

PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 26. POLITICAL AND LEGISLATIVE ADVERTISING

1 TAC §26.1

The Texas Ethics Commission (the TEC) proposes an amendment to Texas Ethics Commission Rules in Chapter 26 (relating to Political and Legislative Advertising). Specifically, the TEC proposes an amendment to §26.1 regarding Disclosure Statement.

State law requires state agencies to "review and consider for re-adoption each of its rules ... not later than the fourth anniversary of the date on which the rule takes effect and every four years after that date." Tex. Gov't Code §2001.039. The law further requires agencies to "re-adopt, re-adopt with amendments, or repeal a rule as the result of reviewing the rule under this section." *Id.*

The TEC is continuing its comprehensive review with a review of the TEC's rules regarding political and legislative advertising, which are codified in Chapter 26.

Amanda Arriaga, General Counsel, has determined that for the first five-year period the proposed amended rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amended rule.

The General Counsel has also determined that for each year of the first five years the proposed amended rule is in effect, the public benefit will be consistency and clarity in the Commission's rules regarding political and legislative advertising. There will not be an effect on small businesses, microbusinesses or rural communities. There is no anticipated economic cost to persons who are required to comply with the proposed amended rule.

The General Counsel has determined that during the first five years that the proposed amended rule is in effect, it will not: create or eliminate a government program; require the creation of new employee positions or the elimination of existing employee positions; require an increase in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; expand, limit, or repeal an existing regulation; create a new regulation; increase or decrease the number of individuals subject to the rules' applicability; or positively or adversely affect this state's economy.

The Commission invites comments on the proposed amended rule from any member of the public. A written statement should

be emailed to public_comment@ethics.state.tx.us, or mailed or delivered to James Tinley, Executive Director, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070. A person who wants to offer spoken comments to the Commission concerning the proposed amended rule may do so at any Commission meeting during the agenda item relating to the proposed amended rule. Information concerning the date, time, and location of Commission meetings is available by telephoning (512) 463-5800 or on the Commission's website at www.ethics.state.tx.us.

The amended rule is proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed amended rule affects Chapter 255 of the Election Code.

§26.1. Disclosure Statement.

(a) A disclosure statement that is required by §255.001, Election Code[; must contain the words "political advertising" or any recognizable abbreviation; and] must:

(1) appear on one line of text or on successive lines of text on the face of the political advertising; or

(2) be clearly spoken in the political advertising if the political advertising does not include written text.

(b) A disclosure statement is not required on political advertising printed on letterhead stationery if the letterhead contains the full name of one of the following:

(1) the person who paid for the political advertising;

(2) the political committee authorizing the political advertising; or

(3) the candidate authorizing the political advertising.

(c) A disclosure statement is not required on:

(1) campaign buttons, pins, or hats, or on objects whose size makes printing the disclosure impractical;

(2) political advertising posted or re-posted on an Internet website, as long as the person posting or re-posting the political advertising:

(A) is not an officeholder, candidate, or political committee;

(B) did not make an expenditure exceeding \$100 in a reporting period for political advertising beyond the basic cost of hardware messaging software and bandwidth; and

(C) did not post or re-post the political advertising in return for consideration.

(3) the Internet social media profile webpage of a candidate or officeholder, provided the webpage clearly and conspicuously displays the full name of the candidate or officeholder; or

(4) political advertising posted or re-posted by a person on an Internet website, provided the advertising is posted with a link to a publicly viewable Internet webpage that:

(A) contains the disclosure statement; or

(B) is exempt from containing the disclosure statement under Subsection (c)(3).

(d) For the purposes of Subsection (c), an "Internet social media profile webpage" is an Internet webpage on a website where members of the public may, for no charge, connect electronically with other members of the public and share text, images, videos, and similar forms of communications.

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

Filed with the Office of the Secretary of State on March 20, 2026.

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Texas Ethics Commission

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For further information, please call: (512) 463-5800



PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 353. MEDICAID MANAGED CARE SUBCHAPTER J. OUTPATIENT PHARMACY SERVICES

1 TAC §353.903, §353.907

The executive commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §353.903, concerning Definitions; and §353.907, concerning Prior Authorization Requirements.

BACKGROUND AND PURPOSE

Previous HHSC rule amendments in the Vendor Drug Program (VDP) implemented portions of House Bill (HB) 3286, 88th Legislature Regular Session, 2023, and became effective in November 2024. These amendments elaborated on existing Preferred Drug List (PDL) exceptions regarding when a non-preferred drug can be used and added new PDL exceptions.

The purpose of this proposal is to implement the portion of HB 3286 that amended Texas Government Code §531.072 by adding subsection (h). However, effective September 1, 2025, Texas Government Code §531.072(h), was transferred to Texas Government Code, Chapter 549, and redesignated as §549.0209, as a result of HB 1620, 89th Legislature Regular Session, 2025.

Therefore, this proposal implements Texas Government Code §549.0209, that requires HHSC to: (1) grant temporary non-preferred (TNP) status to new drugs that are available on the Medicaid formulary but have not been reviewed by the Drug Utilization Review Board (DURB); and (2) establish criteria for authorizing drugs with this status. This change required HHSC to submit a Medicaid State Plan Amendment (SPA) to the Centers for Medicare & Medicaid Services (CMS), which was approved on August 29, 2024. The proposed amendments in Texas Administrative Code (TAC), Title 1, §353.903 and §353.907 address these requirements for managed care, defines TNP drugs and revises existing term definitions, and provides clarifications on application of PDL prior authorization to TNP drugs.

The amendments establish a new TNP status for drugs that are new to the market added to the VDP formulary that have not yet been reviewed by the DURB. This status will apply to new-to-market drugs upon addition to the Texas Medicaid formulary if they fall into an existing PDL class. These drugs will remain temporary non-preferred until reviewed and recommended by the DURB as preferred or non-preferred and approved by the Executive Commissioner.

TNP status does not apply to existing PDL drugs with new label indications. The proposed amendments will require a health care managed care organization (health care MCO) to have a temporary non-preferred drug list prior authorization for coverage.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §353.903 adds a definition of "temporary non-preferred drug," defined as a covered outpatient drug that the DURB has not yet reviewed and recommended as preferred or non-preferred and not yet approved by the Executive Commissioner. The definition of "Preferred drug list" (PDL) is revised to mean the list of covered outpatient drugs defined in proposed §353.903 as a non-preferred drug, preferred drug, or temporary non-preferred drug. The definition of "Preferred drug list prior authorization" (PDL PA) is revised to mean a review a health care MCO does before a network provider can give a non-preferred drug or a temporary non-preferred drug to a member. This change in the definition of PDL PA adds the new term "temporary non-preferred drug" as a type of drug that requires a PDL PA. The definitions of "non-preferred drug" and "preferred drug" are revised to include clarification on the drug designation process.

The proposed amendment to §353.907 establishes that a health care MCO may require a PDL PA for a temporary non-preferred drug. The amendment prohibits a health care MCO from requiring a PDL PA for a covered outpatient drug that was prescribed for a member before the date HHSC decides the drug is non-preferred or temporary non-preferred. The amendment also makes several editorial changes throughout §353.907 to improve the clarity of the rules.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because the proposed rules do not apply to small or micro-businesses, or rural communities.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

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

PUBLIC BENEFIT AND COSTS

Emily Zalkovsky, State Medicaid Director, has determined that for each year of the first five years the rules are in effect, the rules will benefit people who receive Medicaid by allowing access to additional medications that have not yet been reviewed by the DURB. In addition, potential confusion is eliminated for stakeholders by aligning the rules with the Texas Government Code.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because the TNP status does not impact the amount a provider is reimbursed for the drugs and there are no copays for people on Texas Medicaid.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal, including information related to the cost, benefit, or effect of the proposed rule, as well as any applicable data, research, or analysis, may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4601 West Guadalupe Street, Austin, Texas 78751; or emailed to HHRulesCoordinationOffice@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Com-

ments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 25R014" in the subject line.

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, and Texas Human Resources Code §32.021 which authorize HHSC to administer the federal medical assistance (Medicaid) program; and Texas Government Code §540.0051, which authorizes HHSC to implement the Medicaid managed care program.

The amendments affect Texas Government Code §524.0151 and §549.0202 and Texas Human Resources Code §32.021.

§353.903. Definitions.

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

(1) Clinical prior authorization (clinical PA)--A health care managed care organization (MCO) must review and approve certain drugs before a pharmacy can dispense the drug to a Medicaid member. HHSC decides which drugs need clinical prior authorization, and this information is found on the HHSC Medicaid Vendor Drug Program website. [A review process authorized by HHSC that is conducted by a healthcare managed care organization (health care MCO) prior to dispensing a drug. All clinical PAs must be identified on the Medicaid Vendor Drug Program website at <http://www.txvendordrug.com>.]

(2) Covered outpatient drug--A drug or biological product included on the formulary that a network provider can provide to a Medicaid member [and provided] in an outpatient setting.

(3) Formulary--The list of covered outpatient drugs for the Texas Medicaid program.

(4) Maximum allowable cost--The highest unit price set by a health care MCO, or its subcontractor, for reimbursement of therapeutically equivalent multi-source drugs.

(5) Network provider--A pharmacy provider who has entered into a contract with the health care MCO to provide outpatient drug benefits to Medicaid enrollees.

(6) Non-preferred drug--A covered outpatient drug on the preferred drug list (PDL) that has been:

(A) reviewed and recommended by the Drug Utilization Review Board (DUR Board);

(B) approved by the Executive Commissioner; and

(C) designated by HHSC as non-preferred on the preferred drug list.

(7) Pharmacy benefits manager (PBM)--An entity that administers the Medicaid outpatient drug benefit on behalf of a health care MCO.

(8) Preferred drug--A covered outpatient drug on the preferred drug list [PDL] that has been:

(A) reviewed and evaluated for safety, clinical effectiveness, and cost-effectiveness compared to other drugs in the same therapeutic drug class on the market, and recommended by the DUR Board;

(B) approved by the Executive Commissioner; and

(C) designated by HHSC as preferred on the preferred drug list [because it has been evaluated to be safe, clinically effective, and cost-effective compared to other drugs in the same therapeutic drug class on the market].

(9) Preferred drug list (PDL)--The list of covered outpatient drugs defined in this section as a:

(A) non-preferred drug;

(B) preferred drug; or

(C) temporary non-preferred drug. [reviewed by the Drug Utilization Review Board (DUR Board). Reviewed drugs are recommended by the DUR Board as either preferred or non-preferred and HHSC establishes the final designation.]

(10) Preferred drug list prior authorization (PDL PA)--A review a health care MCO does before a pharmacy can dispense [conducted by a health care MCO prior to dispensing] a non-preferred drug or a temporary non-preferred drug to a Medicaid member in an outpatient setting.

(11) Temporary non-preferred drug--A covered outpatient drug on the PDL:

(A) that the DUR Board has not yet reviewed;

(B) the Executive Commissioner has not approved; and

(C) that has not been designated by HHSC as preferred or non-preferred.

§353.907. *Prior Authorization Requirements.*

(a) Except for a temporary non-preferred drug, a [A] health care managed care organization (health care MCO) may not require [impose] a preferred drug list prior authorization (PDL PA) for [on] a covered outpatient drug until HHSC designates the drug as non-preferred. [before the drug has been considered at a meeting of the Health and Human Services Commission's (HHSC's) Drug Utilization Review Board.]

(b) A health care MCO may not require [impose] a PDL PA for [on] a covered outpatient drug that was prescribed for a member before HHSC decides the drug is non-preferred or temporary non-preferred, unless the member has used up the whole prescription, [HHSC's designation of the drug as non-preferred, unless the member has exhausted all of the prescription,] including any authorized refills.

(c) A health care MCO must allow a network provider to submit a request for prior authorization for [of] a covered outpatient drug by telephone, fax, or [electronic communications] through the Internet.

(d) A health care MCO must respond to a request for prior authorization by telephone, fax, or [electronic communications] through the Internet no later than 24 hours after the MCO receives [receiving] the request. If the health care MCO cannot respond to the prior authorization request within this time, then the health care MCO must allow a pharmacy to dispense a 72-hour supply of the prescribed drug.

(e) A health care MCO must not [cannot] require a PDL PA for a preferred drug.

(f) A health care MCO must require a PDL PA for a non-preferred drug or a temporary non-preferred drug.

(g) If a member's medical condition does not match the health care MCO's clinical criteria for dispensing a covered outpatient drug, the health care MCO may require a clinical PA for a preferred, [or] non-preferred, or temporary non-preferred drug [drug].

(h) [HHSC will post on its website clinical PAs that are used in HHSC's fee-for-service Vendor Drug Program.] A health care MCO must implement all clinical PAs that HHSC designates [has designated] as "mandatory" for [the] Medicaid managed care programs.

(i) A health care MCO must accept a standard prior authorization form for a covered outpatient drug in accordance with Texas Insurance Code Chapter 1369, Subchapter F.

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

Filed with the Office of the Secretary of State on March 20, 2026.

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Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: May 3, 2026

For further information, please call: (512) 289-2482

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CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER F. PHARMACY SERVICES

DIVISION 7. TEXAS DRUG CODE

INDEX--ADDITIONS, RETENTIONS, AND DELETIONS

1 TAC §354.1924

The executive commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §354.1924, concerning Preferred Drug List.

BACKGROUND AND PURPOSE

Previous HHSC rule amendments in the Vendor Drug Program (VDP) implemented portions of House Bill (HB) 3286, 88th Legislature Regular Session, 2023, and became effective in November 2024. These amendments elaborated on existing Preferred Drug List (PDL) exceptions regarding when a non-preferred drug can be used and added new PDL exceptions.

The purpose of this proposal is to implement the portion of HB 3286 that amended Texas Government Code §531.072 by adding subsection (h). However, effective September 1, 2025, Texas Government Code §531.072(h), was transferred to Texas Government Code, Chapter 549, and redesignated as §549.0209, as a result of HB 1620, 89th Legislature Regular Session, 2025.

Therefore, this proposal implements Texas Government Code §549.0209, that requires HHSC to: (1) grant temporary non-preferred (TNP) status to new drugs that are available on the Medicaid formulary but have not been reviewed by the Drug Utilization Review Board (DURB); and (2) establish criteria for authorizing drugs with this status. This change required HHSC to submit a Medicaid State Plan Amendment (SPA) to the Centers for Medi-

care & Medicaid Services (CMS), which was approved on August 29, 2024.

The proposed amendment to 1 Texas Administrative Code §354.1924 clarifies criteria HHSC uses to include a drug on the Texas Drug Code Index (TDCI) in the PDL. The rule amendment defines the term "temporary non-preferred" and adds this term to any lists of preferred drug list (PDL) statuses.

The proposed amendment adds a new subsection (d) to §354.1924 for HHSC to give temporary non-preferred status to a new drug HHSC adds to the Vendor Drug Program formulary before the drug is reviewed by the Drug Utilization Review Board (DURB). The proposed amendment also sets the criteria HHSC uses to add a new drug to the formulary with temporary non-preferred status because the drug falls into an existing PDL class and will remain temporary non-preferred until reviewed at a DURB meeting.

Temporary non-preferred status does not apply to existing PDL drugs with new label indications. Drugs on the Texas Medicaid formulary with a temporary non-preferred status will require a temporary non-preferred prior authorization (PA) for coverage.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §354.1924 clarifies in subsection (c)(1) - (5), the criteria HHSC uses to include a drug on the Texas Drug Code Index (TDCI) in the PDL. The proposed amendment defines temporary non-preferred drugs as covered outpatient drugs that the DURB has not yet reviewed and recommended as preferred or non-preferred and approved by the Executive Commissioner. The amendment is added using the same language as Texas Government Code, §549.0209. The proposed amendment renumbers current subsection (d) as subsection (e) and changes the title of the subsection from "Distribution of PDL" to "Obtaining a copy of the PDL" and provides the HHSC Vendor Drug Program website as the website on which HHSC publishes the PDL for a person to view or download the PDL. The proposed amendment removes current subsection (e) because HHSC no longer publishes the revised PDL within 10 days following HHSC's decision on the recommendations of the DUR Board. The proposed amendment requires a prior authorization for a drug with temporary non-preferred status.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

- (1) the proposed rule will not create or eliminate a government program;
- (2) implementation of the proposed rule will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;
- (4) the proposed rule will not affect fees paid to HHSC;
- (5) the proposed rule will not create new regulations;
- (6) the proposed rule will expand existing regulations;

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because the proposed rule does not apply to small or micro-businesses, or rural communities.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule does not impose a cost on regulated persons and is necessary to implement legislation that does not specifically state that §2001.0045 applies to the rule.

PUBLIC BENEFIT AND COSTS

Emily Zalkovsky, State Medicaid Director, has determined that for each year of the first five years the rule is in effect, the rules will benefit people who receive Medicaid by allowing access to additional medications that have not yet been reviewed by the DURB. In addition, potential confusion is eliminated for stakeholders by aligning the rule with the Texas Government Code.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the temporary non-preferred status does not impact the amount a provider is reimbursed for the drugs and there are no copays for people on Texas Medicaid.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal, including information related to the cost, benefit, or effect of the proposed rule, as well as any applicable data, research, or analysis, may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4601 West Guadalupe Street, Austin, Texas 78751; or emailed to HHSRulesCoordinationOffice@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be post-marked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 25R014" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §524.0151, which provides that the executive commissioner

of HHSC shall adopt rules for the operation and provision of services by the health and human services system, and Texas Human Resources Code §32.021 which authorizes HHSC to administer the federal medical assistance (Medicaid) program; and Texas Government Code §540.0051, which authorizes HHSC to implement the Medicaid managed care program.

The amendment affects Texas Government Code §524.0151 and §549.0202 and Texas Human Resources Code §32.021.

§354.1924. *Preferred Drug List.*

(a) Purpose. This section implements the provisions of Texas Government Code §549.0202, which directs the Texas Health and Human Services Commission (HHSC) to develop and implement a preferred drug list (PDL) for the Texas Medical Assistance Program.

(b) Applicability. This section applies to drugs included in the Texas Drug Code Index (TDCI) as described in [established under] §354.1921 of this division [title] (relating to Addition of Drugs to the Texas Drug Code Index).

(c) Selection of drugs for the PDL. HHSC includes [will include] a drug listed on the TDCI in the PDL, if the drug meets the criteria in paragraphs (1) - (5) of this subsection based on: [on the basis of:]

(1) [The] recommendations from [of] the Drug Utilization Review Board (DUR Board) as described in [established under] §354.1941 of this subchapter (relating to Drug Utilization Review Board);

(2) the [The] clinical efficacy of the drug, consistent with the determination of the Food and Drug Administration and the recommendations of the DUR Board;

(3) comparison [Comparison] of the price of the drug and the price of competing drugs when HHSC determines [For purposes of this section,] the price of the [a] drug by reviewing [is determined by reference to] the reimbursement amount set in [for the drug established under] §355.8541 of this title (relating to Legend and Nonlegend Medications) and after deducting Texas and federal rebates;

(4) whether there is a [A] program benefit offered by the manufacturer or labeler of the drug and accepted by HHSC in accordance with Texas Government Code §549.0106; and

(5) written [Written] evidence offered by a manufacturer or labeler that supports including the drug [supporting the inclusion of a product] on the PDL.

(d) Temporary non-preferred status. HHSC gives a new drug a temporary non-preferred status if the drug is available but the DUR Board has not yet reviewed and recommended the drug as preferred or non-preferred and approved by the Executive Commissioner. HHSC sets criteria for authorizing a new drug with temporary non-preferred status, following the criteria in Texas Government Code §549.0209.

