

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 12. COMMISSION ON STATE EMERGENCY COMMUNICATIONS

CHAPTER 251. 9-1-1 SERVICE--STANDARDS

1 TAC §251.2

The Commission on State Emergency Communications (CSEC) adopts amendments to §251.2, concerning implementing changes to 9-1-1 service arrangements, without changes to the proposed text as published for comment in the October 22, 2021, issue of the *Texas Register* (46 TexReg 7125). The adopted rule will not be republished.

REASONED JUSTIFICATION

CSEC adopts amendments to §251.2 (Title 1, Part 12, Chapter 251 of the Texas Administrative Code), relating to implementing changes to 9-1-1 service arrangements. The primary purpose of the amendments is to (1) to make the rule non-9-1-1 administrative entity specific to allow the rule to be adopted by Emergency Communication Districts (ECDs); and (2) streamline and shorten the rule by deleting outdated text and text applicable only to Regional Planning Commissions. As amended, the key requirement of the rule is that 9-1-1 administrative entities must provide reasonable notice to and work with neighboring and adjacent 9-1-1 administrative entities to ensure changes in 9-1-1 service arrangements are coordinated with potentially affected other 9-1-1 administrative entities.

PUBLIC COMMENT AND AGENCY RESPONSE

CSEC received no comments on proposed amended §251.2.

STATUTORY AUTHORITY

The amended section is adopted pursuant to Health and Safety Code §§771.051, 771.055 - 771.056; and Title 1 Texas Administrative Code, Part 12, Chapter 251, Regional Plan Standards.

No other statute, article, 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.

Filed with the Office of the Secretary of State on January 27, 2022.

TRD-202200289

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Effective date: February 16, 2022
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1 TAC §251.11

The Commission on State Emergency Communications (CSEC) adopts the repeal of §251.11, concerning Regional Planning Commission monitoring, without changes to the proposed text as published for comment in the October 22, 2021, issue of the *Texas Register* (46 TexReg 7128). The repealed rule will not be republished.

REASONED JUSTIFICATION

CSEC adopts the repeal of §251.11 (Title 1, Part 12, Chapter 251 of the Texas Administrative Code) relating to Regional Planning Commission monitoring. The primary purpose in repealing the rule is that it has been replaced by CSEC Program Policy Statement 039, Regional Planning Commission Compliance Monitoring, adopted by the Commission at its September 2021 open meeting.

PUBLIC COMMENT AND AGENCY RESPONSE

CSEC received no comments on the proposed repeal of §251.11.

STATUTORY AUTHORITY

The repeal is adopted pursuant to Health and Safety Code §§771.051, 771.055 - 771.057, 771.061, 771.075, 771.0751, 771.078 - 771.079.

No other statute, article, 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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CHAPTER 252. ADMINISTRATION

1 TAC §252.3

The Commission on State Emergency Communications (CSEC) adopts amendments to 1 TAC §252.3, concerning employee and family sick leave pools, without changes to the proposed text as published for comment in the October 22, 2021, issue of the *Texas Register* (46 TexReg 7129). The adopted rule will not be republished.

REASONED JUSTIFICATION

CSEC adopts amendments to §252.3 (Title 1, Part 12, Chapter 252 of the Texas Administrative Code) relating to sick leave pool. The primary purpose of the amendments is to revise the current sick leave pool rule to account for "family sick leave pool" enacted by the 87th Texas Legislature (HB 2063); including a change in the title of the rule to identify both the existing sick leave and newly enacted family leave pool programs.

PUBLIC COMMENT AND AGENCY RESPONSE

CSEC received no comments on proposed amended §252.3.

STATEMENT OF AUTHORITY

The amended section is adopted pursuant to Health and Safety Code §771.051 and Government Code §§661.002 and 661.022.

No other statute, article, or code is affected by the adoption.

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

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 27. RULES FOR ADMINISTRATIVE SERVICES

SUBCHAPTER E. ENHANCED CONTRACT MONITORING

16 TAC §27.170

The Public Utility Commission of Texas (commission) adopts amendments to 16 Texas Administrative Code (TAC) §27.170. The commission adopts this rule with changes to the proposed rules as published in the December 17, 2021, issue of the *Texas Register* (46 TexReg 8418). The rule will be republished. This rule amendment clarifies the procedure for identifying contracts

that require enhanced contract monitoring under Texas Government Code §2261.253.

Substantive changes include amended §25.170(a)(1), which simplifies and revises the factors the commission is required to consider in determining whether enhanced contract monitoring is necessary to better align with the requirements of §2261.253 and those of Chapter 2261 of the Texas Government Code, specifically §2261.051, §2261.052, §2261.0525, §2261.202, and §2261.256. Amended §25.170(a)(2) is modified to clearly refer to the factors listed under subsection (a). Amended §25.170(c) more clearly indicates the responsible party for enhanced contract monitoring. Lastly, numerous clerical changes are made in the proposed rule for clarity.

No parties filed comments or requested a hearing for this rule-making.

The amended rule is adopted under PURA §14.002, which provides the commission with the authority to make, adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction. The amended rule is also adopted under Texas Government Code §2261.253, which requires each state agency to establish a procedure, by rule, to identify each contract that requires enhanced contract monitoring.

Cross Reference to Statute: Public Utility Regulatory Act §14.002 and Texas Government Code §2261.253.

§27.170. *Enhanced Contract Monitoring Procedure.*

(a) The commission will assess each contract to determine whether enhanced contract monitoring is necessary.

(1) The commission will use the following factors to determine whether enhanced contract monitoring is necessary:

- (A) vendor performance history;
- (B) the contract amount;
- (C) contract length;
- (D) impact on agency goals; and
- (E) any other factors that may impact the agency.

(2) Projects deemed medium or high-risk based on the factors under paragraph (1) of this subsection will be co-monitored by contract and program staff and may involve additional team members such as legal, fiscal, and auditing staff members.

(b) If a contract is determined to need enhanced monitoring, the commission will require the vendor to provide specific programmatic information on a scheduled basis to determine whether performance measures are being met.

(1) Programmatic reports must include information related to the performance measures in the contract, as well as any other deliverables.

(2) Enhanced monitoring may also include site visits, additional meetings with the vendor's staff or other documentation relevant to assess progress toward meeting performance requirements.

(c) The director of the fiscal division must notify the agency governing board of contracts requiring enhanced monitoring through this process.

(d) This process does not apply to an interagency agreement, an interlocal agreement, a memorandum of understanding with another state agency, or a contract for which there is not a cost.

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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PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 31. ADMINISTRATION

16 TAC §§31.7 - 31.9

The Texas Alcoholic Beverage Commission (TABC, agency, or commission) adopts new §§31.7 - 31.9, establishing advisory committees, without changes to the text as published in the December 3, 2021, *Texas Register* (46 TexReg 8163). The rules will not be republished.

The commission adopts these rules pursuant to a systematic review of all agency rules following the adoption of H.B. 1545, 86th Tex. Leg. (R.S. 2019), with which the Legislature made significant changes to the Alcoholic Beverage Code (Code). These changes included the addition of new Code §5.21 authorizing the commission to establish advisory committees as it considers necessary to accomplish the purposes of the Code. In February 2020, the commission adopted Rule §31.6, Establishment of Advisory Committees, which sets forth general parameters applicable to all advisory committees created by the commission. The adopted rules establish advisory committees on internal audit, major information technology projects, and public safety.

No public comments were received.

The rules are adopted pursuant to Code §5.21, which authorizes the commission to establish advisory committees as it considers necessary to accomplish the purposes of the 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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TRD-202200274
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CHAPTER 45. MARKETING PRACTICES SUBCHAPTER F. ADVERTISING AND PROMOTION

16 TAC §§45.101, 45.102, 45.105, 45.107, 45.109 - 45.112, 45.120

The Texas Alcoholic Beverage Commission (TABC, agency, or commission) adopts amendments to §§45.101, 45.105, 45.107, 45.109 - 45.112, and 45.120 and also adopts new §45.102, Loyalty Programs. Sections 45.101, 45.102, 45.107, 45.109, 45.111, 45.112, and 45.120 are adopted without changes to the text as proposed in the December 3, 2021, *Texas Register* (46 TexReg 8163), and will not be republished. Sections 45.105 and 45.110 are adopted with changes to the text as proposed and will be republished.

The commission adopts these rules pursuant to a systematic review of all agency rules following the adoption of H.B. 1545, 86th Tex. Leg. (R.S. 2019), with which the Legislature made significant changes to the Alcoholic Beverage Code. A majority of the amendments are to conform to H.B. 1545 and other recent legislative changes, for internal consistency, and to increase clarity and readability. The commission adopts new §45.102, Loyalty Programs, to formally adopt into rule the current practices of the agency with respect to programs that incentivize repeat visits to the same retailer. Amendments to §45.109 and §45.112 also adopt current agency marketing practices policies in rule for greater transparency. Finally, the commission adopts an increase in the spending limit in §45.110 to adjust for inflation and respond to the needs of the regulated industry.

Response to Comments

Comment: One comment was received regarding amendments to §45.110, which sets the maximum value of food and beverages, entertainment, recreation, and travel expenses that members of the wholesale tier may provide to retailers or their agents.

Robert Lee, who describes himself as an entrepreneur looking to enter the wholesale tier of the wine industry in Texas, commented that raising the monetary cap on inducements from \$500 to \$1,000 and expanding allowed travel-related spending will disadvantage smaller businesses by making it more expensive for them to compete with larger, established businesses. He further states that adjustment for inflation since 1998 is an insufficient justification and does not explain the benefit to the public. Finally, he remarks that limits should be reduced due to the ability of industry members to communicate via the internet.

Response: Updating dollar amounts in rules for inflation maintains the status quo by accurately reflecting the actual value limit intended by the originally adopted rule. Adjustment for inflation alone would set the limit at more than \$850. Moreover, the rule is a limitation, not a fee, and does not require any member of the regulated industry to spend any money on inducements.

The expansion of allowable travel expenses beyond ground transportation reflects modern modes of travel without changing the value of the expenditure. The level of inducement is indicated by the dollar value of the thing given; therefore, it is not necessary to limit the type of transportation to achieve the purpose of the rule. The change allows industry to take advantage of modern, fast modes of travel without affecting retailer independence because it is not allowing the provision of a thing of any greater value than other items of the same price that are currently allowed.

No changes to the rule were made as a result of this comment.

Amendments to §§45.101, 45.105, 45.107, 45.109 - 45.112, and 45.120 and new §45.102 are adopted pursuant to the commission's authority in §5.31 of the Code, which allows the commission to prescribe and publish rules necessary to carry out the provisions of the Code; H.B. 1545, 86th Tex. Leg. (R.S. 2019); and/or S.B. 196 and H.B. 1024, 87th Tex. Leg. (R.S. 2021).

§45.105. Advertising.

(a) Retailer Establishments.

(1) This subsection relates to Alcoholic Beverage Code §§108.07, 108.51, and 108.52.

(2) Except as provided in paragraph (3) of this subsection, retail-tier license and permit holders may not advertise any price for an alcoholic beverage on any sign, billboard, marquee, or other display located on the retailer's premises in such a manner that the price may be read by persons outside of the premises.

(3) It is an exception to the restriction in paragraph (2) of this subsection if:

(A) the holder of a food and beverage certificate places a menu on the exterior wall of the premises so that it can be read outside of the premises only by a pedestrian close to the menu. To qualify for the exception granted in this paragraph, the menu visible outside of the premises must be of the same size and in the same sized font as the menu presented to the establishment's customers, and must show both food and beverage prices; or

(B) the holder of a wine and malt beverage retailer's permit, brewpub license, retail dealer's on-premise license, or a license or permit authorizing sales of alcoholic beverages for pickup under Alcoholic Beverage Code §§28.1001 or 32.155 places a menu in a drive-through lane so that it can be read outside of the premises only by a person in a vehicle in the drive-through lane.

(b) Private Clubs.

(1) This subsection relates to Alcoholic Beverage Code §§32.01(b), 108.51, 108.52 and 108.56.

(2) The holder of a private club registration permit or a private club exemption certificate must, in any advertising either directly or indirectly advertising the service of alcoholic beverages, whether or not by any specific brand name, state that the service of alcoholic beverages is only for persons who are members of the club.

(3) The holder of a private club registration permit or a private club exemption certificate may advertise any class of alcoholic beverages in an area where the sale of that class of alcoholic beverages is legal for on-premises consumption, provided no other provisions of the Alcoholic Beverage Code are violated.

(c) Mobile Advertising.

(1) This subsection relates to Alcoholic Beverage Code §§108.51, 108.52 and 108.54.

(2) Mobile advertising on vehicles is not permitted unless it meets the definition of an "electric sign" in Alcoholic Beverage Code §108.51(3).

(3) Mobile advertising that meets the definition of an "electric sign" in Alcoholic Beverage Code §105.51(3) and that is funded directly or indirectly by upper-tier members may not be parked within 200 feet of a retail location for more than one hour, in order to prevent benefit to the retailer by drawing consumer traffic to the location.

(4) Mobile advertising that meets the definition of an "electric sign" in Alcoholic Beverage Code §108.51(3) may not be parked, maintained in, or driven through an area or zone where the sale of alcoholic beverages is prohibited.

(d) Internet Advertising.

(1) This subsection relates to Alcoholic Beverage Code §§102.07, 102.15 and 108.07.

(2) Retailers may advertise on the internet via their website or through third party advertising, unless the advertising is funded directly or indirectly by an upper-tier member.

