanced practice nurse."

(8) Advisory committee--A committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup, established for the purpose of obtaining advice or recommendations on issues or policies that are within the scope of a person's responsibility.

(9) Affiliate--With respect to an applicant or license holder that is:

(A) a corporation--means each officer, director, and stockholder with direct ownership of at least 5.0 percent, subsidiary, and parent company;

(B) a limited liability company--means each officer, member, and parent company;

(C) an individual--means:

(i) the individual's spouse;

(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, director, or stockholder with a direct ownership or disclosable interest of at least 5.0 percent.

(D) a partnership--means each partner and any parent company; and

(E) a group of co-owners under any other business arrangement--means each officer, director, or the equivalent under the specific business arrangement and each parent company.

(10) Agency--A home and community support services agency.

(11) Applicant--The owner of an agency that is applying for a license under the statute. This is the person in whose name the license will be issued.

(12) Assistance with self-administration of medication--Any needed ancillary aid provided to a client in the client's self-administered medication or treatment regimen, such as reminding a client to take a medication at the prescribed time, opening and closing a medication container, pouring a predetermined quantity of liquid to be ingested, returning a medication to the proper storage area, and assisting in reordering medications from a pharmacy. Such ancillary aid includes administration of any medication when the client has the cognitive ability to direct the administration of their medication and would self-administer if not for a functional limitation.

(13) Association--A partnership, limited liability company, or other business entity that is not a corporation.

(14) Audiologist--A person who is currently licensed under the Texas Occupations Code, Chapter 401, as an audiologist.

(15) Bereavement--The process by which a survivor of a deceased person mourns and experiences grief.

(16) Bereavement services--Support services offered to a family during bereavement. Services may be provided to persons other than family members, including residents of a skilled nursing facility, nursing facility, or intermediate care facility for individuals with an intellectual disability or related conditions, when appropriate and identified in a bereavement plan of care.

(17) Biologicals--A medicinal preparation made from living organisms and their products, including serums, vaccines, antigens, and antitoxins.

(18) Boarding home facility--An establishment defined in Texas Health and Safety Code §260.001(2).

(19) Branch office--A facility or site in the service area of a parent agency from which home health or personal assistance services are delivered or where active client records are maintained. This does not include inactive records that are stored at an unlicensed site.

(20) Care plan--

(A) a written plan prepared by the appropriate health care professional for a client of the home and community support services agency; or

(B) for home dialysis designation, a written plan developed by the physician, registered nurse, dietitian, and qualified social worker to personalize the care for the client and enable long- and short-term goals to be met.

(21) Case conference--A conference among personnel furnishing services to the client to ensure that their efforts are coordinated effectively and support the objectives outlined in the plan of care or care plan.

(22) Certified agency--A home and community support services agency, or portion of the agency, that:

(A) provides a home health service; and

(B) is certified by an official of the Department of Health and Human Services as in compliance with conditions of participation in Social Security Act, Title XVIII (42 United States Code (USC) §1395 et seq.).

(23) Certified home health services--Home health services that are provided by a certified agency.

(24) CFR--Code of Federal Regulations. The regulations and rules promulgated by agencies of the Federal government that address a broad range of subjects, including hospice care and home health services.

(25) Change of ownership--An event that results in a change to the federal taxpayer identification number of the license holder of an agency. The substitution of a personal representative for a deceased license holder is not a change of ownership.

(26) CHAP--Community Health Accreditation Program, Inc. An independent, nonprofit accrediting body that publicly certifies that an organization has voluntarily met certain standards for home and community-based health care.

(27) Chief financial officer--An individual who is responsible for supervising and managing all financial activities for a home and community support services agency.

(28) Client--An individual receiving home health, hospice, or personal assistance services from a licensed home and community support services agency. This term includes each member of the primary client's family if the member is receiving ongoing services. This term does not include the spouse, significant other, or other family member living with the client who receives a one-time service (for example, vaccination) if the spouse, significant other, or other family member receives the service in connection with the care of a client.

(29) Clinical note--A dated and signed written notation by agency personnel of a contact with a client containing a description of signs and symptoms; treatment and medication given; the client's reaction; other health services provided; and any changes in physical and emotional condition.

(30) CMS--Centers for Medicare & Medicaid Services. The federal agency that administers the Medicare program and works in partnership with the states to administer Medicaid.

(31) Complaint--An allegation against an agency regulated by HHSC or against an employee of an agency regulated by HHSC that involves a violation of this chapter or the statute.

(32) Community disaster resources--A local, statewide, or nationwide emergency system that provides information and resources during a disaster, including weather information, transportation, evacuation, and shelter information, disaster assistance and recovery efforts, evacuee and disaster victim resources, and resources for locating evacuated friends and relatives.