(e) [(d)] Obtaining a copy [Distribution] of the PDL. HHSC publishes [will publish] the PDL on its HHSC Vendor Drug Program website. A health care provider may view or download the PDL from the website [Internet website (<http://www.hhsc.state.tx.us/>)]. A health care provider may also request a copy of the PDL [from HHSC] by sending a written request to [the] HHSC or its designee.

[(e)] Revisions to the PDL. Within 10 days following HHSC's decision on the recommendations of the DUR Board, HHSC will publish the revised PDL.]

(f) Prior Authorization. [Exclusion of a drug from the PDL.] If HHSC designates a drug as non-preferred or the drug has a temporary non-preferred status, prior authorization from HHSC or its designee is

needed, in accordance with [A drug that is not included in the PDL will be subject to prior authorization by HHSC or its designee in accordance with] §354.1832 of this title (relating to Prior Authorization Procedures).

(g) Supplemental Rebates or Program Benefits. [Agreement on supplemental rebate necessary.] HHSC includes a drug on the PDL only if the manufacturer or labeler of the drug has an agreement with HHSC to provide a supplemental rebate, as described in [HHSC will only include on the PDL drugs provided by a manufacturer or labeler that reaches an agreement on a supplemental rebate with HHSC in accordance with] Texas Government Code Chapter 549, Subchapter C. HHSC may also include a drug on the PDL if HHSC enters into an agreement with a [Such agreement may provide for a program benefit offered by the] manufacturer or labeler of the drug to accept a program benefit, as described in [and accepted by HHSC in accordance with] Texas Government Code §549.0106.

(h) Notwithstanding subsection (g) of this section, the preferred drug list may contain a drug provided by a manufacturer or labeler that has not reached a supplemental rebate agreement with HHSC if HHSC determines that including [inclusion of] the drug on the preferred drug list will not have a [no] negative cost impact to the state, as described in [accordance with] Texas Government Code §549.0204.

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

Filed with the Office of the Secretary of State on March 20, 2026.

TRD-202601333

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: May 3, 2026

For further information, please call: (512) 289-2482



SUBCHAPTER O. ELECTRONIC VISIT VERIFICATION

1 TAC §§354.4003, 354.4005, 354.4006, 354.4013

The executive commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §354.4003, concerning Definitions; §354.4005, concerning Personal Care Services that Require the Use of EVV; §354.4006, concerning Home Health Care Services that Require the Use of EVV; and §354.4013, concerning HHSC and MCO Compliance Reviews and Enforcement Actions.

BACKGROUND AND PURPOSE

A Medicare-Medicaid Plan (MMP) is a health plan that provides both Medicare and STAR+PLUS Medicaid services under one contract. The Centers for Medicare & Medicaid Services (CMS) Contract Year 2023 Medicare Advantage and Part D Final Rule (Final Rule) required states to phase-out their MMP Dual Demonstration Program. With input from MMPs and other stakeholders, HHSC is complying with the Final Rule and ending the MMP's contracts effective December 31, 2025.

The proposed amendments reflect that the STAR+PLUS MMP ended December 31, 2025, and that electronic visit verification (EVV) was required for STAR+PLUS MMP services, if delivered before January 1, 2026.

The proposed amendments remove Free Text Reviews from the list of compliance reviews because HHSC and managed care organizations (MCOs) ceased conducting these reviews in 2023.

An alternative device allows a service provider of a program provider or consumer directed services (CDS) employer to clock in and clock out of the electronic visit verification (EVV) system. HHSC is limiting the use of alternative devices as an approved method to clock in and clock out to enhance program integrity. The alternative device limit is being implemented over three fiscal years to allow program providers and CDS employers time to adjust their business and gradually reduce reliance on alternative devices. This also allows program providers and CDS employers time to migrate their service providers and CDS employees to one of the other approved clock in and clock out methods. The alternative device reduction schedule is in the EVV Policy Handbook.

The proposed amendments add an EVV Alternative Device Compliance Review, and the actions HHSC and the MCO may take, if a program provider's or CDS employer's EVV Alternative Device Compliance score exceeds the allowable percentage score described in the EVV Policy Handbook.

The proposed amendments add that a program provider or CDS employer must use EVV if Medicaid pays for any part of the services that require EVV. These changes clarify that EVV must be used if the services that require EVV are paid for by both Medicaid and a third party, such as private insurance.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §354.4003 revises the definition of CDS employer to remove duplicate language regarding CDS employer responsibilities. The proposed amendment revises the definition of CDS option to add a reference to 26 TAC Chapter 264, and to make the CDS employer's responsibilities easier to read and understand. The proposed amendment adds a definition of "dual eligible member" to make sure the public understands the meaning of this term when used in the rules. The proposed amendment revises the definition of EVV proprietary system to update that it is a system a program provider or a financial management services agency (FMSA) uses instead of the EVV state vendor system and is approved by HHSC as described in the EVV Policy Handbook and to remove the reference to §354.4013 of this subchapter. The proposed amendment revises the definition of EVV state vendor system to clarify that a program provider or an FMSA may use the state system for free. The proposed amendment updates the TAC references in the definitions of Community Attendant Services Program, FC Program--Family Care Program, FMSA--Financial management services agency, IMD--Institution for mental diseases, PDN--Private duty nursing, Primary Home Care Program, and SRO--Service responsibility option. The proposed amendment revises the definition of program provider to clarify the meaning by removing incorrect language. The proposed amendment revises the definition of STAR+PLUS MMP to indicate this program ended on December 31, 2025. The proposed amendment, after the new definition of dual-eligible member, renumbers paragraphs (8) - (57) as (9) - (58).

The proposed amendment to §354.4005, in subsections (a) and (b), adds "if HHSC, an HHSC designated contractor, or an MCO pays for any part of a claim for these services." These changes clarify that EVV must be used for personal care services paid for by both Medicaid and a third party, such as private insurance. The proposed amendment in subsections (a)(13) and (b)(12)

adds "if delivered before January 1, 2026," to the STAR+PLUS MMP personal care services to indicate that only MMP services delivered before January 1, 2026, require EVV. This clarification is necessary because though the MMP Dual Demonstration Program ended on December 31, 2025, program providers and FMSAs may need to submit claims for MMP services that were delivered before the MMP Dual Demonstration Program end date.

The proposed amendment to §354.4006, in subsections (a) and (b), adds "if HHSC, an HHSC designated contractor, or an MCO pays for any part of a claim for these services." These changes clarify that EVV must be used for home health care services paid for by both Medicaid and a third party, such as private insurance. The proposed amendment in subsections (a)(11) and (b)(7) adds "if delivered before January 1, 2026," to the STAR+PLUS MMP home health services to indicate that only MMP home health services delivered before January 1, 2026, require EVV. This clarification is necessary because though the MMP Dual Demonstration Program ended on December 31, 2025, program providers and FMSAs may need to submit claims for MMP services that were delivered before the MMP Dual Demonstration Program end date.

The proposed amendment to §354.4013, in subsection (a), removes EVV Required Free Text Reviews in the list of compliance reviews. The proposed amendment removes subsection (h) relating to EVV Required Free Text Reviews. These changes are necessary because HHSC and MCOs no longer conduct these reviews. The proposed amendment, in subsection (a), adds an EVV Alternative Device Compliance Review in the list of compliance reviews because HHSC and MCOs have started conducting these reviews. The proposed amendment in subsection (c)(3) replaces "terminate" with "end" to refer to the action HHSC or an MCO may propose the third time a CDS employer does not meet the EVV Usage Score. This change is made to clarify that the proposed action may end the member's participation in the CDS option, not terminate the member from the Medicaid program. The proposed amendment in subsections (d) and (g)(3) adds the language "payment hold" to the actions HHSC or the MCO may take when a program provider or FMSA fails to take the required training or complete the required corrective action plan as described in the rules. This change makes sure the rule includes the terminology used in all programs. The proposed amendment adds new subsections (h) and (i) to describe the actions HHSC or an MCO may take if a program provider's or a CDS employer's use of an alternative device exceeds the allowable percentage described in the EVV Policy Handbook. The proposed amendment adds new subsections (j) - (l) to describe the actions HHSC or the MCO may take if the program provider or CDS employer fails to complete the required actions.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not affect the number of HHSC employee positions;

- (3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to HHSC;
- (5) the proposed rules will create new regulations;
- (6) the proposed rules will limit and repeal existing regulations;
- (7) the proposed rules will not change the number of individuals subject to the rules; and
- (8) the proposed rules will not affect the state's economy.

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

The rules do not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rules because there is no requirement to alter current business practices and there are no new fees or costs imposed on those required to comply.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules do not impose a cost on regulated persons and are necessary to receive a source of federal funds or comply with federal law.

PUBLIC BENEFIT AND COSTS

Emily Zalkovsky, Chief Medicaid and CHIP Services Officer, has determined that for each year of the first five years the rules are in effect, the public benefit is that the rules will specify that MMP ended on December 31, 2025, and the use of EVV is not required for MMP after December 31, 2025. In addition, the public will be able to locate the requirements for alternative device compliance reviews and the actions that HHSC or an MCO may take when a program provider, FMSA, or CDS employer fails to meet the alternative device compliance standards.

Trey Wood has also determined that for the first five years the rules are in effect, the proposed rules are not expected to have any economic costs for persons required to comply because there is no requirement to alter current business practices and there are no new fees or costs imposed on those required to comply.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal, including information related to the cost, benefit, or effect of the proposed rule, as well as any applicable data, research, or analysis, may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4601 West Guadalupe Street, Austin, Texas 78751; or emailed to HHSRulesCoordinationOffice@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 26R004" in the subject line.

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system; Texas Government Code §532.0260, which provides the executive commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021, which provides HHSC with the authority to administer the federal medical assistance program in Texas and to adopt rules and standards for program administration.

The amendments affect Texas Government Code §524.0151, Texas Government Code §532.0260, and Texas Human Resources Code §32.021.

§354.4003. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.[:]

(1) CDS employer--Consumer directed services employer. A member or the member's legally authorized representative who participates in the CDS option and whose financial management services agency (FMSA) uses an electronic visit verification (EVV) vendor system or an EVV proprietary system. [A CDS employer is responsible for hiring and retaining a service provider who delivers a service described in §354.4005 of this subchapter (relating to Personal Care Services that Require the Use of EVV) or §354.4006 of this subchapter (relating to Home Health Care Services that Require the Use of EVV).]

(2) CDS option--Consumer directed services option. A service delivery option described in 26 TAC Chapter 264 (relating to Consumer Directed Services Option). In the CDS option, [in which] a CDS employer: [employs and retains a]

(A) hires the service provider; and

(B) manages how the service provider delivers [directs the delivery of] a service described in §354.4005 of this subchapter (relating to Personal Care Services that Require the Use of EVV) or §354.4006 of this subchapter (relating to Home Health Care Services that Require the Use of EVV).

(3) CFC--Community First Choice. A Medicaid state plan option governed by 42 CFR [42 Code of Federal Regulations, Title 42], Part 441, Subpart K, Home and Community-Based Attendant Services and Supports State Plan Option (Community First Choice). CFC services include the following.

(A) CFC HAB--CFC habilitation. A Medicaid state plan service that provides habilitation through CFC as described in §354.1361 of this chapter (relating to Definitions).

(B) CFC PAS--CFC personal assistance services. A Medicaid state plan service that provides personal assistance services through CFC as described in §354.1361 of this chapter.

(C) CFC PAS/HAB--CFC personal assistance services/habilitation. A Medicaid state plan service provided through CFC that provides both personal assistance services and habilitation.

(4) CLASS Program--Community Living Assistance and Support Services Program. A Medicaid waiver program approved by the Centers for Medicare & Medicaid Services under Title XIX, Section 1915(c) of the Social Security Act, as described in 26 TAC Chapter 259 (relating to Community Living Assistance and Support Services (CLASS) Program and Community First Choice (CFC) Services).

(5) CMS--Centers for Medicare & Medicaid Services. The federal agency within the United States Department of Health and Human Services that administers the Medicare and Medicaid programs.

(6) Community Attendant Services Program--A Medicaid state plan program operating under Title XIX of the Social Security Act, as described in 26 TAC Chapter 277 [40 TAC Chapter 47] (relating to Primary Home Care, Community Attendant Services, and Family Care Programs).

(7) DBMD Program--Deaf Blind with Multiple Disabilities. The Medicaid waiver program approved by CMS under Title XIX, Section 1915(c) of the Social Security Act, as described in 26 TAC Chapter 260 (relating to Deaf Blind with Multiple Disabilities (DBMD) Program and Community First Choice (CFC) Services).

(8) Dual eligible member--A member who is eligible for both Medicare and Medicaid.

(9) [(8)] EVV--Electronic visit verification. The documentation and verification of service delivery through an EVV system.

(10) [(9)] EVV aggregator--A centralized database that collects, validates, and stores statewide EVV visit data transmitted by an EVV system.

(11) [(10)] EVV claim--A request for payment of a service described in §354.4005 or §354.4006 of this subchapter submitted to HHSC, HHSC's designated contractor, or a managed care organization (MCO) in accordance with the EVV Policy Handbook.

(12) [(11)] EVV Policy Handbook--A handbook promulgated by HHSC that contains policies and requirements related to EVV.

(13) [(12)] EVV portal--An online system established by HHSC that allows users to perform searches, view reports and view EVV claim match results associated with data in the EVV aggregator.

(14) [(13)] EVV portal user--A person who is employed by or contracts with a program provider or FMSA and has access to the EVV portal.

(15) [(14)] EVV proprietary system--An [HHSC] EVV system that:

(A) [purchased or developed by] a program provider or an FMSA [approved by HHSC in accordance with §354.4013 of this subchapter (relating to HHSC and MCO Compliance Reviews and Enforcement Actions) that a program provider or FMSA] uses instead of the [an] EVV state vendor system; and[-]

(B) HHSC approves, in accordance with §354.4017 of this subchapter (relating to Process to Request Approval of a Proposed EVV Proprietary System and Additional Requirements for a PSO).

(16) [(15)] EVV system--An EVV vendor system or an EVV proprietary system used to electronically document and verify the data elements described in §354.4009(a) of this subchapter (relating to EVV Visit Transaction and EVV Claim) for a visit conducted to provide a service described in §354.4005 or §354.4006 of this subchapter.

(17) [(16)] EVV system user--A person who has access to the EVV system, including a person employed by or contracting with a program provider, FMSA, or CDS employer.

(18) [(17)] EVV state vendor system--An EVV system;

(A) created [developed] and operated by a vendor that has a contract [contracts] with HHSC or an HHSC [HHSC's] designated contractor; and

(B) that a program provider or an FMSA may use for free [uses] instead of using an EVV proprietary system.

(19) [(18)] EVV visit transaction--A record generated by an EVV system that contains the data elements described in §354.4009(a) of this subchapter for a visit conducted to provide a service described in §354.4005 or §354.4006 of this subchapter.

(20) [(19)] FC Program--Family Care Program. A program funded under Title XX, Subtitle A of the Social Security Act, as described in 26 TAC Chapter 277 [40 TAC Chapter 47].

(21) [(20)] FMSA--Financial management services agency. A program provider that contracts with HHSC or an MCO to provide financial management services to a CDS employer as described in 26 TAC Chapter 264 [40 TAC Chapter 41] (relating to Consumer Directed Services Option).

(22) [(21)] HCBS-AMH Program--Home and Community-Based Services Adult Mental Health Program. A Medicaid state plan option approved by CMS under Title XIX, Section 1915(i) of the Social Security Act, as described in 26 TAC Chapter 307, Subchapter B (relating to Home and Community-Based Services--Adult Mental Health Program).

(23) [(22)] HCS Program--Home and Community-based Services Program. A Medicaid waiver program approved by CMS under Title XIX, Section 1915(c) of the Social Security Act, as described in 26 TAC Chapter 263 (relating to Home and Community-based Services (HCS) Program and Community First Choice (CFC)).

(24) [(23)] HHSC--The Texas Health and Human Services Commission.

(25) [(24)] Home health aide--Has the meaning set forth in 26 TAC §558.2 (relating to Definitions).

(26) [(25)] ICF/IID--Intermediate care facility for individuals with an intellectual disability or related conditions. An ICF/IID is a facility that is licensed in accordance with THSC Chapter 252 or certified by HHSC.

(27) [(26)] IMD--Institution for mental diseases. Has the meaning set forth in 26 TAC §273.3 [25 TAC §419.373] (relating to Definitions).

(28) [(27)] LVN--Licensed vocational nurse. A person licensed to practice as a vocational nurse as described in Texas Occupations Code Chapter 301.

(29) [(28)] MCO--Managed care organization. Has the meaning set forth in Texas Government Code §543A.0001.

(30) [(29)] MDCP--Medically Dependent Children Program. A Medicaid waiver program approved by CMS under Title XIX, Section 1915(c) of the Social Security Act, as described in Chapter 353, Subchapter M of this title (relating to Home and Community Based Services in Managed Care).

(31) [(30)] MDCP STAR Health covered service--Medically Dependent Children Program STAR Health covered service. A

service provided to a member eligible to receive MDCP benefits under the STAR Health Program.

(32) [(31)] MDCP STAR Kids covered service--Medically Dependent Children Program STAR Kids covered service. A service provided to a member eligible to receive MDCP benefits under the STAR Kids Program.

(33) [(32)] Member--A person enrolled in one of the following:

- (A) traditional Medicaid service delivery model also referred to as fee-for-service;
- (B) the CLASS Program;
- (C) the Community Attendant Services Program;
- (D) the DBMD Program;
- (E) the FC Program;
- (F) the HCBS-AMH Program;
- (G) the HCS Program;
- (H) the Primary Home Care Program;
- (I) the STAR Program;
- (J) the STAR Health Program;
- (K) the STAR Kids Program;
- (L) the STAR+PLUS Program;
- (M) the STAR+PLUS Home and Community-Based Services Program;
- (N) the STAR+PLUS Medicare-Medicaid Program;
- (O) the Texas Home Living Program;
- (P) Texas Health Steps Comprehensive Care Program (CCP); or
- (Q) the Youth Empowerment Services Program.

(34) [(33)] Nursing facility--A facility licensed in accordance with Texas Health and Safety Code Chapter 242.

(35) [(34)] Occupational therapist--A person licensed as an occupational therapist in accordance with Texas Occupations Code Chapter 454.

(36) [(35)] PCS--Personal Care Services. Support services provided to a member enrolled in Texas Health Steps CCP who requires assistance with activities of daily living or instrumental activities of daily living as described in §363.602 of this title (relating to Definitions).

(37) [(36)] PDN--Private duty nursing. Has the same meaning as the term "Private duty nursing (PDN) Services" in [4 TAC Chapter 363, Subchapter C,] §363.303 of this title (relating to Definitions).

(38) [(37)] Primary Home Care Program--A Medicaid state plan program operating under Title XIX of the Social Security Act, as described in 26 TAC Chapter 277 [40 TAC Chapter 47].

(39) [(38)] Physical therapist--A person licensed as a physical therapist in accordance with Texas Occupations Code Chapter 453.

(40) [(39)] Program provider--An entity that contracts with HHSC or an MCO to provide a service listed [described] in §354.4005 or §354.4006 of this subchapter and that uses an EVV state vendor system or an EVV proprietary system. [A service provider described

in paragraph (43)(B) of this section is both a program provider and a service provider.]

(41) [(40)] PSO--Proprietary system operator. A program provider or an FMSA that uses an EVV proprietary system.

(42) [(41)] Reason code--A standardized HHSC-approved code entered in an EVV system to explain the reason for completing visit maintenance.

(43) [(42)] RN--Registered nurse. A person licensed to practice as a registered nurse as described in Texas Occupations Code Chapter 301.