(3) All retailer advertising on the internet must conform with the on-premises promotion restrictions of §45.103 of this subchapter (relating to On-Premises Promotions), coupon and inducement restrictions of §45.101 of this subchapter (relating to Rebates and Coupons), and sweepstakes and giveaway restrictions of §45.106 of this subchapter (relating to Sweepstakes and Games of Chance).

§45.110. Inducements.

(a) General. This section is enacted pursuant to Alcoholic Beverage Code §§102.04, 102.07, 102.12, 102.15 and 108.06.

(b) Unless otherwise specified, this section applies to members of the manufacturing and wholesale tiers for all alcoholic beverages.

(c) Inducements. Notwithstanding any other provision of these rules, practices and patterns of conduct that place retailer independence at risk constitute an illegal inducement as that term is used in the Alcoholic Beverage Code. Examples of unlawful inducements are:

(1) purchasing or renting shelf, floor or warehouse space from or for a retailer;

(2) requiring a retailer to purchase one product in order to be allowed to purchase another product at the same time;

(3) providing or purchasing, in whole or in part, any type of advertising benefitting any specific retailer, if the advertising is a result of unauthorized activity;

(4) furnishing food and beverages, entertainment or recreation to retailers or their agents or employees except under the following conditions:

(A) the value of food, beverages, entertainment and recreation shall not exceed \$1,000.00 per person on any one occasion; and

(B) food, beverages, entertainment and recreation provided may only be consumed or enjoyed in the immediate presence of both the providing upper tier member and the receiving retail tier member; and

(C) in the course of providing food, beverages, entertainment or recreation under this rule, upper tier members may furnish transportation; and

(D) food, beverages, recreation and entertainment may also be provided during attendance at a convention, conference, or similar event so long as the primary purpose for the attendance of the retailer at such event is not to receive benefits under this section; and

(E) each upper tier member shall keep complete and accurate records of all expenses incurred for retailer entertainment for two years.

(5) furnishing of service trailers with equipment to a retailer;

(6) furnishing transportation or other things of value to organized groups of retailers. Members of the manufacturing and wholesale tiers may advertise in convention programs, sponsor functions or meetings and other participate in meetings and conventions of trade associations of general membership; and

(7) except as otherwise allowed under §45.41 of this chapter (relating to Additional Reasons for Denial of Registration of a Malt Beverage Product), marking, branding or labeling a malt beverage with:

(A) the tradename or trademark of any retailer permittee or licensee or any private club registration permittee; or

(B) a tradename or trademark that is owned, licensed, or exclusively used by any retailer permittee or licensee or any private club registration permittee.

(d) Criteria for determining retailer independence. The following criteria shall be used as a guideline in determining whether a practice or pattern of conduct places retailer independence at risk. The following criteria are not exclusive, nor does a practice need to meet all criteria in order to constitute an inducement.

(1) The practice restricts or hampers the free economic choice of a retailer to decide which products to purchase or the quantity in which to purchase them for sale to consumers.

(2) The retailer is obligated to participate in a program offered by a member of the manufacturing or wholesale tier in order to obtain that member's product.

(3) The retailer has a continuing obligation to purchase or otherwise promote the industry member's product.

(4) The retailer has a commitment not to terminate its relationship with a member of the manufacturing or wholesale tier with respect to purchase of that member's products.

(5) The practice involves a member of the manufacturing or wholesale tier in the day-to-day operations of the retailer. For example, the member controls the retailer's decisions on which brand of product to purchase, the pricing of products, or the manner in which the products will be displayed on the retailer's premises.

(6) The practice is discriminatory in that it is not offered to all retailers in the local market on the same terms without business reasons present to justify the difference in treatment.

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) 206-3451



TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 4. RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER Q. APPROVAL OF OFF-CAMPUS AND SELF-SUPPORTING COURSES AND PROGRAMS FOR PUBLIC INSTITUTIONS

19 TAC §4.278

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Title 19, Part 1, Chapter 4, Subchapter Q, §4.278, Functions of Regional Counsels, without changes to the proposed text as published in the November 5, 2021, issue of the *Texas Register* (46 TexReg 7492). The rule will not be republished.

Specifically, this adopted amendment aligns Texas Administrative Code rule with statutory changes regarding the role of higher education regional councils in relation to the approval of off-campus workforce education or lower-division programs offered by a public institution of higher education at the request of an employer.

The adopted amendments to the Texas Administrative Code implement newly adopted Texas Education Code Section 51.981, Subchapter Z, by House Bill 4361 (87R). Texas Education Code Section 61.0512(g) authorizes the Coordinating Board to approve courses for credit and distance education programs, including off-campus and self-supporting programs.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under Texas Education Code, Section 61.0512(g) which provides the Coordinating Board with the authority to approve courses for credit and distance education programs, including off-campus and self-supporting programs, and Texas Education Code, Section 51.981, which authorizes an institution of higher education to offer certain workforce education and lower-division programs requested by employers without approval of a higher education regional council.

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 January 28, 2022.

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TITLE 22. EXAMINING BOARDS

PART 11. TEXAS BOARD OF NURSING

CHAPTER 223. FEES

22 TAC §223.1

The Texas Board of Nursing (Board) adopts amendments to §223.1, relating to Fees, without changes to the proposed text published in the December 24, 2021, issue of the *Texas Register* (46 TexReg 8879) and will not be republished.

Reasoned Justification. The amendments are adopted under the authority of the Occupations Code §301.151 and §301.155. The General Appropriations Act, 87th Regular Legislative Session, passed a budget for the Board for the 2022 - 2023 biennium. Specifically, in Article VIII, Section 2, it limits the Board appropriation to revenue collections. The Board anticipates a revenue surplus for the 2022 - 2023 biennium. The adopted reduction in fees is necessary to limit revenue collection to align with the budgetary requirements of the legislature.

How the Section Will Function. Adopted §223.1(a)(1) decreases the examination fee for vocational and registered nurse applicants from \$75 to \$50.

Public Comment. The Board did not receive any comments on the proposal.

Statutory Authority. The amendment is adopted under the authority of the Occupations Code §301.151 and §301.155. Section 301.151 addresses the Board's rulemaking authority. Section 301.155 addresses the authority of the Board to establish fees.

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

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 157. EMERGENCY MEDICAL CARE

SUBCHAPTER G. EMERGENCY MEDICAL SERVICES TRAUMA SYSTEMS

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), adopts the repeal of §157.132, concerning the Regional Trauma Account; the repeal and replace with the new §157.122, concerning Trauma Service Ar-

reas; and the repeal and replace with new §157.133, concerning Requirements for Stroke Facility Designation. New §157.133 is adopted with changes to the proposed text as published in the September 24, 2021, issue of the *Texas Register* (46 TexReg 6360). The repeal of §157.132, repeal and new §157.122 and the repeal of §157.133 are adopted without changes and will not be republished.

BACKGROUND AND JUSTIFICATION

The rules update the content and processes with the advances and practices that have developed since these rules were last revised. The repeal and new §157.122, Trauma Service Areas (TSAs), updates the geographic alignment of a TSA and the process for realignment of a county to a TSA.

House Bill (H.B.) 7, 84th Legislature, Regular Session, 2015, removed the funds from regional trauma account No. 5137 and reallocated the funds to the designated trauma facility and emergency medical services (EMS) account No. 5111. The repeal of §157.132 removes the regional trauma account in order to align with the legislative direction of H.B. 7.

The repeal and new §157.133 aligns the Texas stroke systems with national stroke standards. Per Texas Health and Safety Code §773.204, the Governor's EMS and Trauma Advisory Council Stroke Committee shall consult on the criteria for stroke facilities established by national medical organizations, such as The Joint Commission, in developing the stroke emergency transport plan and stroke facility criteria. The extensive revisions to the rule text and reorganization of the subsections necessitate repeal and replacement, rather than an amendment to this section.

COMMENTS

The 31-day comment period ended on October 25, 2021.

During this period, DSHS received a comment letter from the Texas Medical Association (TMA). A summary of the comments relating to the proposed §157.133 and DSHS's responses follows. The Texas Medical Association's comments are in quotes below and followed with DSHS's responses.

Comment: Section 157.133(b)(4), (f)(1), and (g)(1)(B): "DSHS should reconsider including URLs in long-lasting, rulemaking documents such as the proposed rules. If DSHS ever chooses to change or reorganize its website, these links will likely no longer function. DSHS could consider formally naming these lists or detailing where they may be found so applicants can search for them on the internet and find them easily."

Response: DSHS agrees with this concern but did not revise the rule in response to the comment. DSHS is in the process of a website redesign, and this is being taken into consideration.

Comment: Section 157.133(c)(4): "In accordance with feedback received during the August 19, 2019, stakeholders' meeting, TMA recommended adding an express requirement to the Stroke Quality Assessment and Performance Improvement plan that the facility receiving stroke patients "collect, report, and analyze data for all stroke patients."

Response: DSHS disagrees with this addition and declines to revise the rule in response to this comment. It was not integrated into the rule since this is covered in the stroke national standards, which is an element of the designation requirements.

Comment: Section 157.133(d): "The associations note that the designation level names in the proposed rules do not align with

The Joint Commission and American Heart Association (AHA) stroke designations. Specifically, The Joint Commission and AHA refer to DSHS's "Advanced (Level II)" stroke designation as "Thrombectomy-Capable Stroke Center." In addition, The Joint Commission/AHA designations do not use numbers in the level designations. The associations express concern that such numbers create confusion with the trauma facility designations and the Get Ahead of Stroke Initiative's numbered levels. To maintain consistency with national standards, the associations recommend DSHS reconsider the inclusion of numbers in designation levels and rename the Advanced stroke facility designation to match The Joint Commission/AHA designation."

Response: DSHS disagrees with this recommendation and declines to revise the rule in response to the comment. The GETAC Stroke Committee members, stakeholders, and DSHS discussed this in the rule discussion meetings during 2019, 2020, and 2021. The decision was to not align with proprietary language from national organizations due to the fact there are multiple approved survey organizations in Texas.

Comment: Section 157.133(f)(2): "TMA recommended providing a method of "notice" to DSHS of the survey date as follows:

"(2) The hospital provides written or electronic notification to the department of the stroke designation survey date no later than two days before the survey date."

Response: DSHS agrees with this recommendation and revised subsection (f)(2) as "provides written or electronic notification to the department of the stroke designation survey date a minimum of 30 days prior to the survey."

Comment: Section 157.133(f)(3) and (f)(5): "Placing the burden of expenses on the facility alone, without a way for facilities to impact expenses, risks further increasing costs of surveys and survey observers appointed by DSHS. The financial hurdle that facilities face poses an administrative burden that could decrease access to care in low-income or rural areas of Texas that house facilities already operating on thin margins. DSHS should convene interested stakeholders to discuss ways in which survey and observer costs could be mitigated as well as to explore possible incentives for surveyors to keep costs down."

Response: DSHS recognizes this concern, but the cost of the survey is between the survey organization and the hospital. Hospitals seeking stroke designation can choose from four different survey organizations to evaluate the cost of the survey and their process. DSHS has reviewed all of these survey organizations' requirements and survey processes with the GETAC Stroke Committee. Each survey organization was approved for stroke surveys in Texas. This competitive nature affects the cost and potential increases in the survey costs. DSHS declines to revise the rule in response to this comment.

Comment: Section 157.133(i): "DSHS should revisit how paragraphs (1) and (2) of subsection (i) interact. Both paragraphs (1) and (2) describe notification processes that facilities should follow if they are not able to carry out their assigned duties. However, it is unclear which situations fall under paragraphs (1) or (2) and why notification processes in each scenario would differ. Additionally, it is unclear how a facility determines what status to include in the regional advisory committee communication system during a critical interruption and how EMS providers and others would learn the facility's capabilities have been restored."

Response: DSHS has reviewed this comment and the language in the proposed text. Subsection (i)(1) refers to any temporary

event or decision preventing the facility from meeting compliance to a stroke designation requirement. This refers to all stroke designation requirement, including system requirements that are not related to stroke patient care and may not have the same level of urgency. The same subsection (i)(2) reviews an interruption in the capabilities or capacity critical to the evaluation or treatment of a stroke patient. This language is specific to elements of stroke patient care, such as the loss of a CT scan, loss of a neurologist, or the inability to perform interventional radiology procedures. These types of interruptions directly impact the ability to care for a stroke patient and could impact their outcome. For this reason, facilities are required to notify medical control in subsection (i)(2). DSHS declines to change the rule language in response to this comment.

Comment: Section 157.133(i): "The associations also noted that subsection (i)(2) would require facilities to notify "local medical control." Rather than a person or entity, §157.2(55) defines the term "medical control" as "the supervision of prehospital emergency medical service providers by a licensed physician." TMA asked that DSHS clarify who the facilities would need to notify to satisfy this requirement."

Response: DSHS disagrees and declines to revise the rule in response to this comment. This was reviewed by DSHS and the language is not changed as medical control should have procedures defined by the medical director in place to address this. Medical control is defined as the supervision of prehospital emergency medical providers by licensed physicians. This encompasses on-line (direct voice contact) and off-line (written protocol and procedural review).

Comment: Section 157.133(l)(2): "In listing examples of terminology that facilities should not use, DSHS uses language similar to national stroke standards to illustrate its point. If the numbered levels remain in the stroke designation status, the "acute stroke ready" should refer to "Level IV," rather than "Level III." Also, the acute stroke ready terminology is the only example for which DSHS lists the standard twice. DSHS may want to revisit this portion of the document to ensure consistency and clarity as follows."