(33) 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 an agency or other person.

(A) A controlling person includes:

(i) a management company or other business entity that operates or contracts with others for the operation of an agency;

(ii) a person who is a controlling person of a management company or other business entity that operates an agency or that contracts with another person for the operation of an agency; and

(iii) any other individual who, because of a personal, familial, or other relationship with the owner, manager, or provider of an agency, is in a position of actual control or authority with respect to the agency, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the agency.

(B) A controlling person, as described by subparagraph (A)(iii) of this paragraph, does not include an employee, lender, secured creditor, or other person who does not exercise formal or actual influence or control over the operation of an agency.

(34) Conviction--An adjudication of guilt based on a finding of guilt, a plea of guilty, or a plea of nolo contendere.

(35) Counselor--An individual qualified under Medicare standards to provide counseling services, including bereavement, dietary, spiritual, and other counseling services to both the client and the family.

(36) DADS--HHSC.

(37) Day--Any reference to a day means a calendar day, unless otherwise specified in the text. A calendar day includes weekends and holidays.

(38) Deficiency--A finding of noncompliance with federal requirements resulting from a survey.

(39) Designated survey office--An HHSC Home and Community Support Services Agencies Program office located in an agency's geographic region.

(40) Dialysis treatment record--For home dialysis designation, a dated and signed written notation by the person providing dialysis treatment which contains a description of signs and symptoms, machine parameters and pressure settings, type of dialyzer and dialysate, actual pre- and post-treatment weight, medications administered as part of the treatment, and the client's response to treatment.

(41) Dietitian--A person who is currently licensed under the laws of the State of Texas to use the title of licensed dietitian or provisional licensed dietitian, or who is a registered dietitian.

(42) Direct ownership interest--Ownership of equity in the capital, stock, or profits of, or a membership interest in, an applicant or license holder.

(43) Disaster--The occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from a natural or man-made cause, such as fire, flood, earthquake, wind, storm, wave action, oil spill or other water contamination, epidemic, air contamination, infestation, explosion, riot, hostile military or paramilitary action, or energy emergency. In a hospice inpatient unit, a disaster also includes failure of the heating or cooling system, power outage, explosion, and bomb threat.

(44) Disclosable interest--Five percent or more direct or indirect ownership interest in an applicant or license holder.

(45) ESRD--End stage renal disease. For home dialysis designation, the stage of renal impairment that appears irreversible and permanent and requires a regular course of dialysis or kidney transplantation to maintain life.

(46) Functional need--Needs of the individual that require services without regard to diagnosis or label.

(47) Habilitation--Habilitation services, as defined by Texas Government Code §534.001, provided by an agency licensed under this chapter.

(48) Health assessment--A determination of a client's physical and mental status through inventory of systems.

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

(50) Home and community support services agency--A person who provides home health, hospice, or personal assistance services for pay or other consideration in a client's residence, an independent living environment, or another appropriate location.

(51) Home health aide--An individual working for an agency who meets at least one of the requirements for home health aides as defined in §97.701 of this chapter (relating to Home Health Aides).

(52) Home health medication aide--An unlicensed person issued a permit by HHSC to administer medication to a client under the Texas Health and Safety Code, Chapter 142, Subchapter B.

(53) Home health service--The provision of one or more of the following health services required by an individual in a residence or independent living environment:

(A) nursing, including blood pressure monitoring and diabetes treatment;

(B) physical, occupational, speech, or respiratory therapy;

(C) medical social service;

(D) intravenous therapy;

(E) dialysis;

(F) service provided by unlicensed personnel under the delegation or supervision of a licensed health professional;

(G) the furnishing of medical equipment and supplies, excluding drugs and medicines; or

(H) nutritional counseling.

(54) Hospice--A person licensed under this chapter to provide hospice services, including a person who owns or operates a residential unit or an inpatient unit.

(55) Hospice aide--A person working for an agency licensed to provide hospice services who meets the qualifications for a hospice aide as described in §97.843 of this chapter (relating to Hospice Aide Qualifications).

(56) Hospice homemaker--A person working for an agency licensed to provide hospice services who meets the qualifications described in §97.845 of this chapter (relating to Hospice Homemaker Qualifications).