(44) [(43)] Service provider--A person who provides a service described in §354.4005 or §354.4006 of this subchapter and who:

(A) is employed by or contracting with:

- (i) a program provider; or
- (ii) a CDS employer; or

(B) who is contracting with:

- (i) an MCO; or
- (ii) HHSC.

(45) [(44)] SRO--Service responsibility option. A service delivery option described in 26 TAC Chapter 265 [40 TAC Chapter 43] (relating to Service Responsibility Option) in which a member or legally authorized representative selects, trains, and provides daily management of a service provider, while the fiscal, personnel, and service back-up plan responsibilities remain with the program provider.

(46) [(45)] STAR--State of Texas Access Reform.

(47) [(46)] STAR Health Program--A Medicaid program operating under Title XIX, Section 1915(a) of the Social Security Act and Texas Family Code, Chapter 266. The program provides services through a managed care delivery model to a member enrolled in STAR Health as described in Chapter 353, Subchapter H of this title (relating to STAR Health).

(48) [(47)] STAR Kids Program--A Medicaid program operating under Title XIX, Section 1115 of the Social Security Act and Texas Government Code Chapter 540. The program provides services through a managed care delivery model to a member enrolled in STAR Kids as described in Chapter 353, Subchapter N of this title (relating to STAR Kids).

(49) [(48)] STAR Program--A Medicaid program operating under Title XIX, Section 1115 of the Social Security Act. The program provides services through a managed care delivery model to a member enrolled in STAR as described in Chapter 353, Subchapter I of this title (relating to STAR).

(50) [(49)] STAR+PLUS HCBS Program--STAR+PLUS Home and Community-Based Services Program. A Medicaid program operating through a federal waiver under Title XIX, Section 1115 of the Social Security Act. The program provides services to a member eligible to receive HCBS benefits under the STAR+PLUS Program, as described in Chapter 353, Subchapter M of this title (relating to Home and Community Based Services in Managed Care).

(51) [(50)] STAR+PLUS MMP--STAR+PLUS Medicare-Medicaid Plan. A managed care program operating under Title XIX, Section 1115A of the Social Security Act that provides the authority to test and evaluate a fully integrated care model for [clients who are] dual eligible members. The STAR+PLUS MMPs contract with CMS and HHSC to participate in the Dual Demonstration Program described in Chapter 353, Subchapter L of this title (relating to Texas Dual Eligibles

Integrated Care Demonstration Project). The MMP Dual Demonstration Program ended on December 31, 2025.

(52) ~~[(51)]~~ STAR+PLUS Program--A Medicaid program operating under Title XIX, Section 1115 of the Social Security Act, and Texas Government Code Chapter 540. The program provides services through a managed care delivery model to a member enrolled in STAR+PLUS as described in Chapter 353, Subchapter G of this title (relating to STAR+PLUS).

(53) ~~[(52)]~~ TAC--Texas Administrative Code.

(54) ~~[(53)]~~ Texas Health Steps CCP--Texas Health Steps Comprehensive Care Program. A Medicaid comprehensive program approved by CMS under Title XIX, Section 1905 of the Social Security Act, as described in Chapter 363 of this title (relating to Texas Health Steps Comprehensive Care Program).

(55) ~~[(54)]~~ TxHmL--Texas Home Living Program. A Medicaid waiver program approved by CMS under Title XIX, Section 1915(c) of the Social Security Act, as described in 26 TAC Chapter 262 (relating to Texas Home Living (TxHmL) Program and Community First Choice (CFC)).

(56) ~~[(55)]~~ Vendor hold--A temporary suspension of payments for claims that are due to a program provider or FMSA.

(57) ~~[(56)]~~ Visit maintenance--As described in the EVV Policy Handbook, a process to:

(A) manually enter data elements described in §354.4009(a) of this subchapter in an EVV system;

(B) correct the data elements described in §354.4009(a) of this subchapter that are inaccurate in an EVV visit transaction; or

(C) include the data elements described in §354.4009(a) of this subchapter that are missing in an EVV visit transaction.

(58) ~~[(57)]~~ YES Program--Youth Empowerment Services Program. A Medicaid waiver approved by CMS under Title XIX, Section 1915(c) of the Social Security Act as described in 26 TAC Chapter 307, Subchapter A (relating to Youth Empowerment Services (YES)).

§354.4005. *Personal Care Services that Require the Use of EVV.*

(a) A program provider must use ~~[ensure a service provider uses]~~ EVV to document the ~~delivery [provision]~~ of the following personal care services by the program provider ~~if HHSC, an HHSC designated contractor, or an MCO pays for any part of the claim for these services:~~

(1) in the traditional Medicaid service model also referred to as fee-for-service, including for members enrolled in STAR who receive PCS through fee-for-service:

(A) CFC PAS;

(B) CFC HAB;

(C) PCS provided under Texas Health Steps CCP, including SRO; and

(D) PCS-Behavioral Health provided under Texas Health Steps CCP, including SRO;

(2) in the CLASS Program:

(A) CFC PAS/HAB; and

(B) in-home respite;

(3) personal attendant services provided through the Community Attendant Services Program, including SRO;

(4) in the DBMD Program:

(A) CFC PAS/HAB; and

(B) in-home respite;

(5) personal attendant services provided through the FC Program, including SRO;

(6) in the HCBS-AMH Program:

(A) supported home living; and

(B) in-home respite;

(7) in the HCS Program:

(A) CFC PAS/HAB;

(B) in-home respite; and

(C) in-home individualized skills and socialization provided to members with the residential type of "own/family home";

(8) personal attendant services provided through the Primary Home Care Program, including SRO;

(9) in the STAR Health Program:

(A) CFC PAS, including SRO;

(B) CFC HAB, including SRO; and

(C) for a member in STAR Health MDCP:

(i) in-home respite, with and without RN delegation, including SRO; and

(ii) flexible family support, with and without RN delegation, including SRO;

(10) in the STAR Kids Program:

(A) CFC PAS, including SRO;

(B) CFC HAB, including SRO; and

(C) for a member in STAR Kids MDCP:

(i) in-home respite, with and without RN delegation, including SRO; and

(ii) flexible family support, with and without RN delegation, including SRO;

(11) in the STAR+PLUS Program:

(A) personal assistance services, including SRO;

(B) CFC PAS, including SRO; and

(C) CFC HAB, including SRO;

(12) in the STAR+PLUS HCBS Program:

(A) in-home respite care, including SRO;

(B) protective supervision, including SRO;

(C) personal assistance services, including SRO;

(D) CFC PAS, including SRO; and

(E) CFC HAB, including SRO;

(13) in the STAR+PLUS MMP, if delivered before January 1, 2026:

(A) in-home respite care, including SRO;

(B) protective supervision, including SRO;

(C) personal assistance services, including SRO;

(D) CFC PAS, including SRO; and

- (E) CFC HAB, including SRO;
- (14) in the TxHmL Program:
 - (A) CFC PAS/HAB;
 - (B) in-home respite; and
 - (C) in-home individualized skills and socialization;
- (15) in-home respite provided in the YES Program; and
- (16) any other service required by federal or state mandates.

(b) A CDS employer must ensure a service provider uses EVV to document the delivery [provision] of the following personal care services through the CDS option if HHSC, an HHSC designated contractor, or an MCO pays for any part of the claim for these services:

- (1) in the traditional Medicaid service model also referred to as fee-for-service:
 - (A) CFC PAS;
 - (B) CFC HAB;
 - (C) PCS provided under Texas Health Steps CCP; and
 - (D) PCS-Behavioral Health provided under Texas Health Steps CCP;
- (2) in the CLASS Program:
 - (A) CFC PAS/HAB; and
 - (B) in-home respite;
- (3) personal attendant services provided through the Community Attendant Services Program;
- (4) in the DBMD Program:
 - (A) CFC PAS/HAB; and
 - (B) in-home respite;
- (5) personal attendant services provided through the FC Program;
- (6) in the HCS Program:
 - (A) CFC PAS/HAB; and
 - (B) in-home respite;
- (7) personal attendant services provided through the Primary Home Care Program;
- (8) in the STAR Health Program:
 - (A) CFC PAS;
 - (B) CFC HAB; and
 - (C) for a member in STAR Health MDCP:
 - (i) in-home respite, with and without RN delegation;
- and
- (ii) flexible family support, with and without RN delegation;
- (9) in the STAR Kids Program:
 - (A) CFC PAS;
 - (B) CFC HAB; and
 - (C) for a member in STAR Kids MDCP:

- (i) in-home respite, with and without RN delegation;
- and
- (ii) flexible family support, with and without RN delegation;
- (10) in the STAR+PLUS Program:
 - (A) personal assistance services;
 - (B) CFC PAS; and
 - (C) CFC HAB;
- (11) in the STAR+PLUS HCBS Program:
 - (A) in-home respite care;
 - (B) protective supervision;
 - (C) personal assistance services;
 - (D) CFC PAS; and
 - (E) CFC HAB;
- (12) in the STAR+PLUS MMP, if delivered before January 1, 2026:
 - (A) in-home respite care;
 - (B) protective supervision;
 - (C) personal assistance services;
 - (D) CFC PAS; and
 - (E) CFC HAB; and
- (13) in the TxHmL Program:
 - (A) CFC PAS/HAB;
 - (B) in-home respite; and
 - (C) in-home individualized skills and socialization.

§354.4006. *Home Health Care Services that Require the Use of EVV.*

(a) A program provider must use ~~[ensure a service provider uses]~~ EVV to document the delivery [provision] of the following home health care services by the program provider if HHSC, an HHSC designated contractor, or an MCO pays for any part of the claim for these services ~~[on or after January 1, 2024]~~:

- (1) in the traditional Medicaid service model also referred to as fee-for-service, for a member who does not reside in a nursing facility, an ICF/IID, or an IMD, the following services when provided in the residence of the member:
 - (A) any nursing service, other than PDN;
 - (B) occupational therapy; and
 - (C) physical therapy;
- (2) in the CLASS Program, for a member who does not receive support family services or continued family services, the following services when provided in the residence of the member:
 - (A) any nursing service;
 - (B) occupational therapy; and
 - (C) physical therapy;
- (3) in the DBMD Program, for a member who does not receive licensed assisted living or licensed home health assisted living, the following services when provided in the residence of the member:
 - (A) any nursing service;

(B) occupational therapy; and

(C) physical therapy;

(4) in the HCS Program, for a member whose residential type is "own/family home," the following services when provided in the residence of the member:

(A) any nursing service;

(B) occupational therapy; and

(C) physical therapy;

(5) in the HCBS-AMH Program, for a member who does not receive host home/companion care, supervised living services, or assisted living services, the following services when provided in the residence of the member:

(A) nursing - RN; and

(B) nursing - LVN;

(6) in the STAR Program, the following services when provided in the residence of the member:

(A) home health nursing;

(B) occupational therapy;

(C) physical therapy; and

(D) personal care services provided by a home health aide under the supervision of an RN, occupational therapist, or physical therapist;

(7) in the STAR Health Program, the following services when provided in the residence of the member:

(A) home health nursing, other than PDN;

(B) occupational therapy;

(C) physical therapy; and

(D) personal care services provided by a home health aide under the supervision of an RN, occupational therapist, or physical therapist;

(E) nursing delegation and supervision of PCS and CFC tasks; and

(F) for a member in STAR Health MDCP, the following services when provided in the residence of the member:

(i) RN delegation and supervision of personal care services and CFC tasks, other than PDN;

(ii) flexible family supports services performed by RN or an LVN; and

(iii) in-home respite performed by RN or an LVN;

(8) in the STAR Kids Program, the following services when provided in the residence of the member:

(A) home health nursing, other than PDN;

(B) occupational therapy;

(C) physical therapy;

(D) personal care services provided by a home health aide under the supervision of an RN, occupational therapist, or physical therapist;

(E) nursing delegation and supervision of PCS and CFC tasks; and

(F) for a member in STAR Kids MDCP, the following services when provided in the residence of the member:

(i) RN delegation and supervision of personal care services and CFC tasks, other than PDN;

(ii) flexible family supports services performed by an RN or LVN; and

(iii) in-home respite performed by an RN or LVN;

(9) in the STAR+PLUS Program, the following services when provided in the residence of the member:

(A) home health nursing;

(B) occupational therapy;

(C) physical therapy; and

(D) personal care services provided by a home health aide under the supervision of an RN, occupational therapist, or physical therapist;

(10) in the STAR+PLUS HCBS Program, for members not receiving adult foster care, assisted living services - single occupancy, assisted living services - double occupancy, or assisted living services - non-apartment, the following services when provided in the residence of the member:

(A) home health nursing, including SRO;

(B) occupational therapy, including SRO;

(C) physical therapy, including SRO; and

(D) personal care services provided by a home health aide under the supervision of an RN, occupational therapist, or physical therapist, including SRO;

(11) in the STAR+PLUS MMP, for members not receiving adult foster care, assisted living services - single occupancy, assisted living services - double occupancy, or assisted living services - non-apartment, the following services when provided in the member's home, if delivered before January 1, 2026 [~~residence of the member~~]:

(A) home health nursing, including SRO;

(B) occupational therapy, including SRO;

(C) physical therapy, including SRO; and

(D) personal care services provided by a home health aide under the supervision of an RN, occupational therapist, or physical therapist, including SRO;

(12) in the TxHmL Program, the following services when provided in the residence of the member:

(A) any nursing service;

(B) occupational therapy; and

(C) physical therapy; and

(13) any other service required by federal or state mandates.

(b) A CDS employer must ensure a service provider uses EVV to document the delivery [~~provision~~] of the following home health care services using the CDS option, if HHSC, an HHSC designated contractor, or an MCO pays for any part of the claim for these services [~~on or after January 1, 2024~~]:

(1) in the CLASS Program, the following services when provided in the residence of the member:

- (A) any nursing service;
- (B) occupational therapy; and
- (C) physical therapy;

(2) in the HCS Program, for a member whose residential type is "own/family home," the following services when provided in the residence of the member:

- (A) any nursing service;
- (B) occupational therapy; and
- (C) physical therapy;

(3) in the STAR Health Program for a member in STAR Health MDCP, the following services when provided in the residence of the member:

- (A) flexible family supports services performed by any RN or any LVN; and
- (B) in-home respite performed by any RN or any LVN;

(4) in the STAR Kids Program for a member in STAR Kids MDCP, the following services when provided in the residence of the member:

- (A) flexible family supports services performed by any RN or any LVN; and
- (B) in-home respite performed by any RN or any LVN;

(5) in the STAR+PLUS Program, the following services when provided in the residence of the member:

- (A) home health nursing;
- (B) occupational therapy;
- (C) physical therapy; and
- (D) personal care services provided by a home health aide under the supervision of an RN, occupational therapist, or physical therapist;

(6) in the STAR+PLUS HCBS Program, the following services when provided in the residence of the member:

- (A) home health nursing;
- (B) occupational therapy;
- (C) physical therapy; and
- (D) home health aide services as an extension of physical therapy, occupational therapy, or nursing services;

(7) in the STAR+PLUS MMP, the following services when provided in the member's home, if delivered before January 1, 2026 [~~residence of the member~~]:

- (A) home health nursing;
- (B) occupational therapy;
- (C) physical therapy; and
- (D) home health aide services as an extension of physical therapy, occupational therapy, or nursing services; and

(8) in the TxHmL Program, the following services when provided in the residence of the member:

- (A) any nursing service;
- (B) occupational therapy; and
- (C) physical therapy.

§354.4013. *HHSC and MCO Compliance Reviews and Enforcement Actions.*

(a) HHSC and an MCO conduct the following compliance reviews in accordance with the EVV Policy Handbook:

- (1) an EVV Usage Review;
- (2) an EVV Landline Phone Verification Review; and
- (3) an EVV Alternative Device Compliance [~~Required Free Text~~] Review.

(b) If HHSC or an MCO determines from an EVV Usage Review that a program provider's or FMSA's EVV Usage score is less than 80% and such score is:

- (1) the first occurrence within a 24-month period, HHSC or an MCO may require the program provider or FMSA to complete EVV policy, system, and portal trainings within a specific time frame;
- (2) the second occurrence within a 24-month period, HHSC or an MCO may require the program provider or FMSA to complete a corrective action plan within 10 business days after the date the program provider or FMSA is notified that the EVV Usage score is less than 80%; or

(3) the third occurrence within a 24-month period, HHSC or an MCO may propose to terminate the contract of the program provider or FMSA.

(c) If HHSC or an MCO determines from an EVV Usage Review that a CDS Employer's EVV Usage score is less than 80% and such score is:

- (1) the first occurrence within a 24-month period, HHSC or an MCO may require the CDS employer to complete EVV policy and system trainings within a specific time frame;
- (2) the second occurrence within a 24-month period, HHSC or an MCO may require the CDS employer to complete a corrective action plan within 10 business days after the date the CDS employer is notified that the EVV Usage score is less than 80%; or

(3) the third occurrence within a 24-month period, HHSC or an MCO may propose to end [~~terminate~~] the member's participation in the CDS option.

(d) If a program provider or an FMSA does not complete the required EVV trainings listed in subsection (b)(1) of this section, or does not complete a corrective action plan as required by subsection (b)(1) and (2) of this section, HHSC or the MCO may place [~~impose~~] a vendor hold or payment hold on the program provider or FMSA until the EVV trainings or a corrective action plan is completed.

(e) If a CDS employer does not complete EVV trainings required by subsection (c)(1) of this section, HHSC or the MCO may require the CDS employer to complete a corrective action plan within 10 business days after the date the CDS employer is notified that EVV trainings were not completed.

(f) If a CDS employer does not complete a corrective action plan as required by subsections (c)(2) or (e) of this section, HHSC or the MCO may propose to end [~~terminate~~] the member's participation in the CDS option.

(g) If HHSC or an MCO determines from an EVV Landline Phone Verification Review that a service provider has used an unallowable phone type as described in the EVV Policy Handbook to clock in and clock out of the EVV system:

- (1) HHSC or an MCO provides written notification of such determination to the program provider or FMSA;

(2) within 20 business days after receipt of the written notification, the program provider or FMSA must provide the documentation described in the written notification to HHSC or the MCO; and

(3) if the program provider or FMSA does not send the documentation listed [provide the documentation described] in the written notice [notification] to HHSC or the MCO within the deadline described in paragraph (2) of this subsection, HHSC or the MCO may place [impose] a vendor hold or payment hold on the program provider or FMSA until the date HHSC or the MCO receives the documentation from the program provider or FMSA [provides the documentation].

(h) If HHSC or an MCO determines from an EVV Alternative Device Compliance Review that a program provider's EVV Alternative Device Compliance score exceeds the allowable percentage described in the EVV Policy Handbook and such score is:

(1) the first occurrence within a 24-month period, HHSC or an MCO may require the program provider to complete EVV policy, system, and portal trainings within a time frame specified by HHSC or the MCO;

(2) the second occurrence within a 24-month period, HHSC or an MCO may require the program provider to complete a corrective action plan within 10 business days after the program provider receives a notice that the EVV Alternative Device Compliance score exceeds the allowable percentage described in the EVV Policy Handbook; or

(3) the third occurrence within a 24-month period, HHSC or an MCO may propose to terminate the contract of the program provider.