"(2) "comprehensive Level I stroke center," "advanced Level II stroke center," "primary Level III stroke center," "acute Level IV stroke center," or similar terminology in its signs, advertisements or in the printed materials the facility provides to the public, unless the hospital is currently designated at that defined level of stroke facility in accordance with this section."

Response: DSHS agrees with changing the acute ready stroke from a Level III to a IV. The "acute stroke ready hospital" text was removed that followed the "primary Level III stroke center." The "acute stroke ready Level IV" was edited and corrected in the rule language. The Levels I through IV language remains in the rule as this has been the standard for the past nine years.

DSHS added the language "or electronic" in reference to notification in §157.133(i)(1) and (2) for consistency.

25 TAC §§157.122, 157.132, 157.133

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code, Chapter 773 (Emergency Health Care Act), which authorizes the commissioner to adopt rules to implement

emergency medical services and trauma care systems; Texas Health and Safety Code, Chapter 773, Subchapter H, which provides the authority to adopt rules related to emergency stroke services; and Texas Health and Safety Code §1001.075, which authorizes the Executive Commissioner of HHSC to adopt rules and policies 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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Cynthia Hernandez

General Counsel

Department of State Health Services

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For further information, please call: (512) 535-8538



25 TAC §157.122, §157.133

STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code, Chapter 773 (Emergency Health Care Act), which authorizes the commissioner to adopt rules to implement emergency medical services and trauma care systems; Texas Health and Safety Code, Chapter 773, Subchapter H, which provides the authority to adopt rules related to emergency stroke services; and Texas Health and Safety Code §1001.075, which authorizes the Executive Commissioner of HHSC to adopt rules and policies for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

§157.133. *Requirements for Stroke Facility Designation.*

(a) The department ensures that stroke facility designation promotes the goal, objective, and purpose of the stroke system.

(1) The goal of the stroke system is to reduce the morbidity and mortality of the stroke victim, subsequently referred to as a stroke patient.

(2) The objective of the stroke system is to improve the overall care of stroke patients by rapidly recognizing the signs of a stroke and transporting the potential stroke patient to the appropriate level of stroke facility, in the appropriate time, with the appropriate level of resources.

(b) The department determines requirements for the levels of stroke facility designation. Hospitals seeking stroke facility designation must demonstrate compliance to department-approved national stroke standard requirements located on the DSHS EMS/Trauma Systems Stroke Designation Webpage: <https://dshs.texas.gov/em-traumasystems/stroke.shtm>. Hospitals must have compliance with the requirements validated by a department-approved survey organization. The hospital must submit:

(1) a completed application for the stroke facility designation, and an annual summary of the stroke Quality Assessment and Performance Improvement (QAPI) plan;

(2) the documented stroke designation site survey summary that includes the requirement compliance findings and the medical record summaries;

(3) evidence of successful verification issued by the survey organization; and

(4) full payment of the non-refundable, non-transferable designation fee located on the DSHS EMS/Trauma Systems Stroke Designation Webpage: <https://dshs.texas.gov/emtraumasystems/stroke.shtm>.

(c) Minimum requirements for stroke designation.

(1) Health care facilities eligible for stroke designation include:

(A) a hospital in Texas, licensed or otherwise meeting the description in accordance with Chapter 133 of this title (relating to Hospital Licensing);

(B) a hospital owned and operated by the State of Texas; or

(C) a hospital owned and operated by the federal government in Texas.

(2) Each hospital shall demonstrate the capability to provide stabilization and transfer or treatment for an acute stroke patient, written stroke standards of care, and a written stroke QAPI plan.

(3) Each hospital operating on a single hospital license with multiple locations (multi-location license) may apply for stroke designation separately by physical location for each designation.

(A) Hospital departments or services within a hospital shall not be designated separately.

(B) Hospital departments located in a separate building, which is not contiguous with the designated facility, shall not be designated separately.

(C) Each emergency department of a hospital operating on a single hospital license must provide the same level of emergency stroke care for patients.

(D) Stroke designation is issued for the physical location and to the legal owner of the operations of the designated facility and is non-transferable.

(4) If applicable, the designated stroke facility shall include stroke patients received at the non-contiguous departments in the facility's stroke database and stroke performance improvement process.

(d) The four levels of stroke designation and the requirements for each are:

(1) Comprehensive (Level I) stroke designation. The hospital must meet the department-approved national stroke standards of care for a Comprehensive Stroke Center, participate in the hospital's Regional Advisory Council (RAC) and regional stroke plan, and submit data to the department as requested.

(2) Advanced (Level II) stroke designation. The hospital must meet the department-approved national stroke standards of care for a non-Comprehensive Thrombectomy Stroke Center, participate in the hospital's RAC and regional stroke plan, and submit data to the department as requested.

(3) Primary (Level III) stroke designation. The hospital must meet the department-approved national stroke standards of care for a Primary Stroke Center, participate in the hospital's RAC and regional stroke plan, and submit data to the department as requested.

(4) Acute Stroke-Ready (Level IV) stroke designation. The hospital must meet the department-approved national stroke standards of care for an Acute Stroke-Ready Center, participate in the hospital's RAC and regional stroke plan, and submit data to the department as requested.

(e) Designation of a hospital as a stroke facility is valid for the length of the approved stroke survey organization's stroke certification.

(f) A hospital seeking stroke facility designation must undergo an onsite or virtual survey as outlined in this section.

(1) The hospital is responsible for scheduling a stroke designation survey through a department-approved survey organization. Approved survey organizations are located on the DSHS EMS/Trauma Systems Stroke Designation Webpage: <https://dshs.texas.gov/emstraumasystems/stroke.shtm>.

(2) The hospital provides written or electronic notification to the department of the stroke designation survey date a minimum of 30 days prior to the survey.

(3) The hospital is responsible for expenses associated with the stroke designation survey.

(4) The hospital does not accept surveyors with any conflict of interest. If a conflict of interest is present, the hospital must decline the assigned surveyor through the surveying organization. A conflict of interest exists when the surveyor has a current or past relationship with the hospital or key hospital staff members to the degree that the relationship may appear to cause bias. The conflict of interest includes a previous working relationship, residency training, or participation in a consultation program for the hospital within the past five years.

(5) The department, at its discretion, may appoint an observer to accompany the survey team, with the observer costs borne by the department.

(6) The survey team evaluates the hospital's compliance with the department-approved national stroke standards of care requirements and documents all noncompliance issues identified in the survey report and patient care reviews. The surveyors must review ten stroke patient medical record reviews and the associated QAPI related documents and summarize these reviews to include in the hospital's stroke facility designation application.

(7) The hospital shall provide the survey team access to records regarding the QAPI plan to include peer review activities related to the stroke patient. Failure to provide access to these records will result in a determination by the department that the hospital seeking stroke facility designation is not in compliance with Texas Health and Safety Code, Chapter 773, and the rules in this chapter.

(g) A hospital seeking stroke facility designation must submit a completed application packet.

(1) The completed application packet includes:

(A) an accurate and complete stroke designation application for the requested level of designation and an annual summary of the stroke QAPI plan;

(B) full payment of the non-refundable, non-transferable designation fee located on the DSHS EMS/Trauma Systems Stroke Designation Webpage: <https://dshs.texas.gov/emstraumasystems/stroke.shtm>;

(C) the documented stroke designation site survey summary that includes the requirement compliance findings and the medical record summaries, and the report is submitted to the department no later than 60 days after the stroke site survey date;

(D) evidence of successful verification issued by the survey organization;

(E) if required by the department, a plan of correction (POC) that addresses all requirements with identified non-compliance findings in the survey report and the POC shall include:

(i) a statement identifying the specific designation requirement the facility has not met or is in non-compliance;

(ii) a statement describing the corrective action by the facility seeking stroke facility designation to ensure compliance with the defined requirement;

(iii) the title of the individuals responsible for ensuring the corrective actions are implemented;

(iv) the date the corrective actions will be implemented;

(v) how the corrective actions will be monitored;

(vi) supporting documentation of the requirement reaching compliance; and

(vii) corrective actions that will be implemented within 60 days from the date the facility seeking stroke facility designation received the official survey summary report;

(F) written evidence of participation in the applicable RACs; and

(G) any additional documents requested by the department.

(2) If a hospital seeking stroke facility designation fails to submit the required application documents and fee listed in paragraph (1) of this subsection, the application will not be processed.

(3) The stroke facility designation renewal process, a request to change the level of designation, or a change in ownership requiring re-designation follows the same requirements outlined in paragraph (1) of this subsection.

(A) The hospital must submit the required documents described in paragraph (1) of this subsection to the department no later than 90 days before the facility's stroke designation expiration date.

(B) The hospital must submit the stroke designation fee in full payment with the required application documents.

(4) The hospital has the right to withdraw its application for stroke facility designation any time before being recommended for designation by the department.

(5) The hospital must submit an application packet to renew its stroke facility designation no later than 90 days before the facility's stroke designation expiration date.

(6) The facility's stroke designation will expire if the facility fails to provide a complete stroke designation application packet to the department by its current designation's expiration date.

(7) The stroke designation application packet, in its entirety, must be written as an element of the facility's QAPI plan and subject to confidentiality as described in Texas Health and Safety Code, §773.095.

(8) The department reviews the application packet to determine the recommended stroke facility designation.

(9) The department determines the final stroke facility designation level awarded to the hospital. The designation level may be different than the level requested based on the documented stroke designation site survey summary that includes the requirement compliance findings and the medical record summaries.

(10) If the department determines the hospital meets the requirements for stroke facility designation, the department provides the hospital with a designation award letter and a designation certificate.

(A) The hospital shall display its stroke facility designation certificate in a public area of the licensed premises that is readily visible to patients, employees, and visitors.

(B) The hospital shall not alter the stroke facility designation certificate. Any alteration voids stroke designation for the remainder of that designation period.

(h) If a hospital disagrees with the department's decision regarding its designation status, the hospital has a right to a hearing, in accordance with Texas Government Code, Chapter 2001.

(i) Exceptions and Notifications.

(1) A designated stroke facility must provide written or electronic notification of any temporary event or decision preventing the facility from complying with requirements of its current stroke designation level. This notification shall outline the stroke facility requirements the facility is not able to maintain compliance with and be provided to the following:

(A) all emergency medical services (EMS) providers that transfer stroke patients to or from the designated stroke facility;

(B) the health care facilities to which it customarily transfers-out or transfers-in stroke patients;

(C) applicable RACs; and

(D) the department.

(2) If the designated stroke facility has an interruption in capabilities or capacity critical to the evaluation and treatment of a stroke patient, the facility will immediately notify local EMS providers, referring facilities, and their RAC by written or electronic communication with time-stamp capabilities, a phone call to their local medical control, and change their status through the RAC communication system such as EMResources or WEBEOC. This notification must occur within 60 minutes of the recognition of the loss in capabilities.

(3) If the designated stroke facility is unable to comply with requirements to maintain its current designation status, it shall submit to the department a POC as described in subsection (g)(1)(E) of this section, and a request for a temporary exception to the requirements. Any request for an exception shall be submitted in writing from the chief executive officer of the facility and define the facility's plan of correction with a timeline to become compliant with the stroke facility requirements. The department shall review the request and the POC, and either grant the exception, with a specific timeline based on the public interest, or deny the exception. If the facility is not granted an exception, or it is not compliant to the requirements at the end of the exception period, the department shall elect one of the following:

(A) re-designate the facility at the level appropriate to its revised capabilities; or

(B) accept the facility's surrender of its stroke facility designation certificate and designation award letter after the requirements in subsection (k) of this section have been completed.

(j) An application for a higher or lower level of stroke facility designation may be submitted to the department at any time.

(1) A designated stroke facility that is increasing its stroke capabilities may choose to apply for a higher level of designation at any time. The facility must follow the designation process as described in subsection (g)(1) of this section to apply for the higher level.

(2) A designated stroke facility that is unable to maintain compliance with the facility's current level of stroke designation may choose to apply for a lower level of designation at any time.

(k) If the facility chooses to relinquish its stroke facility designation, the facility shall provide a 30 days written, advance notice prior to the relinquishment of the designation to the department, the applicable RACs, EMS providers, and health care facilities it customarily transfers-out or transfers-in stroke patients. The facility is responsible to continue providing stroke care services and ensure that stroke care continuity for the region remains in place for the 30 days following the notice of relinquishing its stroke designation.

(l) A hospital shall not use or authorize the use of any public communication or advertising containing false, misleading, or deceptive claims regarding its stroke designation status. Public communication or advertising shall be deemed false, misleading, or deceptive if the facility uses these terms:

(1) "stroke facility," "stroke hospital," "stroke center," or similar terminology and the facility is not currently designated as a stroke facility in accordance with this section; or

(2) "comprehensive Level I stroke center," "advanced Level II stroke center," "primary Level III stroke center," "acute stroke ready Level IV center," or similar terminology in its signs, advertisements or in the printed materials the facility provides to the public, unless the hospital is currently designated at that defined level of stroke facility in accordance with this section.

(m) The department has the right to review, inspect, evaluate, and audit all stroke patient records, stroke multidisciplinary QAPI plan documents, and peer review activities, as well as, any other documents relevant to stroke care in a designated stroke facility or facility seeking stroke facility designation at any time to verify compliance with the Texas Health and Safety Code, Chapter 773 and this section.

(n) The department maintains confidentiality of such records to the extent authorized by Texas Government Code, Chapter 552.

(o) Stroke designation site review of the hospital applying for stroke facility designation will be scheduled with the department-approved survey organization and follow the department survey guidelines.