(57) Hospice services--Services, including services provided by unlicensed personnel under the delegation of a registered nurse or physical therapist, provided to a client or a client's family as part of a coordinated program consistent with the standards and rules adopted under this chapter. These services include palliative care for terminally ill clients and support services for clients and their families that:

(A) are available 24 hours a day, seven days a week, during the last stages of illness, during death, and during bereavement;

(B) are provided by a medically directed interdisciplinary team; and

(C) may be provided in a home, nursing facility, residential unit, or inpatient unit according to need. These services do not include inpatient care normally provided in a licensed hospital to a terminally ill person who has not elected to be a hospice client. For the purposes of this definition, the word "home" includes a person's "residence" as defined in this section.

(58) IDR--Informal dispute resolution. An informal process that allows an agency to refute a violation or condition-level deficiency cited during a survey.

(59) Independent living environment--A client's residence, which may include a group home, foster home, or boarding home facility, or other settings where a client participates in activities, including school, work, or church.

(60) Indirect ownership interest--Any ownership or membership interest in a person that has a direct ownership interest in an applicant or license holder.

(61) Individual and family choice and control--Individuals and families who express preferences and make choices about how their support service needs are met.

(62) Individualized service plan--A written plan prepared by the appropriate health care personnel for a client of a home and community support services agency licensed to provide personal assistance services.

(63) Inpatient unit--A facility, also referred to as a hospice freestanding inpatient facility, that provides a continuum of medical or

nursing care and other hospice services to clients admitted into the unit and that is in compliance with:

(A) the conditions of participation for inpatient units adopted under Social Security Act, Title XVIII (42 United States Code §1395 et seq.); and

(B) standards adopted under this chapter.

(64) JCAHO--The Joint Commission, previously known as the Joint Commission on Accreditation of Healthcare Organizations. An independent, nonprofit organization for standard-setting and accrediting in-home care and other areas of health care.

(65) Joint training--Training provided by HHSC at least semi-annually for home and community support services agencies and HHSC surveyors on subjects that address the 10 most commonly cited violations of federal or state law by home and community support services agencies as published in HHSC annual reports.

(66) LAR--Legally authorized representative. A person authorized by law to act on behalf of a client with regard to a matter described in this chapter, and may include a parent of a minor, guardian of an adult or minor, managing conservator of a minor, agent under a medical power of attorney, or surrogate decision-maker under Texas Health and Safety Code, §313.004.

(67) License holder--A person that holds a license to operate an agency.

(68) Licensed vocational nurse--A person who is currently licensed under Texas Occupations Code, Chapter 301, as a licensed vocational nurse.

(69) Life Safety Code (also referred to as NFPA 101)--The Code for Safety to Life from Fire in Buildings and Structures, Standard 101, of the National Fire Protection Association (NFPA).

(70) Local emergency management agencies--The local emergency management coordinator, fire, police, and emergency medical services.

(71) Local emergency management coordinator--The person identified as the emergency management coordinator by the mayor or county judge in an agency's service area.

(72) Manager--An employee or independent contractor responsible for providing management services to a home and community support services agency for the overall operation of a home and community support services agency including administration, staffing, or delivery of services. Examples of contracts for services that will not be considered contracts for management services include contracts solely for maintenance, laundry, or food services.

(73) Medication administration record--A record used to document the administration of a client's medications.

(74) Medication list--A list that includes all prescription and over-the-counter medication that a client is currently taking, including the dosage, the frequency, and the method of administration.

(75) Mitigation--An action taken to eliminate or reduce the probability of a disaster, or reduce a disaster's severity or consequences.

(76) Multiple location--A Medicare-approved alternate delivery site that meets the definition in 42 CFR §418.3.

(77) Notarized copy--A sworn affidavit stating that attached copies are true and correct copies of the original documents.

(78) Nursing facility--An institution licensed as a nursing home under the Texas Health and Safety Code, Chapter 242.

(79) Nutritional counseling--Advising and assisting individuals or families on appropriate nutritional intake by integrating information from the nutrition assessment with information on food and other sources of nutrients and meal preparation consistent with cultural background and socioeconomic status, with the goal being health promotion, disease prevention, and nutrition education. Nutritional counseling may include the following:

(A) dialogue with the client to discuss current eating habits, exercise habits, food budget, and problems with food preparation;

(B) discussion of dietary needs to help the client understand why certain foods should be included or excluded from the client's diet and to help with adjustment to the new or revised or existing diet plan;

(C) a personalized written diet plan as ordered by the client's physician or practitioner, to include instructions for implementation;

(D) providing the client with motivation to help the client understand and appreciate the importance of the diet plan in getting and staying healthy; or

(E) working with the client or the client's family members by recommending ideas for meal planning, food budget planning, and appropriate food gifts.

(80) Occupational therapist--A person who is currently licensed under the Occupational Therapy Practice Act, Texas Occupations Code, Chapter 454, as an occupational therapist.