{(h) If HHSC or an MCO determines from an EVV Required Free Text Review that a program provider, an FMSA, or a CDS employer who elects to complete visit maintenance on the HHSC Employer's Selection for Electronic Visit Verification Responsibilities form did not enter free text in the EVV system on an EVV visit transaction when using a reason code as required by the EVV Policy Handbook, HHSC or the MCO may recoup payment made to the program provider or the FMSA for the EVV claim associated with the EVV visit transaction.}

(i) If HHSC or an MCO determines from an EVV Alternative Device Compliance Review that a CDS Employer's EVV Alternative Device Compliance score exceeds the allowable percentage described in the EVV Policy Handbook and such score is:

(1) the first occurrence within a 24-month period, HHSC or an MCO may require the CDS employer to complete EVV policy and system trainings within a time frame specified by HHSC or the MCO;

(2) the second occurrence within a 24-month period, HHSC or an MCO may require the CDS employer to complete a corrective action plan within 10 business days after the date the CDS employer receives a notice that the Alternative Device Compliance score exceeds the allowable percentage described in the EVV Policy Handbook; or

(3) the third occurrence within a 24-month period, HHSC or an MCO may propose to end the member's participation in the CDS option.

(j) If a program provider does not complete the EVV trainings or a corrective action plan as required by subsection (b)(1) and (2) of this section respectively, HHSC or the MCO may place a vendor hold or payment hold on the program provider until the program provider completes the required EVV trainings or corrective action plan.

(k) If a CDS employer does not complete the EVV trainings listed in subsection (c)(1) of this section, HHSC or the MCO may require the CDS employer to complete a corrective action plan within 10 business days after the date the CDS employer receives a notice that the CDS employer did not complete the required EVV trainings.

(l) If a CDS employer does not complete a corrective action plan required by subsections (c)(2) or (e) of this section, HHSC or the MCO may propose to end the member's participation in the CDS option.

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

Filed with the Office of the Secretary of State on March 20, 2026.

TRD-202601336

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

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For further information, please call: (512) 438-5241



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 97. PLANNING AND ACCOUNTABILITY

SUBCHAPTER EE. ACCREDITATION

STATUS, STANDARDS, AND SANCTIONS

DIVISION 1. STATUS, STANDARDS, AND SANCTIONS

19 TAC §97.1066

The Texas Education Agency (TEA) proposes an amendment to §97.1066, concerning campus repurposing and closure. The proposed amendment would clarify the conditions under which a district may close a campus and update the provisions for assigning a new campus number to a repurposed campus.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 97.1066 outlines the process and procedures for campus closure and repurposing. The proposed amendment would clarify the conditions under which a district may close a campus. The amendment would establish these conditions based on the overall state accountability rating of the campus being closed and of the campus to which students of the closed campus will be assigned. The amendment would also reserve the ability to repurpose a campus and assign a new county-district-campus number (CDCN) to circumstances in which the repurposed campus provides a distinctly different academic program and serves a majority of grade levels not served at the original campus, or when the campus is operated under contract with a non profit entity.

FISCAL IMPACT: Steve Lecholop, deputy commissioner of governance, has determined that for the first five years the proposal is in effect, has determined that there are no additional costs to state or local government, including school districts and

open-enrollment charter schools, required to comply with the proposal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand an existing regulation by enhancing the conditions under which a district may close a campus. The amendment would establish these conditions based on the overall state accountability rating of the campus being closed and the rating of the campus to which the closed campus's students would be assigned. The proposed rule would also limit an existing provision by reserving repurposing a campus and receiving a new CDCN to circumstances in which the campus provides a distinctly different academic program and serves a majority of grade levels not served at the original campus, or is operated under a contract with a nonprofit entity.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Mr. Lecholop has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be to ensure clarity on the conditions under which a campus may be closed, the closure steps to be taken, and the provision for assigning a new campus number. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no data and reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: TEA requests public comments on the proposal, including, per Texas Government Code, §2001.024(a)(8), information related to the cost, benefit, or effect of the proposed rule and any applicable data, research,

or analysis, from any person required to comply with the proposed rule or any other interested person. The public comment period on the proposal begins April 3, 2026, and ends May 4, 2026. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on April 3, 2026. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_\(TAC\)/Proposed_Commissioner_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §39A.111, which grants the commissioner the authority to close a campus that has received five consecutive school years of unacceptable performance ratings; TEC, §39A.113, which establishes requirements for repurposing a closed campus; and TEC, §39A.115, which grants the commissioner rulemaking authority over TEC, Chapter 39A, Subchapter C.

CROSS REFERENCE TO STATUTE. The amendment implements TEC, §§39A.111, 39A.113, and 39A.115.

§97.1066. *Campus Repurposing and Closure.*

(a) Definitions. For purposes of this section, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

(1) Acceptable and unacceptable ratings--the terms acceptable and unacceptable ratings have the meanings assigned in Texas Education Code (TEC), §39.0543. The accountability rating is for the year in which the performance occurs, not the year in which the preliminary or final rating is issued.

(2) Campus--this term has the meaning assigned in §97.1051(3) of this title (relating to Definitions).

(3) County-district-campus number (CDCN)--the 9-digit number assigned to instructional campuses.

(4) Facility--a facility includes a building, a group of buildings, portable buildings, or any combination thereof that the commissioner of education determines would comprise a campus.

(b) Campus closure. A campus may be closed by:

(1) the commissioner as described in TEC, §39A.111, and §97.1065 of this title (relating to Commissioner Determinations for Decisions Preceding Alternative Management, Campus Closure, or Board of Managers) if it is assigned an unacceptable performance rating for five consecutive school years, regardless of whether the school district closes or orders the closure of the campus before the fifth consecutive unacceptable accountability rating is issued; or

(2) the school district, subject to the provisions in this subsection: ~~[section.]~~

(A) Closure of a campus is defined as the campus facility not being used for any direct educational services in the next school year.

(B) A school district may close a campus and its corresponding CDCN for any campus rated overall A, B, or C if the plurality of students is transferred to an overall A or B campus within the district.

(C) If the district closes an overall A, B, or C campus facility and its corresponding CDCN but transfers the plurality of students to an overall C, D, or F campus, the district must submit a consol-

idation plan to the Texas Education Agency (TEA). The consolidation plan must include:

(i) the instructional materials that will be used and the time allotted in the daily master schedule;

(ii) a differentiated capacity-building plan that includes upfront and ongoing coaching for campus leaders and teachers; and

(iii) a differentiated capacity-building plan related to supporting students in special populations aligned to the student population of the consolidated campus.

(D) A school district may close a campus facility and its corresponding CDCN for any campus that is rated overall D or F with an unacceptable count of less than four if the majority of students are transferred to an overall A or B campus. The district must submit a consolidation plan to TEA as described in subparagraph (C) of this paragraph. If TEA denies the consolidation plan, the commissioner shall reassign the CDCN to the receiving campus under subsection (i) of this section. TEA will have the authority to monitor the progress of the consolidated campus. If the consolidated campus receives an overall D or F in the next accountability year, then the rating history of the proposed closed campus will be tied to the consolidated campus, along with all applicable interventions and sanctions.

(E) If a district closes an overall D or F campus but transfers students to an overall C, D, or F campus or a new campus facility that has not been rated, the commissioner shall reassign the CDCN to the receiving campus under subsection (i) of this section if the unacceptable count for the closing campus is larger than the unacceptable count of the receiving campus. The district must submit a consolidation plan to TEA as described in subparagraph (C) of this paragraph.

(3) A school district cannot close or order the closure of a campus in the year that the fifth or higher consecutive unacceptable accountability rating could be earned.

(c) Repurposing. A campus is considered to be repurposed if:

(1) a CDCN assigned to a campus is closed;

(2) the school district operates a new campus in the same facility as the closed campus; and

(3) the new campus meets the criteria in TEC, §39A.113. The campus must:

(A) serve a majority of grade levels not served at the original campus;[-]

~~[(i) The school district must have a grade level plan approved by Texas Education Agency (TEA) staff.]~~

~~[(ii) The campus may repurpose starting with one or more grade spans (elementary, middle school, and/or high school).]~~

~~[(i) If the campus repurposes with only one grade span, the campus must repurpose with the lowest grade level or levels to be served and include no more than three elementary grade levels, including prekindergarten-Grade 5; one middle school grade level, including Grades 6-8; or one high school grade level, including Grades 9-12.]~~

~~[(ii) If the campus repurposes with more than one grade span (elementary, middle school, and/or high school), the campus may repurpose starting with the lowest grade level in each grade span.]~~

~~[(iii) The campus may not add more than one grade level per school year;]~~

(B) serve a majority of students who did not attend that campus the previous year; and

(C) offer a distinctly different academic program as described in subsection (d) of this section.

(d) Distinctly different academic program. For purposes of this section, a distinctly different academic program must meet the conditions in paragraphs (1)-(4) of this subsection. Notwithstanding the requirements in this subsection, the campus will be considered to operate a distinctly different education program if the campus is operated under contract as described in TEC, §39A.113(a)(1)(B), and the contract meets the requirements described in §97.1075(d) of this title (relating to Contracting to Partner to Operate a Campus under Texas Education Code, §11.174).

(1) The principal and all assistant principals must not have previously served at the campus, unless they are in their first year of assignment at the campus and have demonstrated improvement in academic outcomes at the campus.

(2) A teacher employed at the campus under the closed CDCN must apply for a position to continue at the campus and must have demonstrated instructional effectiveness in the previous school year.

(3) The school district must ensure that the campus will be open enrollment and will accept students from outside of the campus's geographic boundary and provide a lottery to students outside the geographic boundary if the campus is oversubscribed.

(4) The school district must demonstrate that the academic experience of the students at the new campus will differ significantly from the academic experience that was previously offered at the campus, including, but not limited to, a description of the new plans to:

(A) implement high-quality instructional materials that are aligned to instructional planning calendars and interim and formative assessments;

(B) create a positive school culture;

(C) recruit, select, assign, induct, and retain a full staff of highly qualified educators;

(D) evaluate and develop instructional staff; and

(E) serve special populations and at-risk students.

(e) Repurposing after commissioner closure.

(1) If a school district is subject to TEC, §39A.111, the commissioner shall order either:

(A) the closure of the campus that received a fifth consecutive unacceptable rating with closure taking effect on a date determined by the commissioner; or

(B) the appointment of a board of managers to govern the school district as provided by TEC, §39A.202, which takes effect immediately upon appointment. If the commissioner appoints a board of managers, the campus that received a fifth consecutive unacceptable rating may, at the commissioner's discretion:

(i) continue to operate; and

(ii) receive a new CDCN [- subject to the provisions in this subsection relating to repurposing after commissioner closure].

(2) If the commissioner assigns a new CDCN to a campus, that assignment takes effect no later than September 1 of the school year following the assignment.

(3) The commissioner will determine the effective date of the campus closure ordered under §97.1065 of this title. If the closed campus would receive a campus rating for any year following the year for which a rating was issued that made the school district subject to TEC, §39A.111, the campus may be assigned a label of Not Rated.

(4) A school district may repurpose a facility that housed a campus that was closed by order of the commissioner under TEC, §39A.111, and receive a new CDCN if one of the following requirements is met.

(A) The campus and school district meet the [following criteria:]

~~[(i)]~~ [the campus meets the] criteria in TEC, §39A.113(a)(1)(A), subsection (c)(3) of this section, or subsection (d) of this section. [; and]

~~[(ii)]~~ the school district meets the following criteria by June 30 of the year in which the operation of the campus with a new CDCN will begin:]

~~[(i)]~~ the district completes initial training in a TEA-approved governance framework supporting continuous improvement and engages in ongoing implementation for at least the duration of the school year in which the new campus number is open;]

~~[(ii)]~~ the district develops and implements a plan to ensure that the students who attended the closed campus do not attend the repurposed campus, unless the campus is to be operated under contract as described in subparagraph (B) of this paragraph. The plan must ensure that students who attended the closed campus:]

~~[(a-)]~~ are assigned to a campus whose most recent performance rating is an A, B, or C or have access to nearby school choices that are higher performing than the closed campus. For purposes of this subsection, a higher performing campus is a campus whose most recent performance rating is an A, B, or C; and]

~~[(b-)]~~ must be allowed to attend the new campus until the student would have stopped attending the closed campus by reason of matriculation to another campus or graduation; and]

~~[(iii)]~~ the district timely submits all information required by the commissioner to make a determination under this subsection. Failure to submit information by June 30 may result in non-approval of the new CDCN.]

(B) The campus is operated under contract with a non-profit entity as described in TEC, §39A.113(a)(1)(B), and the contract:

(i) meets the requirements described in §97.1075(d) of this title; and

(ii) has a term of at least three years. If the contract is terminated prior to the end of the contract term, the commissioner may order closure of the campus or appoint a board of managers as described in TEC, §39A.111.

(f) Repurposing after school district closure.

(1) A school district may repurpose a facility that housed a closed campus and receive a new CDCN if the district meets the criteria in this subsection.

(2) Regardless of the campus's most recent rating, a school district may not repurpose a facility and receive a new CDCN if the commissioner determines that such an assignment would allow the dis-

trict or campus to evade state [or federal] accountability sanctions and interventions.

(A) If a school district is determined to have requested a new CDCN to evade state [or federal] accountability sanctions and interventions, the commissioner may:

(i) deny the approval of the new CDCN or assign students enrolled under the new CDCN to the prior CDCN; and

(ii) open a special investigation of the school district under TEC, §39.003.

(B) Changing a CDCN to evade sanctions and interventions may include, but is not limited to, the following scenarios:

(i) enrolling zero students in a CDCN and reassigning students to one or more other campuses in the school district;

(ii) requesting closure of a CDCN and then serving students in that facility under a different CDCN;

(iii) relocating the majority of students to a new facility without prior TEA approval;

(iv) requesting closure of a CDCN and repurposing the campus with the same grade configuration; or

(v) requesting significant modification of grade levels at a campus with an unacceptable rating even if campus closure is not requested.

(3) A school district that closes a campus whose most recent academic accountability rating is acceptable or higher, including a rating of D that meets the criteria in TEC, §39.0543(b), may repurpose, as defined by subsection (c) of this section, the facility that housed that campus and receive a new CDCN unless the commissioner determines that such an assignment would allow the district or campus to evade state [or federal] accountability sanctions and interventions as described in paragraph (2)(A) of this subsection.

(4) A school district that closes a campus whose most recent academic accountability rating is unacceptable may repurpose a facility and receive a new CDCN if:

(A) the school district board of trustees ordered the campus closed no later than January 31 of the school year in which the campus could earn its second, third, or fourth consecutive unacceptable rating, as defined in TEC, §39.0543(a) and (c), regardless of whether the facility was used for direct educational services in the school year prior to the proposed operation of the new campus under a new CDCN;

(B) the campus meets all criteria in TEC, §39A.113(a)(1)(A), subsection (c)(3) of this section, and subsection (d) of this section related to campus repurposing; and

(C) the school district meets the following criteria by May 31 [~~June 30~~] of the year in which the operation of the campus with a new CDCN will begin:

(i) the school district completes initial training in a TEA-approved governance framework supporting continuous improvement and engages in ongoing implementation for at least the duration of the school year in which the new CDCN is open;

(ii) the school district is issued a final closure order that is not subject to any contingency;

(iii) the school district develops and implements a plan to ensure that the students who attended the closed campus do not attend the repurposed campus. The plan must ensure that students who attended the closed campus:

(I) are assigned to a campus whose most recent performance rating is an A or B [~~B, or C~~] or have access to nearby school choices that are higher performing than the closed campus. For purposes of this subsection, a higher performing campus is campus whose most recent performance rating is an A or B [~~B, or C~~]; and

(II) must be allowed to attend the new campus until the student would have stopped attending the closed campus by reason of matriculation to another campus or graduation; and

(iv) the school district timely submits all information required by the commissioner to make a determination under this subsection. Failure to submit information by May 3 [~~June 30~~] may result in non-approval of the new CDCN.

~~[(5) A school district cannot close or order the closure of a campus in the year that the fifth or higher consecutive unacceptable accountability rating could be earned.]~~

(g) Repurposing a campus that has not been in operation. Regardless of school district or commissioner closure, the district may repurpose the campus with a new CDCN if the facility has not been used for any direct educational services for at least one complete school year without having to meet requirements in this section.

(h) Exemptions. The commissioner may grant an exemption allowing students assigned to a closed campus to attend the repurposed campus if there is no other campus in the school district at which the students may enroll.

(i) Reassignment. Notwithstanding the provisions in this section, if the school district closes a campus that has a D or F rating, the CDCN of the closed campus shall be assigned to the district campus receiving a plurality of the students from the closed campus if the unacceptable rating count for the closing campus is larger than the unacceptable rating count of the receiving campus and shall be subject to any sanction or intervention applicable to the closed campus if the commissioner determines that this is necessary to preserve the integrity of the accountability system [~~reassigns a majority of the students that attended a campus that was closed due to an academically unacceptable rating in the prior year to another campus in the district, the receiving campus may be assigned the CDCN of the closed~~].

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

Filed with the Office of the Secretary of State on March 23, 2026.

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: May 3, 2026

For further information, please call: (512) 475-1497



TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 108. PROFESSIONAL CONDUCT

SUBCHAPTER A. PROFESSIONAL RESPONSIBILITY

22 TAC §108.2

The State Board of Dental Examiners (Board) proposes this amendment to 22 TAC §108.2, pertaining to fair dealing. The amendment pertains to the sale, design, and manufacture of orthodontic devices as set out in House Bill 4070 of the 89th Texas Legislature, Regular Session (2025), and codified at Section 431.024 of the Health and Safety Code. The bill seeks to protect patients from unsafe practices by establishing requirements for a person selling an orthodontic device or providing a service related to the design or manufacture of such a device to patients in Texas. The amendment also includes grammatical changes.

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

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

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

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

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

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

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety; and Texas Health and Safety Code §431.024.

This proposed rule implements Section 431.024 of the Health and Safety Code as set out in House Bill 4070 of the 89th Texas Legislature, Regular Session (2025).

§108.2. *Fair Dealing.*

(a) The dentist has special knowledge which a dental patient does not have; therefore, to avoid misunderstanding, the dentist shall advise a patient, before beginning treatment, of the proposed treatment, and any reasonable alternatives, in a manner that allows the patient to become involved in treatment decisions.

(b) Such advice shall include, at a minimum:

(1) the nature and extent of the treatment needed by such patient;

(2) the approximate time required to perform the recommended dental treatment and services;

(3) the terms and conditions of the payment of the dentist's [his] fee; and

(4) any further or additional service or returns by the patient or adjustments, repair, or consultation and the time within which this shall occur.

(c) On the written request of a patient, the licensed dentist shall provide, in plain language, a written explanation of the charges for professional services previously made on a bill or statement for the patient. For this rule, the term "plain language" means language that avoids terms of art or usage of words having specialized meaning in a context typically understood only by health care professionals.

(d) Neither the dentist nor the dentist's [his] employee(s) shall mislead dental patients as to the gravity or lack thereof of such patient's dental needs.

(e) A dentist shall not flagrantly or persistently overcharge, overdiagnose, or overtreat a patient. For this rule the meaning of the term "overcharge" includes, but is not limited to, collecting or attempting to collect a fee without reasonable justification for any element of dental services provided to a patient that is in excess of the fee the dentist ordinarily charges to others for the same service.

(f) In accordance with Section 431.024(f) of the Health and Safety Code, a dentist may not require a patient to agree to use a particular type of orthodontic device as a condition of performing an examination or review.

(g) ~~[(f)]~~ A dentist may not employ an auxiliary to perform any dental procedure which the dentist [he] cannot personally perform.

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

Filed with the Office of the Secretary of State on March 20, 2026.

TRD-202601342

Lauren Studdard

General Counsel

State Board of Dental Examiners

Earliest possible date of adoption: May 3, 2026

For further information, please call: (737) 363-2333



22 TAC §108.7

The State Board of Dental Examiners (Board) proposes this amendment to 22 TAC §108.7, pertaining to the minimum standard of care. The amendment pertains to the sale, design, and manufacture of orthodontic devices as set out in House Bill 4070 of the 89th Texas Legislature, Regular Session (2025), and codified at Section 431.024 of the Health and Safety Code.