(p) The department may deny, suspend, or revoke a stroke facility designation if a designated stroke facility ceases to provide services to meet or maintain compliance with the requirements of this section or if it violates the Chapter 133 of this title, concerning requirements resulting in enforcement action.

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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Cynthia Hernandez
General Counsel
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CHAPTER 448. STANDARD OF CARE

The Texas Health and Human Services Commission (HHSC) adopts amendments to §448.401, concerning License Required; §448.801, concerning Screening; §448.803, concerning Assessment; and §448.911, concerning Treatment Services Provided by Electronic Means.

Amended §§448.401, 448.801, 448.803 and 448.911 are adopted with changes to the proposed text as published in the October 8, 2021, issue of the *Texas Register* (46 TexReg 6875). These rules will be republished.

BACKGROUND AND JUSTIFICATION

The amendments are necessary to comply with House Bill (H.B.) 4, 87th Legislature, Regular Session, 2021, which requires HHSC to adopt rules to permit a licensed chemical dependency treatment facility (CDTF) to provide outpatient treatment services to adult and adolescent clients using telecommunications or information technology. H.B. 4 also requires HHSC to adopt rules relating to the minimum standards for CDTFs to provide intakes, screenings, and assessments using telecommunications or information technology.

The amendments are also necessary to implement H.B. 4298, 86th Legislature, Regular Session, 2019, which exempted a satellite office or location operating under the supervision of a licensed outpatient CDTF and providing services within the scope of the outpatient CDTF's license from the requirement to obtain a CDTF license under Texas Health and Safety Code Chapter 464.

The amendments are also necessary to ensure consistency with Texas Health and Safety Code §464.003 by updating the rule language to align with current statute. Senate Bill (S.B.) 219, 84th Legislature, Regular Session, 2015, and S.B. 1314, 85th Legislature, Regular Session, 2017, made non-substantive amendments to §464.003 to update the references for juvenile justice facilities and programs and licensed acute care facilities already exempt from licensure and to use person-first language.

COMMENTS

The 31-day comment period ended November 8, 2021. During this period, HHSC received comments regarding the proposed rules from three commenters, including Aliviane, Inc.; the Texas Council of Community Centers; and one individual. A summary of comments relating to the rules and HHSC's responses follows.

Comment: The Texas Council of Community Centers expressed support for aligning §448.401 with H.B. 4298 because it will enable providers to make services more accessible, particularly in rural areas, while continuing to ensure the same quality standards.

Response: HHSC acknowledges this comment.

Comment: Aliviane, Inc. stated §448.803 allows a counselor intern to conduct assessments through electronic/telehealth

means and §448.911 requires a qualified credentialed counselor (QCC) to provide outpatient treatment services by electronic/telehealth means under that section. Aliviane, Inc. recommended "keeping counselors and counselor interns to provide electronic/telehealth assessments."

Response: HHSC revised §448.803(b)(1), and renumbered subsequent paragraphs, and §448.911(a)(2) to clarify a qualified credentialed counselor or counselor intern with more than 2,000 hours of supervised work experience and who has passed the chemical dependency counselor licensing examination may provide assessments and treatment services by electronic means under these sections in response to this comment.

Comment: An individual commenter stated §448.803(d) references the five-axis diagnosis system from the Diagnostic and Statistical Manual of Mental Disorders (DSM) IV, and recommended HHSC revise this subsection to reference the DSM V because it is the current standard for psychiatric and substance use diagnoses and does not use a five-axis diagnostic format.

Response: HHSC revised §448.803(d) and §448.801(a) to ensure consistency with the clinical standards and terminology in the current version of the DSM in response to this comment.

Comment: The Texas Council of Community Centers noted the amendments to §448.911 overall reflect flexibility and inclusiveness that is needed for programs to provide substance use treatment services via electronic means. The Texas Council of Community Centers expressed concern about the remaining unchanged language in §448.911, stating the language is vague, creates onerous and unnecessary requirements, and/or will increase provider costs, which will render services unavailable as long as rates are insufficient to cover the increased costs.

Response: HHSC revised §448.911(c) to replace the specific encryption method requirement with more generalized language regarding privacy and encryption measures in response to this comment. HHSC addresses other specific subsections referenced by the commenter in relation to this comment in the subsequent responses.

Comment: The Texas Council of Community Centers expressed support for the amendment to §448.911(a)(1) allowing adolescents to receive treatment through electronic means and noted it will increase access and flexibility for this important population.

Response: HHSC acknowledges this comment and notes that adolescents may receive outpatient chemical dependency treatment program services via electronic means under §448.911(a)(1).

Comment: The Texas Council of Community Centers requested HHSC remove the requirement for a toll-free technical support number under §448.911(h) because the requirement is "onerous and vague" due to the added expenses created by this requirement and because the purpose and beneficiary of the number is unclear.

Response: HHSC removed §448.911(h), renumbered subsequent subsections, and amended §448.911(i), renumbered to §448.911(h), in response to this comment. The amendment to subsection (i), renumbered to (h), clarifies a program must maintain alternate means of communication for clients who may experience technical problems during services.

Comment: The Texas Council of Community Centers stated the purpose and nature of the safeguards required under §448.911(o) is unclear.

Response: HHSC revised §448.911(o), renumbered to §448.911(n), to clarify the safeguards must ensure adolescents receive treatment services separately from adults and that programs must verify the client's identity and the identify of any authorized participants in response to this comment.

Comment: The Texas Council of Community Centers stated the goal and intent of §448.911(p), which requires programs to maintain information on statutes and regulations of the governing area in which the client resides or is receiving services by electronic means, is unclear.

Response: HHSC revised §448.911(p), renumbered to §448.911(o), to clarify the program must provide clients with information for accessing online or a copy of current applicable CDTF rules, statutes, and federal regulations in response to this comment.

Comment: The Texas Council of Community Centers stated §448.911(q) is unclear and asked HHSC to clarify what emergency contact information a program must provide under this subsection.

Response: HHSC revised §448.911(q), renumbered to §448.911(p), to clarify it is the program's emergency contact information in response to this comment.

Comment: The Texas Council of Community Centers stated the goal and intent of §448.911(v), which requires programs to maintain information on statutes and regulations of the governing area in which the client resides or is receiving the internet services, is unclear.

Response: HHSC removed §448.911(v) and renumbered subsequent subsections in response to this comment because it is duplicative with the edits HHSC made to §448.911(p), renumbered to §448.911(o), in response to a previous comment.

HHSC made the following editorial revisions to ensure clarity, readability, and ensure consistency with HHSC rulemaking guidelines:

HHSC replaced the term "the Commission" with HHSC at §448.401(a) and (a)(3), §448.911(m), renumbered to §448.911(l), and §448.911(u), renumbered to §448.911(t).

HHSC replaced the "&" with the word "and" at §448.403(a)(7).

HHSC clarified the internal reference in §448.801(h)(1) and §448.803(b)(1), renumbered to §448.803(b)(2).

HHSC updated a reference at §448.803(e).

HHSC clarified services delivered under §448.911(a)(1) must be within the scope of the facility's license.

HHSC defined the acronym "HIPAA" on first reference at §448.911(b)(2).

HHSC defined the shortened phrase "42 C.F.R. pt.2" on first reference at §448.911(d).

HHSC defined the acronym "ADA" at §448.911(s), renumbered to §448.911(r).

HHSC added the article "the" before facility at §448.911(w), renumbered to §448.911(u) and §448.911(x), renumbered to §448.911(v).

HHSC clarified the facility must provide the facility's emergency contact information in §448.911(w), renumbered to §448.911(u).

SUBCHAPTER D. FACILITY LICENSURE INFORMATION

25 TAC §448.401

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code Chapter 462, which authorizes the Executive Commissioner to adopt rules governing the treatment of persons with chemical dependencies; and Chapter 464, which authorizes the Executive Commissioner to adopt rules governing the organization and structure, policies and procedures, staffing requirements, services, client rights, records, physical plant requirements, and standards for licensed chemical dependency treatment facilities.

§448.401. *License Required.*

(a) A facility providing or offering chemical dependency treatment in Texas shall have a license issued by the Texas Health and Human Services Commission (HHSC) unless it is:

(1) a facility maintained or operated by the Federal government or its agencies;

(2) a facility directly operated by the State of Texas;

(3) a facility licensed by HHSC under Texas Health and Safety Code Chapter 241, 243, 248, 466, or 577;

(4) an educational program for intoxicated drivers;

(5) an individual who personally provides counseling or support services to a person with a chemical dependency but does not offer or purport to offer a chemical dependency treatment program;

(6) the private practice of a licensed health care practitioner or licensed chemical dependency counselor who personally renders individual or group services within the scope of the practitioner's license and in the practitioner's office;

(7) a religious organization registered under Texas Health and Safety Code Chapter 464, Subchapter C;

(8) a 12-step or similar self-help chemical dependency recovery program:

(A) that does not offer or purport to offer a chemical dependency treatment program;

(B) that does not charge program participants; and

(C) in which program participants may maintain anonymity;

(9) a juvenile justice facility or juvenile justice program, as defined by Texas Family Code §261.405; or

(10) a satellite office or location in which the person providing services is operating under the supervision of a licensed outpatient care facility and the services delivered at the satellite site fall within the scope of the licensure of the outpatient care facility.

(b) The facility shall have a license for each physical location at which it provides residential services or outpatient services.

(c) A license is not transferable to a separate legal entity or to a different physical address.

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

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Karen Ray

Chief Counsel

Department of State Health Services

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For further information, please call: (512) 834-4591



SUBCHAPTER H. SCREENING AND ASSESSMENT

25 TAC §448.801, §448.803

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code Chapter 462, which authorizes the Executive Commissioner to adopt rules governing the treatment of persons with chemical dependencies; and Chapter 464, which authorizes the Executive Commissioner to adopt rules governing the organization and structure, policies and procedures, staffing requirements, services, client rights, records, physical plant requirements, and standards for licensed chemical dependency treatment facilities.

§448.801. *Screening.*

(a) To be eligible for admission to a treatment program, an individual shall meet the current Diagnostic and Statistical Manual of Mental Disorders (DSM) criteria for substance use disorders (or substance withdrawal or intoxication in the case of a detoxification program). The facility shall use a screening process appropriate for the target population, individual's age, developmental level, culture and gender which includes the Texas Department of Insurance (TDI) criteria to determine eligibility for admission or referral including an assessment of the client's financial resources and insurance benefits.

(b) The screening process shall collect other information as necessary to determine the type of services that are required to meet the individual's needs. This may necessitate the administration of all or part of validated assessment instruments.

(c) TDI criteria shall guide referral and treatment recommendations as well as placement decisions.

(d) Sufficient documentation shall be maintained in the client record to support the diagnosis and justify the referral/placement decision. Documentation shall include the date of the screening and the signature and credentials of the Qualified Credentialed Counselor (QCC) supervising the screening process.

(e) For admission to a detoxification program, the screening will be conducted by a physician, physician assistant, nurse practitioner, registered nurse, or licensed vocational nurse (LVN). An LVN may conduct a screening under the following conditions:

(1) the LVN has completed detoxification training and demonstrated competency in the detoxification process;

(2) the training and competency verification is documented in the LVN's personnel file;

(3) the LVN shall convey the medical data obtained during the screening process to a physician in person or via telephone. The physician shall determine the appropriateness of the admission and authorize the admission or give instructions for an alternative course of action; and

(4) the physician shall examine the client in person and sign the admission order within 24 hours of authorizing admission.

(f) For admission to all other treatment programs, the screening will be conducted by a counselor or counselor intern.

(g) A detoxification program shall not offer screenings through electronic means.

(h) A treatment program other than a detoxification program may offer screenings in-person and face-to-face, or through electronic means. A facility that offers screenings through electronic means shall comply with the following requirements:

(1) A screening conducted through electronic means shall comply with the requirements under §448.911 of this chapter (relating to Treatment Services Provided by Electronic Means).

(2) The facility shall conduct an in-person and face-to-face screening with an individual at the individual's request.

§448.803. *Assessment.*

(a) A counselor or counselor intern shall conduct and document a comprehensive psychosocial assessment with the client admitted to the facility. The assessment shall document and elicit enough information about the client's past and present status to provide a thorough understanding of the following areas:

(1) presenting problems resulting in admission;

(2) alcohol and other drug use;

(3) psychiatric and chemical dependency treatment;

(4) medical history and current health status, to include an assessment of Tuberculosis (TB), HIV and other sexually transmitted disease (STD) risk behaviors as permitted by law;

(5) relationships with family;

(6) social and leisure activities;

(7) education and vocational training;

(8) employment history;

(9) legal problems;

(10) mental/emotional functioning; and

(11) strengths and weaknesses.

(b) The counselor or counselor intern may conduct the assessment with a client in-person and face-to-face, or through electronic means. A facility that offers assessments through electronic means shall comply with the following requirements.

(1) A counselor intern must have more than 2,000 hours of supervised work experience and must have passed the chemical dependency counselor licensing exam prior to conducting an assessment through electronic means.

(2) An assessment conducted through electronic means shall comply with the requirements under §448.911 of this chapter (relating to Treatment Services Provided by Electronic Means).

(3) The facility shall conduct an in-person and face-to-face assessment with an individual at the individual's request.

(c) The assessment shall result in a comprehensive listing of the client's problems, needs, and strengths.

(d) The assessment shall result in a comprehensive diagnostic impression. The diagnostic impression shall correspond to current Diagnostic and Statistical Manual of Mental Disorders (DSM) standards.