(81) Operating hours--The days of the week and the hours of day an agency's place of business is open as identified in an agency's written policy as required by §97.210 of this chapter (relating to Agency Operating Hours).

(82) Original active client record--A record composed first-hand for a client currently receiving services.

(83) Palliative care-- Intervention services that focus primarily on the reduction or abatement of physical, psychosocial, and spiritual symptoms of a terminal illness. It is client and family-centered care that optimizes quality of life by anticipating, preventing, and treating suffering. Palliative care throughout the continuum of illness involves addressing physical, intellectual, emotional, social, and spiritual needs and facilitating client autonomy, access to information, and choice.

(84) Parent agency--An agency's principal place of business; the location where an agency develops and maintains administrative controls and provides supervision of branch offices and alternate delivery sites.

(85) Parent company--A person, other than an individual, who has a direct 100 percent ownership interest in the owner of an agency.

(86) Person--An individual, corporation, or association.

(87) Personal assistance services--Routine ongoing care or services required by an individual in a residence or independent living environment that enable the individual to engage in the activities of daily living or to perform the physical functions required for independent living, including respite services. The term includes:

(A) personal care;

(B) health-related services performed under circumstances that are defined as not constituting the practice of professional nursing by the Texas Board of Nursing; and

(C) health-related tasks provided by unlicensed personnel under the delegation of a registered nurse or that a registered nurse determines do not require delegation.

(88) Personal care--The provision of one or more of the following services required by an individual in a residence or independent living environment:

- (A) bathing;
- (B) dressing;
- (C) grooming;
- (D) feeding;
- (E) exercising;
- (F) toileting;
- (G) positioning;
- (H) assisting with self-administered medications;
- (I) routine hair and skin care; and
- (J) transfer or ambulation.

(89) Pharmacist--A person who is licensed to practice pharmacy under the Texas Pharmacy Act, Texas Occupations Code, Chapter 558.

(90) Pharmacy--A facility defined in the Texas Occupations Code, §551.003(31), at which a prescription drug or medication order is received, processed, or dispensed.

(91) Physical therapist--A person who is currently licensed under Texas Occupations Code, Chapter 453, as a physical therapist.

(92) Physician--This term includes a person who is:

(A) licensed in Texas to practice medicine or osteopathy in accordance with Texas Occupations Code, Chapter 155;

(B) licensed in Arkansas, Louisiana, New Mexico, or Oklahoma to practice medicine, who is the treating physician of a client and orders home health or hospice services for the client, in accordance with the Texas Occupations Code, §151.056(b)(4); or

(C) a commissioned or contract physician or surgeon who serves in the United States uniformed services or Public Health Service if the person is not engaged in private practice, in accordance with the Texas Occupations Code, §151.052(a)(8).

(93) Physician assistant--A person who is licensed under the Physician Assistant Licensing Act, Texas Occupations Code, Chapter 204, as a physician assistant.

(94) Physician-delegated task--A task performed in accordance with the Texas Occupations Code, Chapter 157, including orders signed by a physician that specify the delegated task, the individual to whom the task is delegated, and the client's name.

(95) Place of business--An office of a home and community support services agency that maintains client records or directs home health, hospice, or personal assistance services. This term includes a parent agency, a branch office, and an alternate delivery site. The term does not include an administrative support site.

(96) Plan of care--The written orders of a practitioner for a client who requires skilled services.

(97) Practitioner--A person who is currently licensed in a state in which the person practices as a physician, dentist, podiatrist, or a physician assistant, or a person who is a registered nurse registered with the Texas Board of Nursing as an advanced practice nurse.

(98) Preparedness--Actions taken in anticipation of a disaster.

(99) Presurvey conference--A conference held with HHSC staff and the applicant or the applicant's representatives to review licensure standards and survey documents, and to provide information regarding the survey process.

(100) Progress note--A dated and signed written notation by agency personnel summarizing facts about care and the client's response during a given period of time.

(101) Psychoactive treatment--The provision of a skilled nursing visit to a client with a psychiatric diagnosis under the direction of a physician that includes one or more of the following:

- (A) assessment of alterations in mental status or evidence of suicide ideation or tendencies;
- (B) teaching coping mechanisms or skills;
- (C) counseling activities; or
- (D) evaluation of the plan of care.

(102) Recovery--Activities implemented during and after a disaster response designed to return an agency to its normal operations as quickly as possible.

(103) Registered nurse delegation--Delegation by a registered nurse in accordance with:

(A) 22 TAC Chapter 224 (concerning Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel for Clients with Acute Conditions or in Acute Care Environments); and

(B) 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).