The bill seeks to protect patients from unsafe practices by establishing requirements for a person selling an orthodontic device or providing a service related to the design or manufacture of such a device to patients in Texas, including requiring an in-person examination.

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

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

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

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

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

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

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety; and Texas Health and Safety Code §431.024.

This proposed rule implements Section 431.024 of the Health and Safety Code as set out in House Bill 4070 of the 89th Texas Legislature, Regular Session (2025).

§108.7. *Minimum Standard of Care, General.*

Each dentist shall:

(1) conduct his/her practice in a manner consistent with that of a reasonable and prudent dentist under the same or similar circumstances;

(2) maintain patient records that meet the requirements set forth in §108.8 of this title (relating to Records of the Dentist);

(3) obtain, maintain, and review an initial medical history. The medical history shall include, but shall not necessarily be limited to, known allergies to drugs, serious illness, current medications, previous hospitalizations and significant surgery, and a review of the physiologic systems obtained by patient history. A "check list," for consistency, may be utilized in obtaining information. The dentist shall review the medical history with the patient at any time a reasonable and prudent dentist would do so under the same or similar circumstances. At a minimum, a medical history should be reviewed and updated annually;

(4) perform and review a limited physical examination when a reasonable and prudent dentist would do so under the same or similar circumstances. At a minimum, a limited physical examination should be performed and reviewed annually;

(5) for office emergencies:

(A) maintain a positive pressure breathing apparatus including oxygen which shall be in working order;

(B) maintain other emergency equipment and/or currently dated drugs as a reasonable and prudent dentist with the same or similar training and experience under the same or similar circumstances would maintain;

(C) provide training to dental office personnel in emergency procedures which shall include, but not necessarily be limited to, basic cardiac life support, inspection and utilization of emergency equipment in the dental office, and office procedures to be followed in the event of an emergency as determined by a reasonable and prudent dentist under the same or similar circumstances; and

(D) shall adhere to generally accepted protocols and/or standards of care for management of complications and emergencies;

(6) successfully complete a current course in basic cardiopulmonary resuscitation given or approved by either the American Heart Association or the American Red Cross;

(7) maintain a written informed consent signed by the patient, or a parent or legal guardian of the patient, if the patient is a minor, or the patient has been adjudicated incompetent to manage the patient's personal affairs. A signed, written informed consent is required for all treatment plans and procedures where a reasonable possibility of complications from the treatment planned or a procedure exists, or the treatment plans and procedures involve risks or hazards that could influence a reasonable person in making a decision to give or withhold consent. Such consents must disclose any and all complications, risks and hazards;

(8) safeguard patients against avoidable infections as required by this chapter;

(9) not be negligent in the provision of dental services;

(10) use proper diligence in the dentist's practice;

(11) maintain a centralized inventory of drugs;

(12) report patient death or hospitalization as required by this chapter;

(13) abide by sanitation requirements as required by this chapter;

(14) abide by patient abandonment requirements as required by this chapter;

(15) abide by requirements concerning notification of discontinuance of practice as required by this chapter; ~~and~~

(16) hold a Level 1 permit (Minimal Sedation permit) issued by the Board before prescribing and/or administering Halcion (triazolam), and should administer Halcion (triazolam) in an in-office setting; and[-]

(17) abide by the requirements in Section 431.024 of the Health and Safety Code prior to selling an orthodontic device to a patient or providing a service related to the design or manufacture of an orthodontic device, which includes performing an in-person intraoral examination and an examination of the patient's head and neck.

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

Filed with the Office of the Secretary of State on March 20, 2026.

TRD-202601340

Lauren Studdard

General Counsel

State Board of Dental Examiners

Earliest possible date of adoption: May 3, 2026

For further information, please call: (737) 363-2333



22 TAC §108.8

The State Board of Dental Examiners (Board) proposes this amendment to 22 TAC §108.8, pertaining to the records of the dentist. The amendment pertains to the sale, design, and manufacture of orthodontic devices as set out in House Bill 4070 of the 89th Texas Legislature, Regular Session (2025), and codified at Section 431.024 of the Health and Safety Code. The bill seeks to protect patients from unsafe practices by establishing requirements for a person selling an orthodontic device or providing a service related to the design or manufacture of such a device to patients in Texas. The amendment also corrects a grammatical error.

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

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

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

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

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the proposed rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3) the implementation of the proposed rule does not require an in-

crease or decrease in future appropriations; (4) the proposed rule does not require an increase in fees paid to the agency; (5) the proposed rule creates a new regulation; (6) the proposed rule does not expand an existing regulation; (7) the proposed rule does not increase or decrease the number of individuals subject to it; and (8) the proposed rule does not positively or adversely affect the state's economy.

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

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety; and Texas Health and Safety Code §431.024.

This proposed rule implements Section 431.024 of the Health and Safety Code as set out in House Bill 4070 of the 89th Texas Legislature, Regular Session (2025).

§108.8. *Records of the Dentist.*

(a) The term dental records includes, but is not limited to: identification of the practitioner providing treatment; medical and dental history; limited physical examination; oral pathology examination; radiographs; dental and periodontal charting; diagnoses made; treatment plans; informed consent statements or confirmations; study models, casts, molds, and impressions, if applicable; cephalometric diagrams; narcotic drugs, dangerous drugs, controlled substances dispensed, administered or prescribed; anesthesia records; pathology and medical laboratory reports; progress and completion notes; materials used; dental laboratory prescriptions; billing and payment records; appointment records; consultations and recommended referrals; and post treatment recommendations.

(b) A Texas dental licensee practicing dentistry in Texas shall make, maintain, and keep adequate dental records for and upon each dental patient for reference, identification, and protection of the patient and the dentist. Records shall be kept for a period of not less than five years from the last date of treatment by the dentist. If a patient was younger than 18 years of age when last treated by the dentist, the records shall be maintained by the dentist until the patient reaches age 21 or for five years from the date of last treatment, whichever is longer. Dentists shall retain records for a longer period of time when mandated by other federal or state statute or regulation. Records must include documentation of the following:

- (1) Patients name;
- (2) Date of visit;
- (3) Reason for visit;
- (4) Vital signs, including, but not limited to, blood pressure and heart rate when applicable in accordance with §108.7 of this title (relating to Minimum Standard of Care, General); and
- (5) If not recorded, an explanation why vital signs were not obtained.

(c) Further, records must include documentation of the following when services are rendered:

(1) Written review of medical history and limited physical evaluation;

(2) Findings and charting of clinical and radiographic oral examination:

(A) Documentation of radiographs taken and findings deduced from them, including radiograph films or digital reproductions.

(B) Use of radiographs must be in accordance with the minimum standard of care.

(C) Documentation of the findings of a tactile and visual examination of the soft and hard tissues of the oral cavity;

(3) Diagnosis(es);

(4) Treatment plan, recommendation, and options;

(5) Treatment provided;

(6) Medication and dosages given to patient;

(7) Complications;

(8) Written informed consent that meets the provisions of §108.7(7) of this title;

(9) The dispensing, administering, or prescribing of all medications to or for a dental patient shall be made a part of such patient's dental record. The entry in the patient's dental record shall be in addition to any record keeping requirements of the DPS or DEA prescription programs;

(10) All records pertaining to Controlled Substances and Dangerous Drugs shall be maintained in accordance with the Texas Controlled Substances Act;

(11) Confirmable identification of provider dentist, and confirmable identification of person making record entries if different from provider dentist;

(12) When any of the items in paragraphs (1) - (11) of this subsection are not indicated, the record must include an explanation why the item is not recorded.

(d) Dentists must follow the documentation requirements in Section 431.024 of the Health and Safety Code prior to selling an orthodontic device to a patient or providing a service related to the design or manufacture of an orthodontic device, including:

(1) maintain a written acknowledgment of counsel signed by the patient regarding available orthodontic treatment options and the risks associated with those treatments; and

(2) maintain records for not less than seven years after the date of sale or provision of orthodontic services. If a patient was younger than 18 years of age when last treated by the dentist, the records shall be maintained by the dentist until the patient reaches age 21 or for seven years from the date of last treatment, whichever is longer.

(e) [(d)] Dental records are the sole property of the dentist who performs the dental service. However, ownership of original dental records may be transferred as provided in this section. Copies of dental records shall be made available to a dental patient in accordance with this section.

(f) [(e)] A dentist who leaves a location or practice, whether by retirement, sale, transfer, termination of employment or otherwise, shall maintain all dental records belonging to him or her, make a written transfer of records to the succeeding dentist, or make a written agreement for the maintenance of records.

(1) A dentist who continues to maintain the dental records belonging to him or her shall maintain the dental records in accordance with the laws of the State of Texas and this chapter.

(2) A dentist who enters into a written transfer of records agreement shall notify the State Board of Dental Examiners in writing within fifteen (15) days of a records transfer agreement. The notification shall include, at a minimum, the full names of the dentists involved in the agreement, include the locations involved in the agreement, and specifically identify what records are involved in the agreement. The agreement shall transfer ownership of the records. A transfer of records agreement may be made by agreement at any time in an employment or other working relationship between a dentist and another entity. Such transfer of records may apply to all or any part of the dental records generated in the course of the relationship, including future dental records. A dentist who assumes ownership of the records pursuant to this paragraph shall maintain the records in a manner consistent with this section and is responsible for complying with subsections (f) and (g) of this section.

(3) A dentist who enters into a records maintenance agreement shall notify the State Board of Dental Examiners within fifteen (15) days of such event. The notification shall include the full names of the dentists involved in the agreement, the locations involved in the agreement, and shall identify what records are involved in the agreement. A maintenance agreement shall not transfer ownership of the dental records, but shall require that the dental records be maintained in accordance with the laws of the State of Texas and the Rules of the State Board of Dental Examiners. The agreement shall require that the dentist(s) performing the dental service(s) recorded in the records have access to and control of the records for purposes of copying and recording. The dentist transferring the records in a records maintenance agreement shall maintain a copy of the records involved in the records maintenance agreement. Such an agreement may be made by written agreement by the parties at any time in an employment or other working relationship between a dentist and another entity. A records maintenance agreement may apply to all or any part of the dental records generated in the course of the relationship, including future dental records.

(g) [(f)] Dental records shall be made available for inspection and reproduction on demand by the officers, agents, or employees of the State Board of Dental Examiners. The patient's privilege against disclosure does not apply to the Board in a disciplinary investigation or proceeding under the Dental Practice Act. Copies of dental records submitted to the Board on demand of the officers, agents, or employees of the Board shall be legible and all copies of dental x-rays shall be of diagnostic quality. Non-diagnostic quality copies of dental x-rays and illegible copies of patient records submitted to the Board shall not fulfill the requirements of this section.

(h) [(g)] A dentist shall furnish copies of dental records to a patient who requests his or her dental records. At the patient's option, the copies may be submitted to the patient directly or to another Texas dental licensee who will provide treatment to the patient. Requested copies, including radiographs, shall be furnished within 30 days of the date of the request. The copies may be withheld until copying costs have been paid. Records shall not be withheld based on a past due account for dental care or treatment previously rendered to the patient. Copies of dental records submitted in accordance with a request under this section shall be legible and all copies of dental x-rays shall be of diagnostic quality. Non-diagnostic quality copies of dental x-rays shall not fulfill the requirements of this section.

(1) A dentist providing copies of patient dental records is entitled to a reasonable fee for copying which shall be no more than \$25 for the first 20 pages and \$0.15 per page for every copy thereafter.

(2) Fees for radiographs, which if copied by a [an] radiograph duplicating service, may be equal to actual cost verified by invoice.

(3) Reasonable costs for radiographs duplicated by means other than by a radiograph duplicating service shall not exceed the following charges:

- (A) a full mouth radiograph series: \$15.00;
- (B) a panoramic radiograph: \$15.00;
- (C) a lateral cephalometric radiograph: \$15.00;
- (D) a single extra-oral radiograph: \$5.00;
- (E) a single intra-oral radiograph: \$5.00; and
- (F) a CBCT scan: \$30.00.

(4) State agencies and institutions will provide copies of dental health records to patients who request them following applicable agency rules and directives.

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

Filed with the Office of the Secretary of State on March 20, 2026.

TRD-202601339

Lauren Studdard

General Counsel

State Board of Dental Examiners

Earliest possible date of adoption: May 3, 2026

For further information, please call: (737) 363-2333



CHAPTER 114. EXTENSION OF DUTIES OF AUXILIARY PERSONNEL--DENTAL ASSISTANTS

22 TAC §114.12

The State Board of Dental Examiners (Board) proposes this amendment to 22 TAC §114.12, pertaining to continuing education for registered dental assistant (RDA) certificate holders. The proposed amendment will allow RDAs to complete their continuing education hours, including clinical hours, through Board-approved self-study, interactive computer courses, or lecture courses. The Board has required clinical hours to be completed through a live course; however, allowing clinical hours to be completed through self-paced or online formats will improve accessibility, efficiency, and affordability while maintaining educational quality.

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

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

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

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

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

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

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are affected by this proposed rule.

§114.12. Continuing Education for Certificate Holders.

(a) To renew a certificate of registration issued under this chapter, a dental assistant must complete twelve (12) hours of continuing education biennially in areas covering dental assistant duties. At least six (6) of these twelve (12) hours must be clinical continuing education.

(b) A dental assistant may fulfill the continuing education requirement, including clinical hours, through board-approved self-study, interactive computer courses, or lecture courses. All continuing education must be offered by providers approved under 22 Texas Administrative Code §104.2.

(c) As a prerequisite to the renewal of a dental assistant's certificate of registration, a course in human trafficking prevention approved by the executive commissioner of the Texas Health and Human Services Commission must be completed.

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

Filed with the Office of the Secretary of State on March 20, 2026.

TRD-202601343

Lauren Studdard
General Counsel
State Board of Dental Examiners
Earliest possible date of adoption: May 3, 2026
For further information, please call: (737) 363-2333

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**CHAPTER 115. EXTENSION OF DUTIES OF
AUXILIARY PERSONNEL--DENTAL HYGIENE
22 TAC §115.20**

The State Board of Dental Examiners (Board) proposes this repeal of 22 TAC §115.20, concerning the dental hygiene advisory committee. The proposed repeal implements Senate Bill 313 of the 85th Texas Legislature, Regular Session (2017). The bill repealed Subchapter B, Chapter 262 of the Texas Occupations Code, which pertained to the dental hygiene advisory committee. The Board no longer uses the committee.

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

PUBLIC BENEFIT-COST NOTE: Casey Nichols has also determined that for the first five-year period the proposed repeal is in effect, the public benefit anticipated as a result of this proposed repeal will be to remove a regulation that is not consistent with state law.

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

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

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the proposed repeal does not create or eliminate a government program; (2) implementation of the proposed repeal does not require the creation or elimination of employee positions; (3) the implementation of the proposed repeal does not require an increase or decrease in future appropriations; (4) the proposed repeal does not require an increase in fees paid to the agency; (5) the proposed repeal does not create a new regulation; (6) the proposed repeal does limit an existing regulation by eliminating requirements that were repealed by state law; (7) the proposed repeal does decrease the number of individuals subject to it by eliminating the requirements of the rule; and (8) the proposed repeal does not positively or adversely affect the state's economy.

COST TO REGULATED PERSONS: This proposed repeal does not impose a cost on a regulated person and, therefore, is not subject to Tex. Gov't. Code §2001.0045.

Comments on the proposed repeal may be submitted to Casey Nichols, Executive Director, 1801 Congress Avenue, Suite 8.600, Austin, Texas 78701, by fax to (512) 649-2482, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed repeal is published in the

Texas Register. To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This repeal is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

This proposed repeal implements the repeal of Subchapter B, Chapter 262, Texas Occupations Code as set out in Senate Bill 313 of the 85th Texas Legislature, Regular Session (2017).

§115.20. *Dental Hygiene Advisory Committee--Purpose and Composition.*

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

Filed with the Office of the Secretary of State on March 20, 2026.

TRD-202601344

Lauren Studdard

General Counsel

State Board of Dental Examiners

Earliest possible date of adoption: May 3, 2026

For further information, please call: (737) 363-2333



TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 550. LICENSING STANDARDS FOR PRESCRIBED PEDIATRIC EXTENDED CARE CENTERS

The executive commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §550.5, concerning Definitions; §550.304, concerning Administrator Responsibilities; §550.406, concerning Student Nurses; §550.413, concerning Contractors; §550.415, concerning Staffing Policies for Staff Orientation, Development, and Training; §550.417, concerning Personnel Records; and §550.418, concerning Criminal History Checks, Nurse Aide Registry, Medication Aide Registry, and Employee Misconduct Registry Requirements.

BACKGROUND AND PURPOSE

The purpose of the proposal is to implement Senate Bill (SB) 1849, 88th Legislature, Regular Session, 2023, which created Texas Health and Safety Code Chapter 810, Interagency Reportable Conduct Search Engine. While the Texas Department of Information Resources (DIR) is responsible for creating the search engine, the chapter also requires HHSC to amend rules relating to the Employee Misconduct Registry search engine and required background check searches providers regulated by HHSC Long-Term Care Regulation (LTCR) must conduct before employing individuals.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §550.5 updates the definition for "Administrator" to clarify that services are being provided to the minor's parents and includes revisions to grammar and punctuation in the section. The proposed amendments to §§550.304, 550.406, 550.413, 550.415, 550.417, and 550.418 implement SB 1849 relating to an interagency reportable conduct search engine, known as the Search Engine for Multi-Agency Reportable Conduct (SEMARC), and update the requirements for providers to use the SEMARC when verifying employability of a new employee, current employee, volunteer, or contractor. The amendments also include minor editorial changes to grammar and punctuation.

FISCAL NOTE

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

There is no expected fiscal impact to state government to implement the proposed rules for this proposal. However, additional HHSC rule proposals will address the costs to state government for implementing SB 1849.

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Trey Wood has also determined that there may be an adverse economic effect on small businesses, micro-businesses, or rural communities.

LTCR providers that are required to comply with the rules may incur increased administrative costs, and this may have an adverse economic effect on small businesses, microbusinesses, or rural communities.

HHSC is unable to estimate the number of small businesses, micro-businesses, or rural communities subject to the proposed rules. The projected economic impact for a small business, micro-business, or rural community is the cost to comply.

HHSC determined that alternative methods to achieve the purpose of the proposed rules for small businesses, micro-businesses, or rural communities would not be consistent with ensuring the health and safety of minors being served.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Michelle Dionne-Vahalik, Associate Commissioner for Long-Term Care Regulation, has determined that for each year of the first five years the rules are in effect, the public benefit will be HHSC's ability to access a new search engine database that will protect minors being served in Prescribed Pediatric Extended Care Centers from individuals with a history of reportable conduct, including the abuse, neglect, and exploitation of vulnerable populations.

Trey Wood has also determined that for the first five years the rules are in effect, persons who are required to comply with the proposed rules may incur economic costs due to additional administrative costs related to accessing and searching the new database.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal, including information related to the cost, benefit, or effect of the proposed rule, as well as any applicable data, research, or analysis, may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4601 West Guadalupe Street, Austin, Texas 78751; or emailed to HHRulesCoordinationOffice@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 25R003" in the subject line.

SUBCHAPTER A. PURPOSE, SCOPE, LIMITATIONS, COMPLIANCE, AND DEFINITIONS

26 TAC §550.5

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system; Texas Health and Safety Code Chapter 810, which requires HHSC

and LTCR providers to use a new interagency search engine to verify employability; and Texas Health and Safety Code Chapter 248A101, which authorizes the executive commissioner of HHSC to adopt rules for Prescribed Pediatric Extended Care Centers.