(e) If the assessment identifies a potential mental health problem, the facility shall obtain a mental health assessment and seek appropriate mental health services when resources for mental health assessments and/or services are available internally or through referral at no additional cost to the program. These services shall be provided by a facility or person authorized to provide such services or a qualified professional as described in §448.901 of this chapter (relating to Requirements Applicable to all Treatment Services).

(f) The assessment shall be signed by a QCC and filed in the client record within three individual service days of admission.

(g) The program may accept an evaluation from an outside source if:

(1) it meets the criteria set forth herein;

(2) it was completed during the 30 days preceding admission or is received directly from a facility that is transferring the client; and

(3) a counselor reviews the information with the client and documents an update.

(h) For residential clients, a licensed health professional shall conduct a health assessment of the client's physical health status within 96 hours of admission. The facility may accept a health assessment from an outside source completed no more than 30 days before admission or received directly from a transferring facility. If the client has any physical complaints or indications of medical problems, the client shall be referred to a physician, physician assistant, or nurse practitioner for a history and physical examination. The examination, if needed, shall be completed within a reasonable time frame and the results filed in the client record.

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 I. TREATMENT PROGRAM SERVICES

25 TAC §448.911

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code Chapter 462, which authorizes the Executive Commissioner to adopt rules governing the treatment of persons with chemical dependencies; and Chapter 464, which authorizes the Executive Commissioner to adopt rules governing the organization and structure, policies and procedures, staffing requirements, services, client rights, records, physical plant requirements, and standards for licensed chemical dependency treatment facilities.

§448.911. Treatment Services Provided by Electronic Means.

(a) A licensed treatment program may provide outpatient chemical dependency treatment program services by electronic means provided the criteria outlined in this section are addressed.

(1) Services may be provided to adult and adolescent clients to the extent allowed by the facility's license; and

(2) Services shall be provided by a qualified credentialed counselor (QCC) or by a counselor intern with more than 2,000 hours of supervised work experience who has passed the chemical dependency counselor licensing exam.

(b) All treatment sessions shall have two forms of access control as follows:

(1) all on-line contact between a QCC and clients must begin with a verification of the client through a name, password or pin number; and

(2) security as detailed in the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

(c) A facility must implement adequate security and encryption measures to ensure all patient communications, recordings and records are protected and are in adherence with federal and state privacy laws, including HIPAA and Texas Health and Safety Code Chapters 181, 464, and 466.

(d) Programs shall maintain compliance with HIPAA and Title 42 of the Code of Federal Regulations (CFR) Part 2.

(e) Programs shall not use e-mail communications containing client identifying information.

(f) Programs shall use audio and video in real time.

(g) Programs shall ensure timely access to individuals qualified in the technology as backup for systems problems.

(h) Programs shall develop a contingency plan and maintain alternate means of communication for clients when technical problems occur during the provision of services.

(i) Programs shall provide a description of all services offered.

(j) Programs shall provide develop criteria, in addition to DSM, to assess clients for appropriateness of utilizing electronic services.

(k) Programs shall provide appropriate referrals for clients who do not meet the criteria for services.

(l) Programs shall develop a grievance procedure and provide a link to the Texas Health and Human Services Commission (HHSC) for filing a complaint when using the Internet or HHSC's toll-free number when counseling by telephone.

(m) Prior to clients engaging in Internet services, programs shall describe and provide in writing the potential risks to clients. The risks shall address at a minimum these areas:

- (1) clinical aspects;
- (2) security; and
- (3) confidentiality.

(n) Programs shall create safeguards to ensure adolescents receive treatment services separately from adults and verify a client's identity and the identity of any authorized participant.

(o) Programs shall provide clients with information to access online or a copy of the current version of the following chemical dependency treatment facility (CDTF) rules, statutes, and federal regulations to notify clients of applicable rules and laws regarding CDTFs:

- (1) This chapter;
- (2) Texas Health and Safety Code Chapter 464; and
- (3) 42 CFR Part 2.

(p) Programs shall provide the program's emergency contact information to the client.

(q) Programs shall maintain resource information for the local area of the client.

(r) Programs shall provide reasonable Americans with Disabilities Act of 1990 (ADA) accommodations for clients upon request.

(s) Programs must reside and perform services in Texas.

(t) HHSC maintains the authority to regulate the program regardless of the location of the client.

(u) The facility shall provide the facility's emergency contact information to the client.

(v) The facility shall maintain resource information for the local area of the client.

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

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 353. INTRODUCTORY PROVISIONS

SUBCHAPTER B. EMPLOYMENT PRACTICES

31 TAC §353.32

The Texas Water Development Board (TWDB) adopts amendments to 31 Texas Administrative Code (TAC) §353.32, Sick Leave Pool. The amendments are adopted without changes as published in the December 31, 2021, issue of the *Texas Register* (46 TexReg 9192). The rule will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED AMENDMENTS.

The 87th Texas Legislature enacted House Bill 2063, amending Texas Government Code Chapter 661 to add new Subchapter A-1, State Employee Family Leave Pool. The new legislation requires state agencies to create and administer an employee family leave pool, and to adopt rules and prescribe procedures relating to the operation of the family leave pool.

SECTION BY SECTION DISCUSSION OF ADOPTED AMENDMENTS.

Subchapter B. Employment Practices

Section 353.32. Sick Leave Pool

The section name is amended from Sick Leave Pool to Employee Leave Pools to allow for inclusion of the new employee family leave pool program.

Section 353.32(b)

Section 353.32(b) is added to outline the TWDB family leave pool program and appoint the TWDB Human Resources Director or other employee designated by the Executive Administrator as family leave pool administrator. The amended rule authorizes the family leave pool administrator to prescribe procedures relating to operation of the family leave pool program.

The remaining sections in §353.32 are relettered to accommodate the addition of §353.32(b) and amended to add references to the family leave pool program.

REGULATORY IMPACT ANALYSIS DETERMINATION

TWDB reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the rulemaking is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to outline the TWDB family leave pool program.

Even if the rulemaking was a major environmental rule, Texas Government Code §2001.0225 still would not apply to this rulemaking because Texas Government Code §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or

(4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed a standard set by federal law or any other federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not proposed solely under the general powers of the agency, but rather under Texas Government Code §661.022. Therefore, this rule does not fall under any of the applicability criteria in Texas Government Code §2001.0225.

TAKINGS IMPACT ASSESSMENT

TWDB evaluated this rulemaking and performed an analysis of whether it constitutes a taking under Texas Government Code Chapter 2007. The specific purpose of this rule revision is to outline the TWDB family leave pool program.

TWDB's analysis indicates that Texas Government Code Chapter 2007 does not apply to this rulemaking because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code §2007.003(b)(4). State agencies are required by Texas Government Code §661.002 to adopt rules relating to the operation of agency family leave pool programs.

Nevertheless, TWDB further evaluated this rulemaking and performed an assessment of whether it constitutes a taking under Texas Government Code, Chapter 2007. Promulgation and enforcement of this rule is neither a statutory nor a constitutional taking of private real property. Specifically, the subject regulation does not affect a landowner's rights in private real property because this rulemaking does not burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. Therefore, the amended rule does not constitute a taking under Texas Government Code Chapter 2007.

PUBLIC COMMENTS

The proposed amendments were open for public comment, and the comment period ended on January 31, 2022. No comments were received, and no changes to the proposed amendments have been made.

STATUTORY AUTHORITY

These amendments are adopted under the authority of Texas Government Code §661.022, which requires state agencies to adopt rules and prescribe procedures relating to the operation of the employee family leave pool, and Texas Water Code §6.101, which provides TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State.

Cross reference to Texas Government Code Chapter 661.

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

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 16. PLANNING AND DEVELOPMENT OF TRANSPORTATION PROJECTS

The Texas Department of Transportation (department) adopts amendments to §§16.2, 16.101, 16.105, 16.106, and 16.154, and new §16.161, concerning Planning and Development of Transportation Projects. The amendments to §§16.2, 16.101, 16.105, and 16.154, and new §16.161 are adopted without changes to the proposed text as published in the November 12, 2021, issue of the *Texas Register* (46 TexReg 7742) and will not be republished. Section 16.106 is adopted with non-substantive changes to correct punctuation in the text as published and will be republished.

EXPLANATION OF ADOPTED AMENDMENTS AND NEW SECTION

Amendments to §16.2, Definitions and Acronyms, remove the definition of "Chief Planning and Project Officer" to align with the department's current organizational structure, which no longer uses the position title.

Amendments to §16.101, Transportation Improvement Program (TIP), revise the frequency for required TIP updates to provide alignment with federal regulations. In addition, this change provides the flexibility, at the discretion of the department in coordination with metropolitan planning organizations (MPO), to update the TIP more frequently than once every four years, if needed.

Amendments to §16.105, Unified Transportation Program (UTP), provide clarification and flexibility. Changes to subsection (b) provide clarification that the UTP will be fiscally constrained to the total planning cash flow forecast and will list estimated funding levels and allocation of funds for each year. Additional amendments correct typographical errors to make the term "statewide transportation improvement program" singular.

Amendments to §16.105(d) add new paragraph (3) to clarify that the Texas Transportation Commission (commission) may consider and require other district and MPO category programming when selecting projects for category 12 funding and renumber existing paragraphs accordingly. These revisions align with current expectations for the state and region to partner and work collaboratively to address statewide and regional needs.

Amendments to §16.105(g) revise the description of UTP public meetings and public hearings to reflect the increased usage of online platforms for such an event to reach audiences statewide. The revision also clarifies that the department will present a draft UTP document at the public meeting. To accommodate technol-

ogy changes, the amendments allow for other means for submitting public comments as well as specifying that copies of documents will be made available in districts and the Transportation Planning and Programming Division office in Austin on request. Subsection (h) is amended to provide that copies of the entire approved unified transportation program and other specified documents will be available, on request, in districts and the Transportation Planning and Programming Division office in Austin.

Amendments to §16.106, Major Transportation Projects, modify the criteria used for designating a project as a major transportation project to the criteria specified in 23 U.S.C 106(h). Amendments to subsection (b) clarify that the list of major transportation projects will be updated annually only if new major projects are designated. Amendments to subsection (c) provide flexibility on the level of design required for design-build major projects as prescribed in 43 TAC §9.153.

Amendments to §16.154, Transportation Allocation Funding Formulas, provide several changes for project funding. Subsection (a)(1)(B) is amended to remove the terms "off-system" and "interstate" in the allocation formula for Category 1 Preventive Maintenance and Rehabilitation. Off-system roadways are not eligible for Category 1 funding and should not be considered in the allocation formula. Interstates are included in the rule's reference to "on-system" and the separate reference to interstates is duplicative.

Amendments to §16.154(e) relate to the requirements for listing projects in the published UTP. The revision clarifies which projects, funded through certain categories, must be shown in the list but does not change current practice.

New §16.154(i) defines carryovers in UTP categories. Carryovers of unused fund allocations are based on the previous year's lettings and adjustment and can increase or decrease the available funds for programming projects in the UTP. The previous year's carryovers are not known until the end of the fiscal year closeout process and therefore, are generally not reflected in the UTP allocations. The amendment codifies the current department practice.

New §16.161, Ten-Year Programming Flexibility for Certain Categories, defines the use of 10-year category allocations in certain UTP categories, while adhering to the department's related fiscal constraint requirements. The section provides the department with flexibility to program large mobility projects based on total 10-year allocations or category totals, since the cost of many large projects can exceed the annual amounts allocated in the UTP. This also provides for advance planning opportunities to ensure projects continue with development and are ready to let and adjust to various shifts in planning and scheduling to optimize use of available funds.

COMMENTS

No comments on the proposed amendments and new section were received.

SUBCHAPTER A. GENERAL PROVISIONS

43 TAC §16.2

STATUTORY AUTHORITY

The amendments and new section are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §201.991, which requires the commission to adopt rules

related to the department's unified transportation program and §201.996, which requires the commission to adopt rules that specify the formulas for allocating funds to districts and metropolitan planning organizations.

CROSS REFERENCE TO STATUTE

Transportation Code, §201.991 and §201.996.

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) 463-8630



SUBCHAPTER C. TRANSPORTATION PROGRAMS

43 TAC §§16.101, 16.105, 16.106

STATUTORY AUTHORITY

The amendments and new section are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §201.991, which requires the commission to adopt rules related to the department's unified transportation program and §201.996, which requires the commission to adopt rules that specify the formulas for allocating funds to districts and metropolitan planning organizations.

CROSS REFERENCE TO STATUTE

Transportation Code, §201.991 and §201.996.

§16.106. Major Transportation Projects.

(a) Criteria. For the purposes of this chapter, a major transportation project is the planning, engineering, right of way acquisition, expansion, improvement, addition, or contract maintenance, other than the routine or contracted routine maintenance, of a bridge, highway, toll road, or toll road system on the state highway system that fulfills or satisfies a particular need, concern, or strategy of the department in meeting the transportation goals established under §16.105 of this subchapter (relating to Unified Transportation Program (UTP)). A project may be designated by the department as a major transportation project if it meets the criteria specified in 23 U.S.C. 106(h).

(b) List of projects. The list of major transportation projects, if any new major transportation projects are designated by the department, will be annually updated and incorporated into the unified transportation program in accordance with §16.105 of this subchapter.