(104) Residence--A place where a person resides, including a home, a nursing facility, a convalescent home, or a residential unit.

(105) Residential unit--A facility that provides living quarters and hospice services to clients admitted into the unit and that is in compliance with standards adopted under the Texas Health and Safety Code, Chapter 142.

(106) Respiratory therapist--A person who is currently licensed under Texas Occupations Code, Chapter 604, as a respiratory care practitioner.

(107) Respite services--Support options that are provided temporarily for the purpose of relief for a primary caregiver in providing care to individuals of all ages with disabilities or at risk of abuse or neglect.

(108) Response--Actions taken immediately before an impending disaster or during and after a disaster to address the immediate and short-term effects of the disaster.

(109) Restraint--A restraint is:

(A) a manual method, physical or mechanical device, material, or equipment that immobilizes or reduces the ability of a client in a hospice inpatient unit to move his or her arms, legs, body, or head freely, but does not include a device, such as an orthopedically prescribed device, a surgical dressing or bandage, a protective helmet, or other method that involves the physical holding of the client for the purpose of:

(i) conducting a routine physical examination or test;

(ii) protecting the client from falling out of bed; or

(iii) permitting the client to participate in activities without the risk of physical harm, not including a physical escort; or

(B) a drug or medication when used as a restriction to manage a client's behavior or restrict the client's freedom of movement in a hospice inpatient unit, but not as a standard treatment or medication dosage for the client's condition.

(110) RN--Registered nurse. A person who is currently licensed under the Nursing Practice Act, Texas Occupations Code, Chapter 301, as a registered nurse.

(111) Seclusion--The involuntary confinement of a client alone in a room or an area in a hospice inpatient unit from which the client is physically prevented from leaving.

(112) Section--A reference to a specific rule in this chapter.

(113) Service area--A geographic area established by an agency in which all or some of the agency's services are available.

(114) Skilled services--Services in accordance with a plan of care that require the skills of:

(A) a registered nurse;

(B) a licensed vocational nurse;

(C) a physical therapist;

(D) an occupational therapist;

(E) a respiratory therapist;

(F) a speech-language pathologist;

(G) an audiologist;

(H) a social worker; or

(I) a dietitian.

(115) Social worker--A person who is currently licensed as a social worker under Texas Occupations Code, Chapter 505.

(116) Speech-language pathologist--A person who is currently licensed as a speech-language pathologist under Texas Occupations Code, Chapter 401.

(117) Statute--The Texas Health and Safety Code, Chapter 142.

(118) Substantial compliance--A finding in which an agency receives no recommendation for enforcement action after a survey.

(119) Supervised practical training--Hospice aide training that is conducted in a laboratory or other setting in which the trainee demonstrates knowledge while performing tasks on an individual. The training is supervised by a registered nurse or by a licensed vocational nurse who works under the direction of a registered nurse.

(120) Supervising nurse--The person responsible for supervising skilled services provided by an agency and who has the qualifications described in §97.244(c) of this chapter (relating to Administrator Qualifications and Conditions and Supervising Nurse Qualifications). This person may also be known as the director of nursing or similar title.

(121) Supervision--Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity with

initial direction and periodic inspection of the actual act of accomplishing the function or activity.

(122) Support services--Social, spiritual, and emotional care provided to a client and a client's family by a hospice.

(123) Survey--An on-site inspection or complaint investigation conducted by an HHSC representative to determine if an agency is in compliance with the statute and this chapter or in compliance with applicable federal requirements or both.

(124) Terminal illness--An illness for which there is a limited prognosis if the illness runs its usual course.

(125) Unlicensed person--A person not licensed as a health care provider. The term includes home health aides, hospice aides, hospice homemakers, medication aides permitted by HHSC, and other unlicensed individuals providing personal care or assistance in health services.

(126) Unsatisfied judgments--A failure to fully carry out the terms or meet the obligation of a court's final disposition on the matters before it in a suit regarding the operation of an agency.

(127) Violation--A finding of noncompliance with this chapter or the statute resulting from a survey.

(128) Volunteer--An individual who provides assistance to a home and community support services agency without compensation other than reimbursement for actual expenses.

(129) Working day--Any day except Saturday, Sunday, a state holiday, or a federal holiday.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 438-3791



SUBCHAPTER B. CRITERIA AND ELIGIBILITY, APPLICATION PROCEDURES, AND ISSUANCE OF A LICENSE

40 TAC §§97.13, 97.17, 97.30

STATUTORY AUTHORITY

The amendments and new section are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies and Texas Health and Safety Code, §142.012, which requires the HHSC executive commissioner to adopt rules related to the licensure of a HCSSA.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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