The amendment implements Texas Government Code §524.0151 and Texas Health and Safety Code Chapter 810.

§550.5. Definitions.

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

(1) **Active Play**--Any physical activity from which a minor derives amusement, entertainment, enjoyment, or satisfaction by taking a participatory rather than a passive role. Active play includes various forms of activities, from the exploration of objects and toys to the structured play of formal games, sports, and hobbies.

(2) **Actual census**--The number of minors at a center at any given time.

(3) **Administration of medication**--The direct application of a medication to the body of a minor by any route. This includes removing an individual or unit dose from a previously dispensed, correctly labeled container, verifying it with the medication order, giving the correct medication and the correct dose to the correct minor at the correct time by the correct route, and accurately recording the time and dose given.

(4) **Administrator**--The person who is responsible for carrying out [~~implementing~~] and supervising the administrative policies [~~poicies~~] and operations of a center and for administratively supervising [~~the provision of~~] services provided to minors and the minor's [~~their~~] parents on a day-to-day basis.

(5) **Adult minor**--A person [~~minor~~] who is at least 18 years of age [~~or older~~] or is emancipated and has not been adjudged incompetent.

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

(A) a corporation--means an officer, director, or stockholder with direct ownership or disclosable interest of at least five percent, a subsidiary, or a parent company;

(B) a limited liability company--means an officer, member, or parent company;

(C) an individual--means:

(i) the individual's spouse;

(ii) each partnership and each partner [~~thereof~~] of which an individual or any affiliate of an individual is a partner; and

(iii) each corporation in which an individual is an officer, director, or stockholder with a direct ownership of at least five percent;

(D) a partnership--means a partner or a parent company of the partnership; and

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

(7) **Applicant**--A person who applies for a license to operate a center under THSC Chapter 248A and this chapter. The applicant is the person in whose name HHSC issues the license.

(8) Audiologist--A person who has a valid license under Texas Occupations Code[[§]] Chapter 401[[§]] as an audiologist.

(9) Basic services--Include:

(A) the development, implementation, and monitoring of a comprehensive protocol of care that:

(i) is provided to a medically dependent or technologically dependent minor;

(ii) is developed in conjunction with the minor's parent; and

(iii) specifies the medical, nursing, psychosocial, therapeutic, and developmental services required by the minor; and

(B) the caregiver training needs of a medically dependent or technologically dependent minor's parent.

(10) Behavioral emergency--A situation that occurs after which preventative or de-escalating techniques are attempted and determined to be ineffective and it is immediately necessary to restrain a minor to prevent immediate probable death or substantial bodily harm to the minor or to others because the minor is attempting serious bodily harm or immediate physical harm to the minor or to others.

(11) Business day--Any day except a national or state holiday listed in Texas Government Code §662.003(a) or (b). The term includes Saturday or Sunday if the center is open on that day.

(12) Center--A Prescribed Pediatric Extended Care Center. A facility operated for profit or on a nonprofit basis that provides non-residential basic services to four or more medically dependent or technologically dependent minors who require the services of the center and who are not related by blood, marriage, or adoption to the owner or operator of the center.

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

(14) Chemical restraint--The use of any chemical, including pharmaceuticals, through topical application, oral administration, injection, or other means[[§]] to restrict the free movement of all or a portion of a minor's body for the purpose of modifying or controlling the minor's behavior and which is not a standard treatment for a minor's medical or psychosocial condition.

(15) Chief financial officer--An individual who is responsible for supervising and managing all financial activities for a center.

(16) Clinical note--A notation of a contact with a minor or a minor's family member that is written and dated by any staff providing services on behalf of a center and that describes signs and symptoms of the minor, and treatments and medications administered to the minor, including the minor's reaction or response, and any changes in physical, emotional, psychosocial, or spiritual condition of the minor during a given period of time.

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

(18) Complaint--An allegation against a center or involving services provided at a center that involves a violation of this chapter or THSC Chapter 248A.

(19) Continuous face-to-face observation--Maintaining an in-person line of sight of a minor that is uninterrupted and free from distraction.

(20) Contractor--An individual providing services ordered by a prescribing physician on behalf of a center that the center would otherwise provide by its employees.

(21) Controlling person--A person who has the ability, acting alone or in concert with others, to directly or indirectly influence, direct, or cause the direction of the management of, expenditure of money for or policies of a center or other person.

(A) A controlling person includes:

(i) a management company, landlord, or other business entity that operates or contracts with another person for the operation of a center;

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

(iii) any other person who, because of a personal, familial, or other relationship with the owner, manager, landlord, tenant, or provider of a center, is in a position of actual control of or authority with respect to the center, regardless of whether the person is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the center.

(B) Notwithstanding any other provision of this paragraph, a controlling person of a center or of a management company or other business entity described by subparagraph (A)(i) of this paragraph that is a publicly traded corporation or is controlled by a publicly traded corporation means an officer or director of the corporation. The term does not include a shareholder or lender of the publicly traded corporation.

(C) A controlling person described by subparagraph (A)(iii) of this paragraph does not include a person, including an employee, lender, secured creditor, or landlord, who does not exercise any formal or actual influence or control over the operation of the center.

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

(23) Daily census--The number of minors served at a center during a center's hours of operation for a 24-hour period, starting at midnight.

(24) Day--A calendar day, unless otherwise specified in the text. A calendar day includes Saturday, Sunday, and a holiday.

(25) Dietitian--A person who has a valid license under the Licensed Dietitian Act, Texas Occupations Code[[§]] Chapter 701[[§]] as a licensed dietitian or provisional licensed dietitian, or who is registered as a dietitian by the Commission on Dietetic Registration of the American Dietetic Association.

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

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

(28) Emergency situation--An impending or actual situation that:

(A) interferes with normal activities of a center or minors at a center;

- (B) may:
- (i) cause injury or death to a minor or individual at the center; or
 - (ii) cause damage to the center's property;
- (C) requires the center to respond immediately to mitigate or avoid injury, death, damage, or interference; and
- (D) does not include a situation that arises from the medical condition of a minor such as cardiac arrest, obstructed airway, or cerebrovascular accident.

(29) Executive commissioner--The executive commissioner of the Texas Health and Human Services Commission.

(30) Functional assessment--An evaluation of a minor's abilities, wants, interests, and needs related to self-care, communication skills, social skills, motor skills, play with toys or objects, growth, and development appropriate for age.

(31) Health care provider--An individual or facility licensed, certified, or otherwise authorized to administer health care in the ordinary course of business or professional practice.

(32) Health care setting--A location at which licensed, certified, or otherwise regulated health care is administered.

(33) HHSC--The Texas Health and Human Services Commission.

(34) IDT--Interdisciplinary team. Individuals who work together to meet the medical, nursing, psychosocial, and developmental needs of a minor and a minor's parent's training needs.

(35) Immediate threat to the health or safety of a minor--A situation that causes, or is likely to cause, serious injury, harm, or impairment to, or the death of a minor.

(36) Inactive medical record--A record for a minor who was admitted by a center to receive services and was subsequently discharged by the center.

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

(38) Inspection--An on-site examination or audit of a center by HHSC to determine compliance with THSC Chapter 248A and this chapter.

(39) Isolation--The involuntary confinement of a minor in a room of a center for the purposes of infection control, assessment, and observation away from other minors in a room at the center. When in isolation, a minor is physically prevented from contact with other minors.

(40) Joint training--Training provided by HHSC to service providers and HHSC inspectors on subjects that address the 10 most commonly cited violations of state law governing centers, as published in HHSC annual reports. HHSC determines the frequency of joint training.

(41) License--A license to operate a center issued by HHSC under THSC[§] Chapter 248A[§] and this chapter. The term includes initial, renewal, and temporary licenses unless specifically stated otherwise.

(42) Licensed assistant in speech-language pathology--A person who has a valid license under Texas Occupations Code[§] Chapter 401[§] as a licensed assistant in speech-language pathology and who

provides speech language support services under the supervision of a licensed speech-language pathologist.

(43) License holder--A person that holds a license to operate a center under THSC Chapter 248A and this chapter.

(44) Life Safety Code--A publication of the National Fire Protection Association (NFPA), also known as NFPA 101, 2000 edition.

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

(46) Local emergency management coordinator--The person identified as the emergency management coordinator by the mayor or county judge for the geographical area in which a center is located.

(47) LVN--Licensed vocational nurse. A person who has a valid license under Texas Occupations Code[§] Chapter 301[§] as a licensed vocational nurse.

(48) Mechanical restraint--The use of any mechanical device, material, or equipment to restrict the free movement of all or a portion of a minor's body for the purpose of modifying or controlling the minor's behavior.

(49) Medical director--A physician who has the qualifications described in §550.307 of this chapter (relating to Medical Director Qualifications and Conditions) and has the responsibilities described in §550.308 of this chapter (relating to Medical Director Responsibilities).

(50) Medical record--A record composed first-hand for a minor who has or is receiving services at a center.

(51) Medically dependent or technologically dependent--The condition of an individual who, because of an acute, chronic, or intermittent medically complex or fragile condition or disability, requires ongoing, technology-based skilled nursing care prescribed by a physician to avert death or further disability, or the routine use of a medical device to compensate for a deficit in a life-sustaining body function. The term does not include a controlled or occasional medical condition that does not require continuous nursing care, including asthma or diabetes, or a condition that requires an epinephrine injection.

(52) Medication administration record--A record used to document the administration of a minor's medications and pharmaceuticals.

(53) Medication list--A list that includes all prescriptions, over-the-counter pharmaceuticals, and supplements that a minor is prescribed or taking, including the dosage, preparation, frequency, and the method of administration.

(54) Minor--An individual younger than 21 years of age who is medically dependent or technologically dependent.

(55) Mitigation--An action taken to eliminate or reduce the probability of an emergency or public health emergency or reduce an emergency's severity or consequences.

(56) Nursing director--The individual responsible for supervising skilled services provided at a center and who has the qualifications described in §550.309 of this chapter (relating to Nursing Director and Alternate Nursing Director Qualifications and Conditions).

(57) Nutritional counseling--Advising and assisting an adult minor or a minor's parent or family on appropriate nutritional intake by integrating information from a nutrition assessment with information on food and other sources of nutrients and meal preparation consistent with cultural background and socioeconomic status, with

the goal being health promotion, disease prevention, and nutrition education. The term includes:

(A) dialogue with an adult minor or a minor's parent to discuss current eating habits, exercise habits, food budget, and problems with food preparation;

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

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

(D) providing the adult minor or the minor's parent with motivation to help them understand and appreciate the importance of the diet plan in getting and staying healthy; or

(E) working with the adult minor or the minor's parent by recommending ideas for meal planning, food budget planning, and appropriate food gifts.

(58) Occupational therapist--A person who has a valid license under Texas Occupations Code[§] Chapter 454[§] as an occupational therapist.

(59) Occupational therapy assistant--A person who has a valid license under Texas Occupations Code[§] Chapter 454[§] as an occupational therapy assistant who assists in the practice of occupational therapy under the general supervision of an occupational therapist.

(60) Online portal--A secure portal provided on the HHSC website for licensure activities, including for an applicant to submit licensure applications and information.

(61) Operating hours--The days of the week and the hours of day a center is open for services to a minor as identified in a center's written policy as required by §550.201 of this chapter (relating to Operating Hours).

(62) Overnight--The hours between 9:00 p.m. and 5:00 a.m. during the days of the week a center operates.

(63) Over-the-counter pharmaceuticals--A drug or formula for which a physician's prescription is not needed for purchase or administration.

(64) Parent--A person authorized by law to act on behalf of a minor with regard to a matter described in this chapter. The term includes:

(A) a biological, adoptive, or foster parent;

(B) a guardian;

(C) a managing conservator; and

(D) a non-parent decision-maker as authorized by Texas Family Code §32.001.

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

(66) Person--An individual, firm, partnership, corporation, association, or joint stock association, and the legal successor thereof.

(67) Personal care services--Services required by a minor, including:

(A) bathing;

(B) maintaining personal hygiene;

(C) routine hair and skin care;

(D) grooming;

(E) dressing;

(F) feeding;

(G) eating;

(H) toileting;

(I) maintaining continence;

(J) positioning;

(K) mobility and bed mobility;

(L) transfer and ambulation;

(M) range of motion;

(N) exercise; and

(O) use of durable medical equipment.

(68) Pharmaceuticals--Of or pertaining to drugs, including over-the-counter drugs and those requiring a physician's prescription for purchase or administration.

(69) Pharmacist--A person who is licensed to practice pharmacy under Texas Occupations Code[§] Chapter 558.

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

(71) Physical restraint--The use of physical force, except for physical guidance or prompting of brief duration, that restricts the free movement of all or a portion of a minor's body for the purpose of modifying or controlling the minor's behavior.

(72) Physical therapist--A person who has a valid license under Texas Occupations Code[§] Chapter 453[§] as a physical therapist.

(73) Physical therapist assistant--A person who has a valid license under Texas Occupations Code[§] Chapter 453[§] as a physical therapist assistant and:

(A) who assists and is supervised by a physical therapist in the practice of physical therapy; and

(B) whose activities require an understanding of physical therapy.

(74) Physician--A person who:

(A) has a valid license in Texas to practice medicine or osteopathy in accordance with Texas Occupations Code[§] Chapter 155;

(B) has a valid license in Arkansas, Louisiana, New Mexico, or Oklahoma to practice medicine, who is the treating physician of a minor, and orders services for the minor[§] in accordance with Texas Occupations Code[§] Chapter 151; or

(C) is a commissioned or contract physician or surgeon who serves in the United States uniformed services or Public Health Service if the person is not engaged in private practice[§] in accordance with Texas Occupations Code[§] Chapter 151.

(75) Place of business--An office of a center where medical records are maintained and from which services are directed.

(76) Plan of care--A protocol of care.

(77) Positive intervention--An intervention that is based on or uses a minor's preferences as positive reinforcement[§] and focuses on positive outcomes and wellness for the minor.

(78) Pre-licensing program training--Computer-based training, available on the HHSC website, designed to acquaint center staff with licensure standards.

(79) Premises--The term includes the center, any lots on which the center is located, any outside ground areas, any outside play areas, and the parking lot.

(80) Preparedness--Actions taken in anticipation of a disaster, including a public health disaster.

(81) Prescribing physician--A physician who is authorized to write and issue orders for services at a center.

(82) Progress note--A dated and signed written notation summarizing facts about services provided to a minor and the minor's response during a given period of time.

(83) Protective device--A mechanism or treatment, including sedation, that is:

(A) used:

(i) for body positioning;

(ii) to immobilize a minor during a medical, dental, diagnostic, or nursing procedure;

(iii) to permit wounds to heal; or

(iv) for a medical condition diagnosed by a physician; and

(B) not used as a restraint to modify or control behavior.

(84) Protocol of care--A comprehensive, interdisciplinary plan of care that includes the medical physician's plan of care, nursing care plan and protocols, psychosocial needs, and therapeutic and developmental service needs required by a minor and family served.

(85) Psychologist--A person who has a valid license under Texas Occupations Code[§] Chapter 501[§] as a psychologist.

(86) Psychosocial treatment--The provision of skilled services to a minor under the direction of a physician that includes one or more of the following:

(A) assessment of alterations in mental status or evidence of suicide ideation or tendencies;

(B) teaching coping mechanisms or skills;

(C) counseling activities; or

(D) evaluation of a plan of care.

(87) Quiet time--A behavior management technique used to provide a minor with an opportunity to regain self-control, where the minor enters and remains for a limited period of time in a designated area from which egress is not prevented.

(88) Recovery--Activities implemented during and after a disaster response, including a public health disaster response, designed to return a center to its normal operations as quickly as possible.

(89) Relocation--The closing of a center and the movement of its business operations to another location.

(90) Respiratory therapist--A person who has a valid license under Texas Occupations Code[§] Chapter 604[§] as a respiratory care practitioner.

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

(92) Restraint--Physical restraint, chemical restraint, or mechanical restraint.

(93) RN--Registered nurse. A person who has a valid license under Texas Occupations Code[§] Chapter 301[§] to practice professional nursing.

(94) RN delegation--Delegation of tasks by an RN in accordance with 22 Texas Administrative Code Chapter 224 (relating to Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel for Clients with Acute Conditions or in Acute Care Environments).

(95) Sedation--The act of allaying nervous excitement by administering medication that commonly induces the nervous system to calm. Sedation is a protective device.

(96) Social worker--A person who has a valid license under Texas Occupations Code[§] Chapter 505[§] as a social worker.

(97) Speech-language pathologist--A person who has a valid license under Texas Occupations Code[§] Chapter 401[§] as a speech-language pathologist.

(98) Substantial compliance--A finding in which a center receives no recommendation for enforcement action after an inspection.

(99) Supervision--Authoritative procedural guidance by a qualified person that instructs another person and assists in accomplishing a function or activity. Supervision includes initial direction and periodic inspection of the actual act of accomplishing the function or activity.

(100) Support services--Social, spiritual, and emotional care provided to a minor and a minor's parent by a center.

(101) THSC--Texas Health and Safety Code.

(102) Total census--The total number of minors with active plans of care at a center.

(103) Transition support--Planning, coordination, and assistance to move the location of services provided to a minor from a center to the least restrictive setting appropriate.

(104) Violation--A finding of noncompliance with this chapter or THSC Chapter 248A resulting from an inspection.

(105) Volunteer--An individual who provides assistance to a center without compensation other than reimbursement for actual expenses.

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

Filed with the Office of the Secretary of State on March 18, 2026.

TRD-202601301

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: May 3, 2026

For further information, please call: (512) 438-3161



SUBCHAPTER C. GENERAL PROVISIONS
DIVISION 2. ADMINISTRATION AND
MANAGEMENT

26 TAC §550.304

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system; Texas Health and Safety Code Chapter 810, which requires HHSC and LTCR providers to use a new interagency search engine to verify employability; and Texas Health and Safety Code Chapter 248A101, which authorizes the executive commissioner of HHSC to adopt rules for Prescribed Pediatric Extended Care Centers.

The amendment implements Texas Government Code §524.0151 and Texas Health and Safety Code Chapter 810.

§550.304. *Administrator Responsibilities.*

(a) An administrator of a center must be responsible for implementing and supervising the administrative policies and operations of the center and for administratively supervising the provision of all services to minors on a day-to-day basis.

(b) A center's administrator must:

- (1) ensure that the center complies with applicable federal, state, and local laws, rules, and regulations;
- (2) manage the daily operations of the center;
- (3) organize and direct the center's ongoing functions;
- (4) ensure the availability of qualified staff and ancillary services to ensure the health, safety, and proper care of each minor;
- (5) ensure that an applicant's criminal history and the following registries are checked before employment: the nurse aide registry, the medication aide registry, and the Search Engine for Multi-Agency Reportable Conduct established under THSC Chapter 810[; employee misconduct registry, nurse aide registry, and medication registry checks are conducted for required staff before employment];
- (6) ensure the implementation of the center's training program policies and procedures;
- (7) familiarize staff with regulatory issues, as well as the center's policies and procedures;
- (8) ensure that the documentation of services provided is accurate and timely;
- (9) manage census records, including daily, actual, and total, in accordance with §550.803 of this chapter (relating to Census);
- (10) ensure that the center immediately notifies a minor's parent of any and all accidents or unusual incidents involving the [their] minor or that had the potential to cause injury or harm to a minor;
- (11) ensure that the center provides written notice to the parent of accidents or unusual incidents involving the [their] minor on the day of occurrence;
- (12) maintain a record of accidents or unusual incidents involving a minor or staff member that caused, or had the potential to cause, injury or harm to a person or property at the center;
- (13) maintain a copy of current contractor agreements with third party providers contracted by the center;

(14) maintain a copy of current written agreements with each contractor;

(15) ensure adequate staff education and evaluations according to requirements in §550.415 of this subchapter (relating to Staffing Policies for Staff Orientation, Development, and Training);

(16) maintain documented development programs for all staff;

(17) ensure the accuracy of public information materials and activities made available and presented on behalf of the center;

(18) ensure implementation of an effective budgeting and accounting system consistent with good business practice that promotes the health and safety of the center's minors; and

(19) supervise the annual distribution and evaluation of the responses to the parent-satisfaction surveys on all minors served.