(c) Benchmarks. The progress of a major transportation project will be tracked and evaluated in accordance with §16.202 of this chapter (relating to Reporting System for Delivery of Individual Projects) based on benchmarks for planning, implementation, and

construction of the project and timelines developed for that project. The benchmarks will include the:

- (1) environmental clearance issued by the applicable federal or state authority;
 - (2) acquisition or possession of right of way parcels sufficient to proceed to construction in accordance with planned construction phasing;
 - (3) adjustment of utility facilities or coordination of adjustment sufficient to proceed to construction in accordance with planned construction phasing;
 - (4) 100 percent completion of plans, specifications, and estimates or to the level of completion sufficient to proceed with the award of a design-build contract in accordance with §9.153 of this title (relating to Solicitation of Proposals);
 - (5) award of construction contract by the commission; and
 - (6) completion of construction.
- (d) Critical benchmarks.

(1) The first year of the unified transportation program is designated as the implementation phase of the UTP and a major transportation project may be listed in this phase only if the project:

- (A) is listed in the statewide long-range transportation plan and the applicable metropolitan transportation plan; and
- (B) has environmental clearance issued by the applicable federal or state authority.

(2) The executive director may approve an exception to the requirements contained in paragraph (1) of this subsection if:

(A) the project satisfies a time sensitive critical need of the department related to safety, system connectivity, a hurricane evacuation route, reconstruction of a large infrastructure facility, or other similar need; and

(B) there is a reasonable likelihood that environmental clearance for the project will be issued and the other required development benchmarks will be timely accomplished to permit an award of a construction contract within the one year implementation phase of the UTP.

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

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SUBCHAPTER D. TRANSPORTATION FUNDING

43 TAC §16.154, §16.161

STATUTORY AUTHORITY

The amendments and new section are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §201.991, which requires the commission to adopt rules related to the department's unified transportation program and §201.996, which requires the commission to adopt rules that specify the formulas for allocating funds to districts and metropolitan planning organizations.

CROSS REFERENCE TO STATUTE

Transportation Code, §201.991 and §201.996.

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PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 215. MOTOR VEHICLE DISTRIBUTION

INTRODUCTION. The Texas Department of Motor Vehicles (department) adopts amendments to 43 TAC §§215.150, 215.151, 215.153, 215.154, and 215.155 concerning access to the temporary tag database and temporary tag requirements and new 43 TAC §215.505 concerning denial of access to the temporary tag database. The amendments and new section are necessary to implement amended Transportation Code §§503.0626, 503.063, 503.0631, and 503.067, and new §503.0632(f) concerning denial of access to the temporary tag database, management of the temporary tag database, requirements related to the issuance of certain temporary tags without an inspection, and prohibits the display and issuance of unauthorized temporary tags under House Bill (HB) 3927, 87th Legislature, Regular Session (2021).

The department adopts §§215.151, 215.153, and 215.155 without changes to the proposed text as published in the November 12, 2021, issue of the *Texas Register* (46 TexReg 7752); §§215.151, 215.153, and 215.155 will not be republished. The department adopts §§215.150, 215.154, and 215.505 with changes to the proposed text as published in the November 12, 2021, issue of the *Texas Register* (46 TexReg 7752); §§215.150, 215.154, and 215.505 will be republished. Sections 215.150, 215.151, 215.153, 215.154, 215.155, and 215.505 have been adopted for immediate effect.

The department has also adopted amendments to 43 TAC §215.152 and §215.158 concerning maximum temporary tag limits in this issue of the *Texas Register*.

REASONED JUSTIFICATION. House Bill 3927 amended Transportation Code §503.0626 and §503.0631 and adds §503.0632 to provide the department with tools to limit the fraudulent misuse of the temporary tag database. The tools include the authority to deny access to the temporary tag database without having to first revoke the dealer's or converter's license and to establish the maximum number of temporary tags that a dealer or converter may issue. New §215.505 addresses the process for denial of access to the temporary tag database.

In addition, HB 3927 amended Transportation Code §503.0626 and §503.0631 to direct the department to manage the temporary tag database and amended Transportation Code §503.067 to prohibit the display and issuance of unauthorized temporary tags. Amendments to §§215.150, 215.151, 215.153, 215.154, and 215.155 address managing the database and limiting the ability of unauthorized users to obtain and display temporary tags.

Finally, HB 3927 amended Transportation Code §503.063 concerning requirements related to the issuance of buyer's temporary tags to certain vehicles sold out-of-state or at auction without an inspection, which is addressed in amendments to §215.155.

The department met twice with the Motor Vehicle Industry Regulatory Advisory Committee in considering this adoption. The department appreciates the committee member's serious consideration of the issues presented by HB 3927 and the member's comments.

The department published the proposal for comment in the *Texas Register* on November 12, 2021. The department also published proposals for amendments to §215.152 and §215.158 concerning maximum temporary tag limits and 43 TAC §§217.2, 217.4, 217.23, 217.28, 217.36, 217.45, 217.46, and 217.89 concerning the implementation of SB 876. Some commenters chose to make comments on more than one proposal in one submission or not specify the proposal that they were commenting on. The department has considered all timely received comments in respect to the proposal the commenter stated that they were commenting or to which the comment could apply. The department has not excluded any comments because the submission included, referred to, or could apply to multiple proposals.

The following paragraphs address the amendments and new section.

The amendments to §215.150(a) conform to the amendment requirement in Transportation Code §503.067 that temporary tags must be for an authorized purpose. The amendments to §215.150(b) reference that a dealer's or converter's ability to obtain temporary tags is limited by new Transportation Code §503.0632(a-e) concerning maximum tag limits and §503.0632(f) concerning denial of access to the temporary tag database.

New §215.150(d) establishes requirements to manage access to the temporary tag database. The requirements are consistent with Transportation Code §503.0626 and §503.0631 which, as amended, require the department to manage a secure database and support preventing unauthorized access to the database necessary to implement §503.067. The department has amended §215.150(d)(4) in response to comments. The department agrees with the comment that the preprinted tags should be securely stored and later fully destroyed. The provision refers to internet down tags which dealers may obtain in limited numbers under §215.158. Consistent with the commenters suggestions,

the department has changed the text to add to §215.150(d)(4) securing printed tags and destroying expired tags, by means such as storing printed tags in locked areas and shredding or defacing expired tags; as examples of securing and destroying the preprinted tags. Establishing a requirement for a separate secure office space or shredding equipment would be inconsistent with the minimal premises requirements set forth in §215.140(5) and (6), which has not been proposed for amendment.

The amendment to §215.151 adds converters to the procedure for displaying a temporary tag as required by Transportation Code §503.0625.

The amendments to §215.153 are necessary to prevent unauthorized access to temporary tags necessary to implement §503.067. The amendments remove the sample copies of temporary tags from display, because the department is concerned that unauthorized persons may be able to use computer software to manipulate the sample to create a high-quality tag, or at least a better-quality copy of a temporary tag than could be obtained by photography or scanning. Further, having the tags online limit the department's ability to change the design even if requested by law enforcement. As such, the department proposes not to display the design. Law enforcement would be informed of the design and any design changes, and dealers and converters using the database will print the current design for their customers and own needs.

The amendments to §215.154 clarify the use of dealer's tags and support preventing unauthorized access to the database necessary to implement §503.067. The amendment to §215.154(d)(1) adds that designation and informs the reader that Transportation Code §503.062 states the authorized uses of a dealer temporary tag. This avoids the potential incorrect inference that a dealer's tag could be used for any purpose not prohibited in redesignated §215.154(d)(2). The amendments to redesignated §215.154(d)(2)(D) clarify that a dealer's tag cannot be issued for an off-highway vehicle, which are now defined in Transportation Code §551A.001, because off-highway vehicles are not eligible for registration under Transportation Code §502.140. Section 551A.001 defines an off-highway vehicle as an "all-terrain vehicle or recreational off-highway vehicle," a "sand rail," or a "utility vehicle."

The amendments to §215.154(e)(3) update the limitation on use of courtesy cars to the current allowed use. As addressed in the comments, the department has changed the reference to correct a typographical error and conform §215.154(e)(3) with the limitation on metal dealer plates under §215.138(d)(3). Transportation Code §503.068(b)(1) provides that "A person may not use a metal dealer's license plate or dealer's temporary tag on: (1) service or work vehicle, except as provided by Subsection (b-1)." The department has defined "a dealer's service or work vehicle" in §215.138(d)(3) as "a courtesy car on which a courtesy car sign is displayed;" and in §215.154(e)(3) as "a courtesy car," despite the source of the prohibition being the same statute.

As indicated by the commenters, Transportation Code §503.062(b) allows a dealer to use a dealer's temporary tag on a vehicle used by a prospective buyer to operate while the vehicle is being demonstrated, or on a vehicle for a customer to operate while the customer's vehicle is being repaired. These are commonly called "courtesy vehicles," although the actual term is not defined in rule. Thus, §215.154(e)(3) is changed to read "a courtesy car on which a courtesy car sign is displayed," which is consistent with §215.138(d)(3). The change is intended to clarify that a "courtesy car" operating under Transportation

Code §503.062(b) may have a dealer's temporary tag. The change does not add additional costs or requirements or affect persons not on notice of the proposal.

Based on questions from the Regulatory Compliance Division of the Office of the Governor, the department removed the proposed amendment to the reference to §215.153(d)(3) or (4) in §215.155(f). The existing reference to §215.153(d)(3) or (4) was struck because it is a typographical error. The Regulatory Compliance Division requested why the sentence was not parallel to the statement in the preceding sentence. The change is not intended to authorize the issuance of buyer's tags for golf carts or all-terrain vehicles. The matter may be reconsidered in future rulemaking. The change does not add additional costs or requirements or affect persons not on notice of the proposal.

New §215.505 establishes the process for denial of access to the temporary tag database under new Transportation Code §503.0632(f), as added by HB 3927. New §215.505(a) describes the conduct that constitutes "fraudulently obtained temporary tags from the temporary tag database," and is grounds under §503.0632(f), for denial of access to the temporary tag database.

New §215.505(b) has been revised based on comments to remove the 10-day period and begin the denial of access immediately upon sending notice to the license holder. In making this decision, the department has considered that the determination will follow an investigation of the license holder engaging in fraudulently obtaining temporary tags from the database. The investigation will vary depending on the activity involved, if the activity is ongoing, the response of the license holder to department inquiries, and information the license holder has provided the department. The dealer or converter may negotiate with the department during this period. New §215.505(c) provides that the notices will be sent to the dealer's or converter's last known address on the department's records.

New §215.505(d) establishes the appeal process under Subchapter O, Chapter 2301, Occupations Code as required by new §503.0632(f) and HB 3927. The appeal process requires the dealer to submit a request for hearing with the department within 26 days from the date the initial notice is sent to the dealer or converter. Further, as proposed, requesting a hearing will not stay the denial of access.

New §215.505(e) provides that the department may also issue a Notice of Department Decision stating administrative violations as provided in §215.500 concurrently with the notice of denial of access. The subsection is to clarify that the denial of access process based on the department's determination that the dealer or converter has fraudulently obtained temporary tags from the temporary tag database is separate from any administrative action the department may bring against the dealer or converter, even though they may be based on the same facts. New §215.505(f) provides that the denial determination will become final if the dealer or converter does not request a hearing or enter into a settlement agreement with the department within 26 days of the date of the notice denying access to a database.

The department adopts §§215.150, 215.151, 215.153, 215.154, 215.155, and 215.505 for immediate effect to act against continuing temporary tag fraud.

SUMMARY OF COMMENTS.

The department received written comments requesting a change in the proposed text from Senator Bettencourt, Cer-

nose Wrecker/Deer Park Paint & Body, Representative Harris, Representative Hefner, NCTCOG, TADA, TIADA, Vroom, and 27 individual commenters.

General

Comment:

Multiple commenters stated that the purpose of HB 3927 was to aid law enforcement in stopping the fraud without being onerous to legitimate dealers.

Agency Response:

That department agrees with the commenters and has endeavored to implement HB 3927 in that respect to aid law enforcement and the department to work together in stopping the fraud without being onerous to legitimate dealers, including the:

(1) adoption of:

(a) security requirements for managing user access to the temporary tag database in §215.150 as authorized in Transportation Code §503.063;

(b) a denial of access process in §215.505 as authorized under Transportation Code §503.0632(f);

(2) in a separate adoption submitted on this day, the adoption of maximum tag limits in §215.152 in this adoption as authorized under Transportation Code §503.0632(a)-(e) that sets out a formula designed to provide dealers with more tags than they have used in prior fiscal years and not require any additional reporting on behalf of dealers, while preventing criminals from accessing unlimited numbers of tags.

Section 215.150(d)

Comment:

A commenter suggests that each person who has access to the temporary tag database must have and use a unique identification code and password and that a list of all authorized users, including their identification information, be made available to the department.

Agency Response:

The department agrees with the comment and has designed the temporary tag database system to require each person who has access to the temporary tag database to have and use a unique identification code and password and that a list of all authorized users, including their identification information, be made available to the department.

Under law prior to HB 3927, the department was not authorized to deny a dealer or converter access to the temporary tag database. The individuals with access to the temporary database are authorized as sub-users by a license holder. The new denial of access authority under new Transportation Code §503.0362(f) and as implemented in §215.505 will allow the department to take action against criminals engaging in such practices.

Section 215.150(d)

Comment:

A commenter states that the proposed requirements for dealers and converter to securely store and later fully destroy preprinted temporary tags is ambiguous. The commenter suggests adding means to accomplish securing and destroying the tags.

Agency Response:

The department agrees with the comment that the preprinted tags should be securely stored and later fully destroyed. The provision refers to internet down tags which dealers may obtain in limited numbers under §215.158. Consistent with the commenters suggestions the department has changed the text to add to §215.150(d)(4) "securing printed tags and destroying expired tags, by means such as storing printed tags in locked areas and shredding or defacing expired tags;" as examples of securing and destroying the preprinted tags. Establishing a requirement for a separate secure office space or shredding equipment would be inconsistent with the minimal premises requirements set forth in §215.140(5) and (6), which has not been proposed for amendment.

Section 215.150(d)

Comment:

A commenter suggests that the department have and maintain a secure real-time database of information on vehicles which the dealer or converter has issued a temporary tag; and that the department have and maintain a secure real-time database of information on persons whom temporary buyer's tags are issued.

Agency Response:

The department agrees with the comment and has designed the temporary tag database system as a secure real-time database for recording information on vehicles which the dealer or converter has issued a temporary tag, and information on persons whom temporary buyer's tags are issued. The information entered by criminals may, in some respects, be fictitious, including the location of the vehicle, and the name or address of the owner. Transportation Code §503.0362(f) and as implemented in §215.505 will allow the department to take action against criminals engaging in such practices.

Section 215.150(d)

Comment:

A commenter asserts that the department should require license holders to maintain a record of any unauthorized access to the temporary tag database, the details of the issuance of the unauthorized temporary tags, and report such access to the department on a weekly or on occurrence basis, including providing details of immediate corrective actions, and providing information of such activities to the department.

Agency Response:

The department agrees that the dealer has responsibility to monitor access and use of the data base through the license holder's account. The department has authority to deny dealers access to the database and enforcement authority. As such, dealers are encouraged to record any unauthorized access to the database, take immediate action to stop the unauthorized access on their account to the database, and report the activity to the department to reduce fraud and mitigate potential sanctions. The department declines to add a reporting and record keeping requirement, because it could add additional costs and burden legitimate dealers.

Section 215.150(d)

Comment:

A commenter asserts that it is inappropriate to make a dealer or converter responsible for all access to the department's system by unauthorized users, including for breaches of the database that are outside of the license holder's control such as attacks

by hackers. The commenter suggests that the department revise §215.150(d) to read (based on the proposed new text):

"A dealer or converter is responsible for [all] taking reasonable measures to safeguard the use and access to the applicable temporary tag database under the dealer's or converter's account, including access by any user or unauthorized person. Dealer and converter [duties] reasonable measures include, but are not limited to monitoring temporary tag usage, managing account access, and taking timely and appropriate actions to maintain system security, including:"

Alternatively, the commenter suggests just deleting the word "all" from first sentence from the provision.

Agency Response:

The department agrees that internet hacking is a serious matter, and the department has designed and maintains the temporary tag database system to limit that possibility. The department declines to make either of the proposed change because the temporary tag database is a department system and as such the department retains responsibility for overall system security. However, dealers and converters must be responsible for all access to the system under their account as described in the subsection. A dealer operating within its temporary tag allotment will likely be the first to spot excess tag usage and be able to take corrective action by identifying a criminal and notifying the department of a problem.

Section 215.150(d)

Comment:

A commenter suggests adding to §215.152(d)(2), a specific number of authorized sub-users that would have access to the database.

Agency Response:

The department appreciates the comment. The department declines to make the requested change because it was not proposed for comment and may vary based on the dealer or converter, by size type, or another factor unknown to the department. The department will consider the matter for future proposals.

Section 215.150(d)

Comment:

A commenter suggests adding a requirement for the license holder to submit their password policy and provide employment documentation to support all bona fide employees upon the department request.

Agency Response:

The department agrees with the commenters intent but declines to make the requested change. The department will request the information as needed.

Section 215.153

Comment:

Two commenters stated that the department should make it harder to copy or recreate paper temporary tags.

Agency response:

The department appreciates the comment. The department has worked with law enforcement to implement design changes that make the temporary tags harder to copy and recreate. These

rules address efforts to stop actual temporary tags from being issued by a few criminals.

Section 215.154 Courtesy Vehicle

Comment:

Two commenters suggested that the department change or delete the reference to courtesy vehicles because it is incorrect.

Agency Response:

The department agrees and has changed the reference to correct a typographical error and conform §215.154(e)(3) with the limitation on metal dealer plates under §215.138(d)(3). Transportation Code §503.068(b)(1) provides that "A person may not use a metal dealer's license plate or dealer's temporary tag on: (1) service or work vehicle, except as provided by Subsection (b-1)." The department has defined "a dealer's service or work vehicle" in §215.138(d)(3) as "a courtesy car on which a courtesy car sign is displayed;" and in §215.154(e)(3) as "a courtesy car," despite the source of the prohibition being the same statute.

As indicated by the commenters, Transportation Code §503.062(b) allows a dealer to use a dealer's temporary tag on vehicles used by a prospective buyer to operate while the vehicle is being demonstrated, or on a vehicle for a customer to operate while the customer's vehicle is being repaired. These are commonly called "courtesy vehicles," although the actual term is not defined in rule. Thus, §215.15(e)(3) is changed to read "a courtesy car on which a courtesy car sign is displayed," which is consistent with §215.138(d)(3). The change is intended to clarify that a "courtesy car" operating under Transportation Code §503.062(b), may have a dealer's temporary tag. The change does not add additional costs or requirements or affect persons not on notice of the proposal.

Section 215.155 Inspections of out of state vehicles.

Comment:

A commenter stated that HB 3927 added Transportation Code §503.063(i) clarifying that vehicles being sold out-of-state could be issued a temporary buyer's tag without a vehicle inspection.

Agency Response:

The department agrees with the comment. The department did not assert that vehicles being sold out-of-state required an inspection; however, other states may have misinterpreted Texas law. To aid in clarifying the issue the department proposed §215.155(b)(1) to reference the inspection exemption under Transportation Code §503.063(i).

Section 215.505(a)

Comment:

Two commenters raise concerns that the section provides no guidepost with respect to what is an excessive number of temporary tags relative to a dealer's sales. The commenters ask

- (1) is the benchmark twice the number of sales or ten percent;
- (2) is the amount one tag or an amount that is "grossly" excessive;
- (3) and what is an "excessive" number of buyer's temporary tags versus excessive agent's temporary tags versus excessive vehicle specific temporary tags?

Agency Response:

The department appreciates the comments and considers that HB 3927 is meant to aid law enforcement and the department to work together in stopping the fraud without being onerous to legitimate dealers. The department declines to set a threshold number or percentage, because setting a threshold could create a safe harbor for fraudulent activity. Further, denial of access will be based on a department determination. The department will conduct an investigation to reach the determination that the license holder, or sub-user of the license holder, has violated the rule and statute. The investigation will vary depending on the activity involved, if the activity is ongoing, the response of the license holder to department inquiries, and information the license holder has provided the department.

Section 215.505(a)

Comment:

A commenter states that in addition to other elements, fraud carries with it a material misrepresentation that is known to be false or recklessly performed. If the agency infers fraud by an excessive number of temporary tags relative to a dealer's sales, the investigators need markers as well as a specific time period for inferring fraud by what is excessive and for what time period as well as which type of temporary tag.

Agency Response:

The department appreciates the comments and repeats its response made to the prior comment. House Bill 3927 is meant to aid law enforcement and the department to work together in stopping temporary tag fraud without being onerous to legitimate dealers. The department declines to set a number, percentage, or time period, because setting a threshold could create a safe harbor for fraudulent activity. Again, a determination would follow a department investigation.

Section 215.505(a)

Comment:

A commenter is concerned that a vehicle may be in the dealer's inventory at the time the temporary tag is printed; however, the sale may be rescinded or the vehicle may be dealer-traded so that in neither scenario is the vehicle listed on the "Dealer's Motor Vehicle Inventory Tax Statement."

Agency Response:

The department appreciates the comment. The presumption that if a vehicle is not in a dealer's inventory is rebuttable; if the dealer provides documentation of a sale to another dealer or other evidence that the vehicle was otherwise in the dealer's inventory then the dealer would not be in violation of the rule for that sale. Again, a determination would follow a department investigation.

Section 215.505(a)

Comment:

A commenter is concerned that with respect to a fictitious user or person using a false identity, if a system is compromised by cyberattack or a virus, this scenario may be outside of the control of the licensee and the licensee will not have made a material misrepresentation that is known to be false or recklessly performed.

Agency Response:

The department appreciates the comment. The department disagrees with the commenters reading of text which is "a dealer or converter account user misusing the temporary tag database au-

thorized under Transportation Code §503.0626 or §503.06321 to obtain: (3) access to the temporary tag database for a fictitious user or person using a false identity." In the case of a true hacker, the license holder would not be using the account to obtain access for the fictitious user. Determining the nature of the event though would be a question of fact, including how the fictitious user was authorized to act under the license holder's account to access the system and the license holder's actions after discovering the fictitious user. For example, did the license holder discontinue the fictitious user's access permissions, and when. Again, a determination would follow a department investigation.

Section 215.505(c)

Comment:

A commenter asserts that it should be the license holder's responsibility to provide the department with the license holder's current contact information.

Agency Response:

The department appreciates the comment. Transportation Code §503.006 and §215.141(b)(7) require a license holder to maintain a current address with the department.

Section 215.505(b) and (d)

Comment:

Two commenters assert that the department should immediately deny access to a dealer or converter that has been determined to be inappropriately using the temporary tag database, and not provide criminals the ability to continue to issue tags for an additional 10 days.

Agency Response:

The department agrees with the comment and has revised §215.505 to remove the 10-day period and begin the denial of access immediately upon sending notice to the license holder. In making this decision, the department has considered that the determination will follow an investigation of the license holder engaging in fraudulently obtaining temporary tags from the database. The investigation will vary depending on the activity involved, its continuing occurrence, the response of the license holder to department inquiries, and information the license holder has provided the department.

Section 215.505(d) and (f)

Comment:

A commenter suggests decreasing the time for a license holder to file an appeal from 26 to 14 calendar days, because 14 days should be enough time for a dealer or converter to respond to an urgent matter.

Agency Response:

The department appreciates the comment but declines to make a change based on the comment. The 26-calendar day period is a standard time for filing an appeal with the State Office of Administrative Hearings (SOAH) under other rules such as §.217.500 and allows the license holder and department additional time to reach a solution, if possible, prior to engaging in the appeal process. The license holder will continue to be denied access to the temporary tag database for the 26-day period and a subsequent appeal.

Section 215.505(g)

Comment:

Three commenters stated that the department should do on-site visits of every dealer or converter before issuing a license or allowing them access to the temporary tag system.

One of the commenters further suggested the following additional language be added to §215.505:

Due to the magnitude of the abuse of the temporary tag program, in order to determine the number of temporary tags that will be available to the dealer or converter on an annual basis, any and all dealers and converters shall be assessed on the following criteria through an on-location visit by DMV personnel:

(1) the dealer 's or converter's:

(A) time in operation;

(B) sales data; and

(C) expected growth;

(2) expected changes in the dealer 's or converter 's market;

(3) temporary conditions that may affect sales by the dealer or converter;

(4) the size and actual inspection of the physical location of the dealer or converter; and

(5) any other information the department considers relevant.

Agency Response:

The department appreciates the comment and has attempted to implement the statutory items set out in the comment in this adoption. This comment has also been addressed in the department's separate adoption of maximum temporary tag limit rules. The department is further evaluating the benefit of site visits versus the cost and burden to the 20,000 legitimate dealers in this state and the department. Because site visits were not addressed in the proposal for public comment, the department declines to add them to this adoption; however, they may be considered in future proposals.

The following comments are not associated with a particular section of the proposal

Comment:

Six commenters stated that dealers should not be allowed to issue excessive numbers of temporary tags.

Agency response:

The department agrees with the comments and has adopted rules to implement HB 3927 both with regards to maximum tag limits to prevent criminals from having access to unlimited numbers of temporary tags and to denial of access for criminals that try to engage in selling temporary tags.

Comment:

Fifteen commenters stated that the issuance of fraudulent temporary tags harms this state and drivers and law enforcement officers in Texas and other states. The commenters stated that vehicles in violation of licensing and registration laws can result in numerous costs to the state and private citizens, including risks to law enforcement at traffic stops with potential criminals, higher insurance rates, accidents where losses aren't covered due to uninsured drivers, lost taxes and fees to the state, lost and increasing toll fees, and higher pollution levels.

Agency response:

The department agrees with the comments and has adopted rules to implement HB 3927 both with regards to maximum tag limits to prevent criminals from having access to unlimited numbers of temporary tags and denial of access for any that still try to engage in selling temporary tags.

Comment:

Five commenters recommended that the department should require fingerprinting and background checks for all users of the temporary tag database.

Agency response:

The department appreciates these comments. The department is evaluating fingerprinting and other means and may present these actions in future proposals; however, the request goes beyond the scope of this proposal.

Comment:

Five commenters recommended that the department cease issuing paper tags.

Agency response:

The department appreciates the comment. The use of paper tags is required by statute and is an effective low-cost means of facilitating the millions of dealer and converter sales transactions that occur annually in the state. The legislature enacted HB 3927 which is being implemented by the department to combat the few criminals that have sought to exploit the system.

Comment:

Four commenters asserted that the department should do more to take action against drivers who operate their vehicle with expired or illegible paper plates.

Agency response:

The department appreciates the comment. The department is not a criminal law enforcement agency and is limited to the authorized actions that the legislature has provide it under statute.

Comment:

Two commenters asserted the department should do more to stop the sale of fraudulent temporary tags on social media and prosecute both the people that are advertising on social media and the social media sites themselves.