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

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Karen Ray
Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-3161



DIVISION 3. NURSING AND STAFFING
REQUIREMENTS

26 TAC §§550.406, 550.413, 550.415, 550.417, 550.418

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system; Texas Health and Safety Code Chapter 810, which requires HHSC and LTCR providers to use a new interagency search engine to verify employability; and Texas Health and Safety Code Chapter 248A101, which authorizes the executive commissioner of HHSC to adopt rules for Prescribed Pediatric Extended Care Centers.

The amendments implement Texas Government Code §524.0151 and Texas Health and Safety Code Chapter 810.

§550.406. *Student Nurses.*

(a) If a center has an agreement with an accredited school of nursing to use the center for a portion of a student nurse's clinical experience, the student nurse may provide care under the following conditions:

- (1) the agreement ensures that criminal history checks are conducted for a student nurse according to §550.418 of this division (relating to Criminal History Checks, Nurse Aide Registry, Medication Aide Registry, and Search Engine for Multi-Agency Reportable Conduct Requirements) [in accordance with §550.418 of this division (relating to Criminal History Checks, Nurse Aide Registry, Medication Aide Registry, and Employee Misconduct Registry Requirements)] before a student nurse provides direct care;

(2) a student nurse is not counted in the staffing ratio required in this chapter; and

(3) one of the following:

(A) an instructor from the school is onsite, provides class supervision, and assumes responsibility for all student nursing activities at the center; or

(B) the center:

(i) assumes responsibility for supervision of all student nurses and for all student nursing activities at the center; and

(ii) meets the requirements described in subsection (b) of this section.

(b) The center must adopt and enforce written policy and procedures describing whether the center will assume responsibility for supervision of all student nurses and for all student nursing activities at the center. If a center assumes responsibility for student nurse activity, the center must:

(1) determine the appropriate level of student nurse interaction with a minor, based on the qualifications and experience of the student nurse;

(2) assign an RN to supervise a student nurse;

(3) limit RN supervision to no more than three student nurses at one time; and

(4) based on the outcomes of paragraph (1) of this subsection, determine if it is appropriate to exclude from the staffing ratio the RN assigned to supervise the student nurse activities to ensure the health and safety of minors.

§550.413. Contractors.

(a) If a center uses contractors, the center must enter into a contract with each contractor. The contract must be enforced by the center and clearly designate:

(1) that minors are accepted for care only by the center;

(2) the services to be provided by the contractor and how they will be provided, including per visit or per hour;

(3) the necessity of the contractor to conform to all applicable center policies, including staff qualifications;

(4) the contractor's responsibility for participating in developing the plan of care;

(5) the manner in which services will be coordinated and evaluated by the center in accordance with §550.802 of this subchapter (relating to Coordination of Services); and

(6) the procedures the contractor must use to ~~for~~:

(A) submit ~~submitting~~ information and documentation by the contractor in accordance with the center's record policies;

(B) schedule ~~scheduling of~~ visits by the contractor or the center; and

(C) periodically evaluate ~~periodic evaluation of~~ the minor by the contractor.

(b) A center must establish and maintain a contract management record system to ensure that services provided to each minor by a contractor at the center are completely and accurately documented, readily accessible, and systematically organized to facilitate the compilation, retrieval, and review of the information.

(c) The center is not required to maintain a personnel record for contractors. Upon request by HHSC, a center must provide documentation at the site of a survey no later than eight working hours after the request to demonstrate:

(1) that contractors meet the center's written job qualifications for the position and duties performed; and

(2) the center complies with §550.418 of this division (relating to Criminal History Checks, Nurse Aide Registry, Medication Aide Registry, and Search Engine for Multi-Agency Reportable Conduct Requirements).

~~{(2) the center is in compliance with §550.418 of this division (relating to Criminal History Checks, Nurse Aide Registry, Medication Aide Registry, and Employee Misconduct Registry Requirements).}~~

§550.415. Staffing Policies for Staff Orientation, Development, and Training.

(a) A center must adopt and enforce written staffing policies and procedures that govern all staff providing services on behalf of the center, including employees, volunteers, and contractors.

(b) A center's written staffing policies must include:

(1) requirements for orientation to the policies, procedures, and objectives of the center;

(2) requirements and procedures for processing criminal history checks;

(3) requirements that staff are current on immunizations;

(4) requirements that an applicant for employment provide written documentation to rule out communicable diseases, including but not limited to tuberculosis;

(5) requirements for direct care staff to demonstrate the necessary skills and competency to meet the direct care needs of a minor to which he or she is assigned and as described in the ~~their~~ job description;

(6) requirements for staff to participate in appropriate employee development programs quarterly;

(7) requirements for participation by all staff in job-specific training;

(8) staff training policies that ensure:

(A) staff are properly oriented to tasks performed;

(B) demonstration of competency for tasks when competency cannot be determined through education, license, certification, or experience;

(C) quarterly continuing systemic training for all staff who provide services, including training on infection prevention and control;

(D) staff are informed of changes in techniques, philosophies, organization, minor's rights, ethics and confidentiality, medical record requirements, information relating to minor's development, goals, and products relating to a minor's care;

(E) staff are properly oriented and trained in the proper use of person-centered direction and guidance as outlined in center policy and in accordance with §550.206 of this subchapter (relating to Person-Centered Direction and Guidance);

(F) staff are properly oriented and trained in the proper use and application of protective devices; and

(G) staff are properly oriented and trained in the proper use and application of restraints in accordance with the following requirements:

(i) all center staff whose job responsibilities include the use of restraint during a behavioral emergency must be trained before assuming direct care responsibilities for a minor;

(ii) all center staff must receive training and demonstrate competency in the following areas:

(I) using any restraint techniques or procedures that are expected or anticipated to be employed;

(II) identifying the underlying causes or functions of threatening behaviors;

(III) understanding how the behavior of staff members affects the behavior of minors;

(IV) using de-escalation, mediation, self-protection, and other techniques, such as quiet time, to prevent or reduce the use of restraint;

(V) applying principles of trauma informed care; and

(VI) recognizing and responding to signs of distress in a minor who is being restrained; and

(iii) all center staff must complete training and demonstrate competence in the use of restraint in a behavioral emergency at least every 12 months following initial training; and

(H) job-specific training is documented with the following information:

(i) the name and qualifications of the trainer;

(ii) the training topics and length; and

(iii) a list of staff who completed the training and demonstrated competence;

(9) a requirement to have a written job description that is a statement of the functions and responsibilities, and job qualifications, including the specific education and training requirements for each position at the center;

(10) steps for checking the nurse aide registry and following the requirements in §550.418 of this division (relating to Criminal History Checks, Nurse Aide Registry, Medication Aide Registry, and Search Engine for Multi-Agency Reportable Conduct Requirements);

~~[(10) procedures for searching the nurse aide registry and the employee misconduct registry for staff in accordance with §550.418 of this division (relating to Criminal History Checks, Nurse Aide Registry, Medication Aide Registry, and Employee Misconduct Registry Requirements);]~~

(11) a requirement to have annual evaluation of employee and volunteer performance;

(12) a description of employee and volunteer disciplinary action and procedures;

(13) a policy regarding the use of volunteers that is in compliance with §550.414 of this division (relating to Volunteers); and

(14) a requirement that all staff providing services on behalf of a center sign a statement that the staff have read, understand, and will comply with all applicable center policies.

(c) A center must adopt and enforce written policies and procedures for parent orientation and training programs in accordance with

§550.509 of this subchapter (relating to Parent Training). The policy must:

(1) require orientation be provided to each parent of each minor admitted to the center; and

(2) ensure that orientation includes:

(A) the philosophy of the center;

(B) the basic services as defined in §550.5 of this chapter (relating to Definitions);

(C) on-going parent training needs as determined by the individual needs of the minor;

(D) a minor's parent agreement and disclosure form;

(E) the center attendance policy for minors; and

(F) information about a minor's rights while receiving services at the center.

§550.417. Personnel Records.

(a) A center must maintain a personnel record for an employee and volunteer. A personnel record may be maintained electronically if it meets the same requirements as a paper record. All information must be kept current. A personnel record must include the following:

(1) a signed job description and qualifications for each position accepted or a signed statement that the person read the job description and qualifications for each position accepted;

(2) an application for employment or volunteer agreement;

(3) a record of the immunizations requirements and evaluation of the tuberculosis results;

(4) verification of references, job experience, and educational requirements as conducted by the center to verify qualifications for each position accepted;

(5) verification of licenses, permits, and certifications before employment and annually;

(6) annual performance evaluations and disciplinary actions;

(7) the signed statement about compliance with center policies required by §550.415 of this division (relating to Staffing Policies for Staff Orientation, Development, and Training); and

(8) for an employee and volunteer:

(A) a printed copy of the results of the initial and annual searches of the nurse aide registry and the Search Engine for Multi-Agency Reportable Conduct (SEMARC) established under THSC Chapter 810 [employee misconduct registry obtained from the HHSC Internet website]; and

(B) documentation that the employee, volunteer, or contractor, as required by §550.418 of this division (relating to Criminal History Checks, Nurse Aide Registry, Medication Aide Registry, and Search Engine for Multi-Agency Reportable Conduct Requirements), has received written information about the SEMARC.

~~[(B) documentation that the employee, volunteer, or contractor in accordance with §550.418 of this division (relating to Criminal History Checks, Nurse Aide Registry, Medication Aide Registry, and Employee Misconduct Registry Requirements) received written information about the Employee Misconduct Registry.]~~

(b) A center must keep a complete and accurate personnel record for an employee and volunteer at its licensed location.

§550.418. *Criminal History Checks, Nurse Aide Registry, Medication Aide Registry, and Search Engine for Multi-Agency Reportable Conduct [Employee Misconduct Registry] Requirements.*

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

(1) Applicant means any individual applying for a position in a center.

(2) Employee means an individual directly employed by a center, a volunteer, or a contractor.

(b) The provisions in this subsection apply to an applicant and an employee.

(1) A center must conduct a criminal history check authorized by, and in compliance with, THSC Chapter 250 for an applicant for employment and an employee.

(2) A center must not employ an applicant whose criminal history check includes a conviction listed in THSC §250.006 that bars employment or a conviction the center has determined is a contraindication to employment. If an applicant's or employee's criminal history check includes a conviction of an offense that is not listed in THSC §250.006, the center must document its review of the conviction and its determination of whether the conviction is a contraindication to employment.

(3) The center must immediately discharge an employee when the center becomes aware that the employee's criminal history check reveals conviction of a crime that bars employment or that the center has determined is a contraindication to employment.

(c) The provisions in this subsection apply to an applicant and an employee.

(1) Before a center hires an applicant, the center must search the Nurse Aide Registry (NAR), Medication Aide Registry (MAR), and the Search Engine for Multi-Agency Reportable Conduct (SEMARC) established under THSC Chapter 810 to verify if the applicant is listed as unemployable. If the applicant's name is on any of these lists as unemployable the center cannot hire the applicant.

~~[(1) Before a center hires an applicant, the center must search the Nurse Aide Registry (NAR), Medication Aide Registry (MAR), and Employee Misconduct Registry (EMR) using the HHSC website to determine if an applicant or employee is listed in any of these registries as unemployable. The center must not employ an applicant who is listed as unemployable in any of these registries.]~~

(2) The center must provide new employees information about the SEMARC within [provide information about the EMR to an employee no later than] five business days after hiring an employee. This [The] information must:

(A) be in writing;

(B) state that a person listed in the SEMARC established under THSC Chapter 810 [EMR] is not employable by the center; and

(C) include a reference to Chapter 561 of this title (relating to Employee Misconduct Registry) and THSC Chapter 253.

(3) In addition to the initial verification of employability, the center must, at least once every 12 months, search the NAR and the SEMARC [EMR] to determine if the employee is listed as unemployable. [in either registry at least every 12 months.]

(4) A center must suspend the employment of an employee who HHSC finds has engaged in reportable conduct while the employee

exhausts any applicable appeals process, including informal and formal appeals and any hearing or judicial review, in accordance with THSC §253.004 or §253.005, pending a final decision by an administrative law judge. A center must not reinstate the employee's employment or contract during the course of any applicable appeals process.

(5) The center must immediately discharge an employee when the center becomes aware:

(A) that the employee is listed as unemployable on the Nurse Aide Registry or the SEMARC; or

~~[(A) that the employee is designated in the NAR or the EMR as unemployable; or]~~

(B) that the employee's criminal history check reveals conviction of a crime that bars employment or that the center has determined is a contraindication to employment.

(d) Upon request by HHSC, a center must provide documentation to demonstrate compliance with subsections (b) and (c) of this section.

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

Filed with the Office of the Secretary of State on March 18, 2026.

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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-3161



CHAPTER 553. LICENSING STANDARDS FOR ASSISTED LIVING FACILITIES

SUBCHAPTER E. STANDARDS FOR LICENSURE

26 TAC §553.257

The executive commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §553.257, concerning Human Resources.

BACKGROUND AND PURPOSE

The purpose of the proposal is to implement Senate Bill (SB) 1849, 88th Legislature, Regular Session, 2023, which created Texas Health and Safety Code Chapter 810, Interagency Reportable Conduct Search Engine. While the Texas Department of Information Resources (DIR) is responsible for creating the search engine, the chapter also requires HHSC to amend rules relating to the Employee Misconduct Registry search engine and required background check searches providers regulated by HHSC Long-Term Care Regulation (LTCR) must conduct before employing individuals.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §553.257 implements SB 1849 relating to an interagency reportable conduct search engine, known as Search Engine for Multi-Agency Reportable Conduct (SEMARC), and updates the requirements for providers to use the SEMARC when verifying employability of a new employee or

current employee. The proposed amendment also changes the name of the section from "Human Resources" to "Personnel" and updates and references.

FISCAL NOTE

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

There is no expected fiscal impact to state government to implement the proposed rule for this proposal. However, additional HHSC rule proposals will address the costs to state government for implementing SB 1849.

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Trey Wood has also determined that there may be an adverse economic effect on small businesses, micro-businesses, or rural communities.

LTCR providers that are required to comply with the rule may incur increased administrative costs, and this may have an adverse economic effect on small businesses, microbusinesses, or rural communities.

HHSC is unable to estimate the number of small businesses, micro-businesses, or rural communities subject to the proposed rule. The projected economic impact for a small business, micro-business, or rural community is the cost to comply.

HHSC determined that alternative methods to achieve the purpose of the proposed rule for small businesses, micro-businesses, or rural communities would not be consistent with ensuring the health and safety of assisted living facility residents.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule is necessary to protect the health, safety, and welfare of the residents of Texas and are necessary to imple-

ment legislation that does not specifically state that §2001.0045 applies to the rule.

PUBLIC BENEFIT AND COSTS

Michelle Dionne-Vahalik, Associate Commissioner for Long-Term Care Regulation, has determined that for each year of the first five years the rule is in effect, the public benefit will be HHSC's ability to access a new search engine database that will protect residents of assisted living facilities from individuals with a history of reportable conduct, including the abuse, neglect, and exploitation of vulnerable populations.

Trey Wood has also determined that for the first five years the rule is in effect, persons who are required to comply with the proposed rule may incur economic costs due to additional administrative costs related to accessing and searching the new database.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal, including information related to the cost, benefit, or effect of the proposed rule, as well as any applicable data, research, or analysis, may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4601 West Guadalupe Street, Austin, Texas 78751; or emailed to HSRulesCoordinationOffice@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 25R003" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system; Texas Health and Safety Code Chapter 810, which requires HHSC and LTCR providers to use a new interagency search engine to verify employability; and Texas Health and Safety Code 247.025, which authorizes the executive commissioner of HHSC to adopt rules for assisted living facilities.

The amendment implements Texas Government Code §524.0151 and Texas Health and Safety Code Chapter 810.

§553.257. *Personnel* [*Human Resources*].

(a) Personnel records. A facility must keep current and complete personnel records on a facility employee for review by HHSC staff, including:

- (1) documentation that the facility performed a criminal history check;

(2) an annual search of the Search Engine for Multi-Agency Reportable Conduct (SEMARC) established under Texas Health and Safety Code Chapter 810 [employee misconduct registry check];

(3) an annual nurse aide registry check;

(4) documentation of initial tuberculosis screenings referenced in this subchapter [~~§553.261(f) of this subchapter (relating to Coordination of Care)~~];

(5) documentation of the employee's compliance with or exemption from the facility vaccination policy referenced in [~~§553.261(f) of~~] this subchapter;

(6) the signed statement from the employee referenced in §553.273 of this subchapter (relating to Abuse, Neglect, or Exploitation Reportable to HHSC by Facilities), acknowledging that the employee may be criminally liable for the failure to report abuse, neglect, and exploitation; and

(7) a signed disclosure statement, indicating whether the employee:

(A) has been convicted of an offense described in Texas Health and Safety Code §250.006; and

(B) has lived in a state other than Texas within the past five years.

(b) Investigation of facility employees.

(1) A facility must comply with the provisions of Texas Health and Safety Code[~~§~~] Chapter 250.

(2) Before a facility hires an applicant [an employee], the facility must search [~~the employee misconduct registry (EMR) established under §253.007, Texas Health and Safety Code, and~~] the [HHSC] nurse aide registry (NAR) and the SEMARC to determine if the applicant [~~individual~~] is listed [~~designated in either registry~~] as unemployable based on employee misconduct. [~~Both registries can be accessed on the HHSC Internet website.~~]

(3) A facility is prohibited from hiring or continuing to employ a person who is listed in the [EMR ~~or~~] NAR or the SEMARC as unemployable. If a person [~~or who~~] has been convicted of an offense listed in Texas Health and Safety Code §250.006, the person cannot be hired or allowed to continue to work at [~~as a bar to employment or is a contraindication to employment with~~] the facility.

(4) A facility must provide notification about the SEMARC [EMR] to an employee in accordance with §561.3 of this title (relating to Employment and Registry Information).

(5) In addition to the initial search of the NAR and the SEMARC [EMR], a facility must, at least once every 12 months, conduct a search of the NAR and the SEMARC [EMR] to determine if the person [employee] is listed [~~designated in either registry~~] as unemployable. [~~at least every 12 months.~~]

(6) The facility must keep a copy of the results from the initial and annual search of the NAR and the SEMARC in each employee's file.

[~~(6) A facility must keep a copy of the results of the initial and annual searches of the NAR and EMR in the employee's personnel file.~~]

(7) If an applicant for employment indicates on the disclosure statement that the applicant has [~~he or she have~~] lived in another state within the past five years, the facility must conduct a name-based criminal history check in each state in which the applicant previously

resided within the five-year period. A facility may hire the applicant pending the results of the name-based criminal history check in each state, but the employee must not be in a position that has direct contact with residents.

(8) If HHSC determines that a facility employee has engaged in reportable conduct, the facility must:

(A) suspend the employment of the employee while the employee exhausts any applicable appeals process, including informal and formal appeals and any hearing or judicial review conducted in accordance with Texas Health and Safety Code §253.004 or §253.005, pending a final decision by an administrative law judge; and

(B) not reinstate the employee's employment during the course of any applicable appeals process.