Agency response:

The department appreciates the comment. The department is not a criminal law enforcement agency. The department has acted to notify social media sites of the activity when it is discovered; however, even if a site is removed it may appear again.

Comment:

Two commenters recommended that the department deter the use of fraudulent tags by enlisting citizens to assist with finding the fraudulent sellers and create a system for people to report violations they witness.

Agency response:

The department appreciates the comment. The department is not a criminal law enforcement agency.

Comment:

Two commenters asserted that the department needs to process title applications faster and eliminate its backlog.

Agency Response:

The department appreciates the comment. The department is not currently experiencing a backlog of title applications. All title applications received by the department are being processed within five days of receipt, in accordance with Transportation Code §501.027.

Comment:

An individual commenter asserted that dealers should not be able to sell a vehicle until the dealer possess the title.

Agency response:

The department appreciates the comment. Under Transportation Code §503.038, the department may take administrative action against a dealer that "fails to take assignment of any basic evidence of ownership, including a certificate of title or manufacturer's certificate, for a vehicle the dealer acquires."

Comment:

An individual commenter asserted that title applications should be executed on the date of the sale.

Agency Response:

The department appreciates the comment. The titling process involves multiple entities, including the seller, the buyer, the department, and the county tax assessor-collectors, who complete different steps. Multiple statutes address the length of time each entity has to complete specific steps. Specifically, Transportation Code §501.023 states the county tax assessor-collector has 72 hours after receipt to send its application to the department; Transportation Code §501.027 gives the department five days after the receipt of the application to make its determination. The department is not able to change statute by rule.

Comment:

An individual commenter recommended that the department require a dealer to be in possession of the vehicle to issue a temporary tag to the vehicle.

Agency Response:

The department appreciates the comment. The existing rule in Title 43 Texas Administrative Code §215.151 requires the dealer to secure the temporary tag to the vehicle. This requirement is not being removed by this adoption.

Comment:

An individual commenter recommended that the department require dealers and converters to renew their licenses annually.

Agency response:

The department appreciates the comment. The license term is set by statute and cannot be altered by rule.

Comment:

An individual commenter recommended that the department track how many paper plates are issued by each dealer and converter.

Agency response:

The department appreciates the comment. The department's system tracks the number of plates issued by each dealer and converter. Prior to the enactment of HB 3927, statute did not allow the department to limit or deny a dealer's or converter's

access to the database unless the license was revoked which is a long process.

Comment:

An individual commenter recommended that the department require buyers of vehicles go in-person to their TxDMV Regional Service Center to receive a temporary tag.

Agency response:

The department appreciates the comment. The use of paper tags is required by statute and is an effective low-cost means of facilitating the millions of dealer and converter sales transactions that occur annually in the state.

Comment:

An individual commenter asserted that the department should not allow small dealerships to issue paper tags; instead, people who purchase from small dealerships should be required to get their paper tags from TxDMV.

Agency response:

The department appreciates the comment. The department disagrees that creating barriers for the thousands of small dealerships in this state to prevent a few criminals is an appropriate response, and declines to make a change based on this comment.

Comment:

An individual commenter recommended that the department immediately revoke access to the temporary tag database for any dealer that duplicates a paper tag.

Agency response:

The department appreciates the comment. The department's denial of access rules in §215.505 under HB 3927 will allow for this. Prior to the enactment of HB 3927, statute did not allow the department to limit or deny or limit a dealer's or converter's access to the database unless the license was revoked which is a long process.

Comment:

An individual commenter recommended that the department and county tax assessor-collector should promptly complete their reviews of sale information before the department issues a temporary tag to a vehicle.

Agency Response:

The department appreciates the comment. The complete sales transaction that is processed by a dealer or converter, the county tax assessor-collector, and the department, can be complex with all information not being available for several weeks after the customer has purchased the vehicle.

Comment:

An individual commenter stated that license plates should be issued to the person and transferrable between cars; when the person sells the vehicle, they should keep the plate and use it on any vehicle the person subsequently purchases.

Agency response:

The department appreciates the comment. The department notes that new vehicles do not have license plates and some used vehicles have missing or used license plates. Also, the license plate relates to the prior owner, which may cause confu-

sion for law enforcement and other agencies and unwarranted burdens for the new owner.

Comment:

An individual commenter recommended that the department require buyers to purchase an insurance policy that is effect for the 60 days the temporary tag is in effect, to provide financial responsibility.

Agency Response:

The department appreciates the comment. Owners are required by statute to comply with motor vehicle financial responsibility laws at all times. The department cannot change statute by rule.

Comment:

An individual commenter recommended that the department include the dealer's phone number on the temporary tag.

Agency Response:

The department appreciates the comment. The department will consider the comment in future updates to temporary tags.

SUBCHAPTER E. GENERAL DISTINGUISHING NUMBERS

43 TAC §§215.150, 215.151, 215.153 - 215.155

STATUTORY AUTHORITY. The department adopts amendments to §§215.150, 215.151, 215.153, 215.154, and 215.155, and new §215.505 under Occupations Code §2301.705 and Transportation Code §§503.002, 503.0626, 503.0631, and 1002.001.

-Occupations Code §2301.705 provides that notice of a hearing involving a license holder must be given in accordance with Chapter 2301 and board rules.

-Transportation Code §503.002 authorizes the department to adopt rules to administer Transportation Code Chapter 503.

-Transportation Code §503.0626(d) authorizes the department to adopt rules and prescribe procedures as necessary to implement §503.0626.

-Transportation Code §503.0631(e) authorizes the department to adopt rules and prescribe procedures as necessary to implement §503.0631.

-Transportation Code §1002.001 authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. Transportation Code §§503.0626, 503.063, 503.0631, 503.0632, and 503.067.

§215.150. *Authorization to Issue Temporary Tags.*

(a) A dealer that holds a GDN may issue a dealer's temporary tag, buyer's temporary tag, or a preprinted Internet-down temporary tag for authorized purposes only for each type of vehicle the dealer is licensed to sell. A converter that holds a converter's license under Occupations Code, Chapter 2301 may issue a converter's temporary tag for authorized purposes only.

(b) A license holder may issue an applicable dealer's temporary tag, buyer's temporary tag, or converter's temporary tag until:

(1) the department denies access to the temporary tag database under Transportation Code §503.0632(f) and §215.505 of this title (relating to Denial of Dealer or Converter Access to Temporary Tag System);

(2) the license holder issues the maximum number of temporary tags authorized under Transportation Code §503.0632(a)-(d); or

(3) the license is canceled, revoked, or suspended.

(c) A federal, state, or local governmental agency that is exempt under Section 503.024 from the requirement to obtain a dealer general distinguishing number may issue one temporary buyer's tag, or one preprinted Internet-down temporary tag, in accordance with Transportation Code §503.063. A governmental agency that issues a temporary buyer's tag, or preprinted Internet-down temporary tag, under this subsection:

(1) is subject to the provisions of Transportation Code §503.0631 and §503.067 applicable to a dealer; and

(2) is not required to charge the registration fee under Transportation Code §503.063(g).

(d) A dealer or converter is responsible for all use of and access to the applicable temporary tag database under the dealer's or converter's account, including access by any user or unauthorized person. Dealer and converter duties include monitoring temporary tag usage, managing account access, and taking timely and appropriate actions to maintain system security, including:

(1) establishing and following reasonable password policies, including preventing the sharing of passwords;

(2) limiting authorized users to owners and bona fide employees with a business need to access the database;

(3) removing users who no longer have a legitimate business need to access the system;

(4) securing printed tags and destroying expired tags, by means such as storing printed tags in locked areas and shredding or defacing expired tags; and

(5) securing equipment used to access the temporary tag database and print temporary tags.

§215.154. Dealer's Temporary Tags.

(a) A dealer's temporary tag may be displayed only on the type of vehicle for which the GDN is issued and for which the dealer is licensed by the department to sell.

(b) A wholesale motor vehicle auction license holder that also holds a dealer GDN may display a dealer's temporary tag on a vehicle that is being transported to or from the licensed auction location.

(c) When an unregistered vehicle is sold to another dealer, the selling dealer shall remove the selling dealer's temporary tag. The purchasing dealer may display its dealer temporary tag or its metal dealer's license plate on the vehicle.

(d) A dealer's temporary tag:

(1) may be displayed on a vehicle only as authorized in Transportation Code §503.062; and

(2) may not be displayed on:

(A) a laden commercial vehicle being operated or moved on the public streets or highways;

(B) on the dealer's service or work vehicles;

(C) a golf cart as defined under Transportation Code Chapter 551; or

(D) an off-highway vehicle as defined under Transportation Code Chapter 551A.

(e) For purposes of this section, a dealer's service or work vehicle includes:

(1) a vehicle used for towing or transporting other vehicles;

(2) a vehicle, including a light truck, used in connection with the operation of the dealer's shops or parts department;

(3) a courtesy car on which a courtesy car sign is displayed;

(4) a rental or lease vehicle; and

(5) any boat trailer owned by a dealer or manufacturer that is used to transport more than one boat.

(f) For purposes of subsection (d) of this section, a vehicle bearing a dealer's temporary tag is not considered a laden commercial vehicle when the vehicle is:

(1) towing another vehicle bearing the same dealer's temporary tags; and

(2) both vehicles are being conveyed from the dealer's place of business to a licensed wholesale motor vehicle auction or from a licensed wholesale motor vehicle auction to the dealer's place of business.

(g) As used in this section, "light truck" has the meaning assigned by Transportation Code, §541.201.

(h) A dealer's temporary tag may not be used to operate a vehicle for the personal use of a dealer or a dealer's employee.

(i) A dealer's temporary tag must show its expiration date, which must not exceed 60 days after the date the temporary tag was issued.

(j) A dealer's temporary tag may be issued by a dealer to a specific motor vehicle in the dealer's inventory or to a dealer's agent who is authorized to operate a motor vehicle owned by the dealer.

(k) A dealer that issues a dealer's temporary tag to a specific vehicle must ensure that the following information is placed on the temporary tag:

(1) the vehicle-specific number from the temporary tag database;

(2) the year and make of the vehicle;

(3) the VIN of the vehicle;

(4) the month, day, and year of the temporary tag's expiration; and

(5) the name of the dealer.

(l) A dealer that issues a dealer's temporary tag to an agent must ensure that the following information is placed on the temporary tag:

(1) the specific number from the temporary tag database;

(2) the month, day, and year of the temporary tag's expiration; and

(3) the name of the dealer.

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 January 27, 2022.

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Texas Department of Motor Vehicles
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Proposal publication date: November 12, 2021
For further information, please call: (512) 465-4209



SUBCHAPTER J. ADMINISTRATIVE SANCTIONS

43 TAC §215.505

STATUTORY AUTHORITY. The department adopts amendments to §§215.150, 215.151, 215.153, 215.154, and 215.155, and new §215.505 under Occupations Code §2301.705 and Transportation Code §§503.002, 503.0626, 503.0631, and 1002.001.

-Occupations Code §2301.705 provides that notice of a hearing involving a license holder must be given in accordance with Chapter 2301 and board rules.

-Transportation Code §503.002 authorizes the department to adopt rules to administer Transportation Code Chapter 503.

-Transportation Code §503.0626(d) authorizes the department to adopt rules and prescribe procedures as necessary to implement §503.0626.

-Transportation Code §503.0631(e) authorizes the department to adopt rules and prescribe procedures as necessary to implement §503.0631.

-Transportation Code §1002.001 authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. Transportation Code §§503.0626, 503.063, 503.0631, 503.0632, and 503.067.

§215.505. *Denial of Dealer or Converter Access to Temporary Tag System.*

(a) In this section "fraudulently obtained temporary tags from the temporary tag database" means a dealer or converter account user misusing the temporary tag database authorized under Transportation Code §503.0626 or §503.06321 to obtain:

(1) an excessive number of temporary tags relative to dealer sales;

(2) temporary tags for a vehicle or vehicles not in the dealer's or converter's inventory a vehicle is presumed not to be in the dealer's or converter's inventory if the vehicle is not listed in the relevant monthly Vehicle Inventory Tax Statement; and

(3) access to the temporary tag database for a fictitious user or person using a false identity.

(b) The department shall deny a dealer or converter access to the temporary tag database effective on the date the department sends notice electronically and by certified mail to the dealer or converter that the department has determined, directly or through an account user, the dealer or converter has fraudulently obtained temporary tags from the temporary tag database. A dealer or converter may seek a negotiated resolution with the department by demonstrating corrective actions taken or that the department's determination was incorrect.

(c) Notice shall be sent to the dealer's or converter's last known email and mailing address in the department's records.

(d) A dealer or converter may request a hearing on the denial as provided by Subchapter O, Chapter 2301, Occupations Code. The request must be submitted in writing and request a hearing under this section. The department must receive a written request for a hearing within 26 days of the date of the notice denying access to the database. The request for a hearing does not stay the denial of access under subsection (b) of this section. A dealer may continue to seek a negotiated resolution with the department after a request for hearing has been submitted under this subsection by demonstrating corrective actions taken or that the department's determination was incorrect.

(e) The department may also issue a Notice of Department Decision stating administrative violations as provided in §215.500 concurrently with the notice of denial of access under this section. A Notice of Department Decision may include notice of any violation, including a violation listed under subsection (a) of this section.

(f) A department determination and action denying access to the temporary tag database becomes final if the dealer or converter does not request a hearing or enter into a settlement agreement with the department within 26 days of the date of the notice denying access to a database.

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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