(9) For the purpose of paragraph (8) of this subsection, reportable conduct includes:

(A) abuse or neglect that causes or may cause death or harm to a resident;

(B) sexual abuse of a resident;

(C) financial exploitation of a resident in an amount of \$25 or more; and

(D) emotional, verbal, or psychological abuse that causes harm to a resident.

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-3161



CHAPTER 554. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

The executive commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §554.101, concerning Definitions; and §554.1921, concerning General Requirements for a Nursing Facility.

BACKGROUND AND PURPOSE

The purpose of the proposal is to implement Senate Bill (SB) 1849, 88th Legislature, Regular Session, 2023, which created Texas Health and Safety Code Chapter 810, Interagency Reportable Conduct Search Engine. While the Texas Department of Information Resources (DIR) is responsible for creating the search engine, the chapter also requires HHSC to amend rules relating to the Employee Misconduct Registry search engine and required background check searches providers regulated by HHSC Long-Term Care Regulation (LTCR) must conduct before employing individuals.

The proposal is also necessary to update rules and to improve the readability and understanding of the rules.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §554.101 revises the definition for "Drug" to clarify that the term does not include devices, components, parts, or accessories. The amendment also includes minor editorial revisions for formatting, punctuation, and to update a rule reference.

The proposed amendment to §554.1921 implements SB 1849 relating to an interagency reportable conduct search engine, known as the Search Engine for Multi-Agency Reportable Conduct (SEMARC) and updates requirements for providers to use the SEMARC when verifying employability of a new employee or current employee. The amendment also includes minor editorial revisions for formatting, punctuation, and to update a rule reference.

FISCAL NOTE

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

There is no expected fiscal impact to state government to implement the proposed rules for this proposal. However, additional HHSC rule proposals will address the costs to state government for implementing SB 1849.

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Trey Wood has also determined that there may be an adverse economic effect on small businesses, micro-businesses, or rural communities.

LTCR providers that are required to comply with the rules may incur increased administrative costs, and this may have an adverse economic effect on small businesses, microbusinesses, or rural communities.

HHSC is unable to estimate the number of small businesses, micro-businesses, or rural communities subject to the proposed rules. The projected economic impact for a small business, micro-business, or rural community is the cost to comply.

HHSC determined that alternative methods to achieve the purpose of the proposed rules for small businesses, micro-busi-

nesses, or rural communities would not be consistent with ensuring the health and safety of nursing facility residents.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Michelle Dionne-Vahalik, Associate Commissioner for Long-Term Care Regulation, has determined that for each year of the first five years the rules are in effect, the public benefit will be HHSC's ability to access a new search engine database that will protect residents of nursing facilities from individuals with a history of reportable conduct, including the abuse, neglect, and exploitation of vulnerable populations.

Trey Wood has also determined that for the first five years the rules are in effect, persons who are required to comply with the proposed rules may incur economic costs due to additional administrative costs related to accessing and searching the new database.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal, including information related to the cost, benefit, or effect of the proposed rule, as well as any applicable data, research, or analysis, may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4601 West Guadalupe Street, Austin, Texas 78751; or emailed to HHRulesCoordinationOffice@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 25R003" in the subject line.

SUBCHAPTER B. DEFINITIONS

26 TAC §554.101

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system; Texas Health and Safety Code Chapter 810, which requires HHSC and LTCR providers to use a new interagency search engine to

verify employability; and Texas Health and Safety Code Chapter 242, which authorizes the executive commissioner of HHSC to adopt rules for nursing facilities.

The amendment implements Texas Government Code §524.0151 and Texas Health and Safety Code Chapter 810.

§554.101. *Definitions.*

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

(1) Abuse--Negligent or willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical or emotional harm or pain to a resident; or sexual abuse, including involuntary or nonconsensual sexual conduct that would constitute an offense under Texas Penal Code §21.08 (relating to Indecent Exposure) or Texas Penal Code[.] Chapter 22 (relating to Assaultive Offenses), sexual harassment, sexual coercion, or sexual assault.

(2) Act--[Chapter 242 of the] Texas Health and Safety Code Chapter 242.

(3) Activities assessment--See Comprehensive Assessment and Comprehensive Care Plan in paragraphs (26) and (27) of this section.

(4) Activity director--The qualified individual appointed by the facility to direct the activities program as described in §554.702 of this chapter (relating to Activities).

(5) Addition--The addition of floor space to an institution.

(6) Administrator--A person currently licensed in accordance with Chapter 555 of this title (relating to Nursing Facility Administrators).

(7) Admission MDS assessment--An MDS assessment that determines a recipient's initial determination of eligibility for medical necessity for admission into the Texas Medicaid Nursing Facility Program.

(8) Advanced practice registered nurse--A person licensed as a registered nurse and approved to practice as an advanced practice registered nurse by the Texas Board of Nursing.

(9) Adverse event--An untoward, undesirable, and usually unanticipated event that causes death or serious injury, or the risk of death or serious injury.

(10) Alzheimer's Disclosure Statement for Nursing Facilities--The HHSC-prescribed form a facility uses to describe the nature of care or treatment of residents with Alzheimer's disease and related disorders.

(11) Alzheimer's disease and related disorders--Alzheimer's disease and any other irreversible dementia described by the Centers for Disease Control and Prevention or the most current edition of the Diagnostic and Statistical Manual of Mental Disorders.

(12) Applicant--A person or governmental unit, as [those terms are] defined in the Texas Health and Safety Code[.] Chapter 242, applying for a license under that chapter.

(13) Attending physician--A physician, currently licensed by the Texas Medical Board, who is designated by the resident or resident representative as having primary responsibility for the treatment and care of the resident.

(14) Authorized electronic monitoring--The placement of an electronic monitoring device in a resident's room and using the device to make tapes or recordings after making a request to the facility to allow electronic monitoring.

(15) Barrier precautions--Precautions, including the use of gloves, masks, gowns, resuscitation equipment, eye protectors, aprons, face shields, and protective clothing for purposes of infection control.

(16) Care and treatment--Services required to maximize resident independence, personal choice, participation, health, self-care, psychosocial functioning, and reasonable safety, all consistent with the preferences of the resident.

(17) Certification--The determination by HHSC that a nursing facility meets all the requirements of the Medicaid or Medicare programs.

(18) Certified facility--A facility that meets the requirements of the Medicare program, the Medicaid program, or both.

(19) Certified Ombudsman--Has the meaning given in §88.2 of this title (relating to Definitions).

(20) CFR--Code of Federal Regulations.

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

(22) Chemical restraints--Any drug administered for the purpose of discipline or convenience, and not required to treat the resident's medical symptoms.

(23) CMS--Centers for Medicare & Medicaid Services.

(24) Complaint--Any allegation received by HHSC other than an incident reported by the facility. Such allegations include[.] but are not limited to,] abuse, neglect, exploitation, or violation of state or federal standards.

(25) Completion date--The date an RN assessment coordinator signs an MDS assessment as complete.

(26) Comprehensive assessment--An interdisciplinary description of a resident's needs and capabilities, including daily life functions and significant impairments of functional capacity, as described in §554.801(2) of this chapter (relating to Resident Assessment).

(27) Comprehensive care plan--A plan of care prepared by an interdisciplinary team that includes measurable short-term and long-term objectives and timetables to meet the resident's needs developed for each resident after admission.

(A) The plan addresses at least the following needs:

(i) medical[.]

(ii) nursing[.]

(iii) rehabilitative[.]

(iv) psychosocial[.]

(v) dietary[.]

(vi) activity[.] and

(vii) resident's rights.

(B) The plan includes strategies developed by the team, as described in §554.802(c)(2) of this chapter (relating to Comprehensive Person-Centered Care Planning), consistent with the physician's prescribed plan of care, to assist the resident in eliminating, managing, or alleviating health or psychosocial problems identified through assessment. Planning includes:

(i) [(A)] goal setting;

(ii) [(B)] establishing priorities for management of care;

(iii) [(C)] making decisions about specific measures to be used to resolve the resident's problems; and

(iv) [(D)] assisting in the development of appropriate coping mechanisms.

(28) Controlling person--A person with the ability, acting alone or in concert with others, to directly or indirectly, influence, direct, or cause the direction of the management, expenditure of money, or policies of a nursing facility or other person. A controlling person does not include a person, such as an employee, lender, secured creditor, or landlord, who does not exercise any influence or control, whether formal or actual, over the operation of a facility. A controlling person includes:

(A) a management company, landlord, or other business entity that operates or contracts with others for the operation of a nursing facility;

(B) any person who is a controlling person of a management company or other business entity that operates a nursing facility or that contracts with another person for the operation of a nursing facility;

(C) an officer or director of a publicly traded corporation that is, or that controls, a facility, management company, or other business entity described in subparagraph (A) of this paragraph but does not include a shareholder or lender of the publicly traded corporation; and

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

(29) Covert electronic monitoring--The placement and use of an electronic monitoring device that is not open and obvious, and the facility and HHSC have not been informed about the device by the resident, by a person who placed the device in the room, or by a person who uses the device.

(30) DADS--The term referred to the Department of Aging and Disability Services; it now refers to HHSC.

(31) Dentist--A practitioner licensed to practice dentistry by the Texas State Board of Dental Examiners.

(32) DHS--This term referred to the Texas Department of Human Services; it now refers to HHSC.

(33) Dietitian--A person [qualified dietitian is one who is] qualified based upon either:

(A) registration by the Commission on Dietetic Registration of the Academy of Nutrition and Dietetics; or

(B) licensure, or provisional licensure, as a dietitian under Texas Occupations Code[.] Chapter 701 and one year of supervisory experience in dietetic service of a health care facility.

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

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

(36) Distinct part--That portion of a facility certified to participate in the Medicaid Nursing Facility program or as a SNF in the Medicare program.

(37) Drug (also referred to as medication)--Any of the following:

(A) any substance recognized as a drug in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them;

(B) any substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans;

(C) any substance (other than food) intended to affect the structure or any function of the body of a human; and

(D) any substance intended for use as a component of any substance specified in subparagraphs (A) - (C) of this paragraph. The term [It] does not include devices or [their] components, parts, or accessories.

(38) Electronic monitoring device--Video surveillance cameras and audio devices installed in a resident's room, designed to acquire communications or other sounds that occur in the room. An electronic, mechanical, or other device used specifically for the nonconsensual interception of wire or electronic communication is excluded from this definition.

(39) Emergency--A sudden change in a resident's condition requiring immediate medical intervention.

(40) Essential Caregiver--A family member, friend, guardian, volunteer, or other person designated for in-person visits by an individual, resident, or client or the individual's, resident's, or client's guardian or legally authorized representative (LAR) during a public health emergency or disaster. In case of conflict between an individual's, resident's, or client's selection and a guardian's selection on behalf of the individual, resident, or client, the guardian's selection prevails, in accordance with the terms of the guardianship. If an individual, resident, or client has no guardian and is unable to select an essential caregiver, the individual's, resident's, or client's LAR may select the essential caregiver.

(41) Executive commissioner [Commissioner]--The executive commissioner of the Texas Health and Human Services Commission.

(42) Exploitation--The illegal or improper act or process of a caregiver, family member, or other individual who has an ongoing relationship with a resident using the resources of the resident for monetary or personal benefit, profit, or gain without the informed consent of the resident.

(43) Facility--Unless otherwise indicated, a facility is an institution that provides organized and structured nursing care and service and is subject to licensure under Texas Health and Safety Code[.] Chapter 242.

(A) For Medicaid, a facility is a nursing facility that meets the requirements of §1919(a) - (d) of the Social Security Act (42 United States Code §1396r(a) - (d)). A facility may not include any institution that is for the care and treatment of mental diseases except for services furnished to individuals age 65 and over and who are eligible as defined in Chapter 303 of this title (relating to Preadmission Screening and Resident Review (PASRR)).

(B) For Medicare and Medicaid purposes (including eligibility, coverage, certification, and payment), the "facility" is always

the entity which participates in the program, whether that entity is comprised of all, or a distinct part of, a larger institution.

(C) "Facility" is also referred to as a nursing home or nursing facility. Depending on context, these terms are used to represent the management, administrator, or other persons or groups involved in the provision of care of the resident; or to represent the physical building, which may consist of one or more floors or one or more units, or which may be a distinct part of a licensed hospital.

(44) Family council--A group of family members, friends, or legal guardians of residents, who organize and meet privately or openly.

(45) Family representative--An individual appointed by the resident to represent the resident and other family members, by formal or informal arrangement.

(46) Fiduciary agent--An individual who holds in trust another's monies.

(47) Goals--Long-term: general statements of desired outcomes. Short-term: measurable, time-limited, expected results that provide the means to evaluate the resident's progress toward achieving long-term goals.

(48) Governmental unit--A state or a political subdivision of the state, including a county or municipality.

(49) Health care provider--An individual, including a physician, or facility licensed, certified, or otherwise authorized to administer health care, in the ordinary course of business or professional practice.

(50) Hearing--A contested case hearing held in accordance with the Administrative Procedure Act, Texas Government Code[5] Chapter 2001, and the formal hearing procedures in 1 Texas Administrative Code Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act) and Chapter 110 of this title [40 TAC Chapter 94] (relating to Hearings Under the Administrative Procedure Act).

(51) HHSC--The Texas Health and Human Services Commission.

(52) HIV--Human Immunodeficiency Virus.

(53) Incident--An abnormal event, including accidents or injury to staff or residents, which is documented in facility reports. An occurrence in which a resident may have been subject to abuse, neglect, or exploitation must also be reported to HHSC.

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

(55) Infection control--A program designed to prevent the transmission of disease and infection in order to provide a safe and sanitary environment.

(56) Inspection--Any on-site visit to or survey of an institution by HHSC for the purpose of licensing, monitoring, complaint investigation, architectural review, or similar purpose.

(57) Involuntary seclusion--Separation of a resident from others or from the resident's room or confinement to the resident's room, against the resident's will or the will of a person who is legally authorized to act on behalf of the resident. Monitored separation from other residents is not involuntary seclusion if the separation is a therapeutic intervention that uses the least restrictive approach for the minimum amount of time, not to exceed 24 hours, until professional staff can develop a care plan to meet the resident's needs.

(58) IV--Intravenous.

(59) Legend drug or prescription drug--Any drug that requires a written or telephonic order of a practitioner before it may be dispensed by a pharmacist, or that may be delivered to a particular resident by a practitioner in the course of the practitioner's practice.

(60) License holder--A person that holds a license to operate a facility.

(61) Licensed health professional--A physician; physician assistant; advanced practice registered nurse; physical, speech, or occupational therapist; pharmacist; physical therapist assistant occupational therapy assistant; registered professional nurse; licensed vocational nurse; licensed dietitian; licensed social worker; or certified respiratory care practitioner.

(62) Licensed vocational nurse (LVN)--A nurse who is currently licensed by the Texas Board of Nursing as a licensed vocational nurse.

(63) Life Safety Code--NFPA 101.

(64) Life safety features--Fire safety components required by NFPA 101, including building construction, fire alarm systems, smoke detection systems, interior finishes, sizes and thicknesses of doors, exits, emergency electrical systems, and sprinkler systems.

(65) Life support--Use of any technique, therapy, or device to assist in sustaining life. (See §554.419 of this chapter (relating to Advance Directives)).

(66) Local authorities--Persons, including[; but not limited to,] local health authority, fire marshal, and building inspector, who may be authorized by state law, county order, or municipal ordinance to perform certain inspections or certifications.

(67) Local health authority--The physician appointed by the governing body of a municipality or the commissioner's court of the county to administer state and local laws relating to public health in the municipality's or county's jurisdiction as defined in Texas Health and Safety Code §121.021.

(68) Long-term Care Regulation [care-regulatory]--HHSC Regulatory Services Division, which is responsible for surveying nursing facilities to determine compliance with regulations for licensure and certification for Medicaid participation.

(69) Major injury--An injury that qualifies as a major injury under NFPA 99.

(70) Management services--Services provided under contract between the owner of a facility and a person to provide for the operation of a facility, including administration, staffing, maintenance, or delivery of resident services. Management services do not include contracts solely for maintenance, laundry, or food service.

(71) Manager--A person, other than a licensed nursing home administrator, having a contractual relationship to provide management services to a facility.

(72) Managing local ombudsman--Has the meaning given in §88.2 of this title.

(73) MDS--Minimum data set. See RAI.

(74) MDS nurse reviewer--A registered nurse employed by HHSC to monitor the accuracy of the MDS assessment submitted by a Medicaid-certified nursing facility.

(75) Medicaid applicant--A person who requests the determination of eligibility to become a Medicaid recipient.

(76) Medicaid nursing facility vendor payment system--Electronic billing and payment system for reimbursement to nursing facilities for services provided to eligible Medicaid recipients.

(77) Medicaid recipient--A person who meets the eligibility requirements of the Title XIX Medicaid program, is eligible for nursing facility services, and resides in a Medicaid-participating facility.

(78) Medical director--A physician licensed by the Texas Medical Board, who is engaged by the nursing home to assist in and advise regarding the provision of nursing and health care.

(79) Medical power of attorney--The legal document that designates an agent to make treatment decisions if the individual designator becomes incapable.

(80) Medication aide--A person who holds a current permit issued under the Medication Aide Training Program as described in Chapter 557 of this title (relating to Medication Aides--Program Requirements) and acts under the authority of a person who holds a current license under state law which authorizes the licensee to administer medication.

(81) Memory Care Disclosure Statement for Nursing Facilities--The HHSC-prescribed form a facility uses when the facility advertises, markets, or otherwise promotes that it provides services to residents with Alzheimer's disease and related disorders.

(82) Memory care services--Services provided by a nursing facility that meet the needs of residents with a diagnosis of Alzheimer's disease or related disorders or a diagnosis of dementia.

(83) Misappropriation--The taking, secretion, misapplication, deprivation, transfer, or attempted transfer to any person not entitled to receive any property, real or personal, or anything of value belonging to or under the legal control of a resident without the effective consent of the resident or other appropriate legal authority, or the taking of any action contrary to any duty imposed by federal or state law prescribing conduct relating to the custody or disposition of property of a resident.

(84) MN--Medical necessity. A determination, made by physicians and registered nurses who are employed by or contract with the state Medicaid claims administrator, that a recipient requires the services of a licensed nurse in an institutional setting to carry out a physician's planned regimen for total care. A recipient's need for custodial care in a 24-hour institutional setting does not constitute medical necessity.

(85) Neglect--The failure to provide goods or services, including medical services, that are necessary to avoid physical or emotional harm, pain, or mental illness.

(86) NFPA--National Fire Protection Association.

(87) NFPA 99--NFPA 99, Health Care Facilities Code, 2012 Edition.

(88) NFPA 101--NFPA 101, Life Safety Code, 2012 Edition.

(89) Nurse aide--An individual who provides nursing or nursing-related services to residents in a facility under the supervision of a licensed nurse. This term may include an individual who provides these services through an agency or under a contract with the facility. This definition does not include an individual who is a licensed health professional, a registered dietitian, or someone who volunteers such services without pay. A nurse aide is not authorized to provide nursing or nursing-related services for which a license or registration

is required under state law. Nurse aides do not include those individuals who furnish services to residents only as paid feeding assistants.

(90) Nurse practitioner--An advanced practice registered nurse licensed by the Texas Board of Nursing in the role of Nurse Practitioner.

(91) Nurses' station--A nurses' station is an area designated as the focal point on all shifts for the administration and supervision of resident-care activities for a designated number of resident bedrooms.

(92) Nursing care--Services provided by nursing personnel which include, but are not limited to, observation; promotion and maintenance of health; prevention of illness and disability; management of health care during acute and chronic phases of illness; guidance and counseling of individuals and families; and referral to physicians, other health care providers, and community resources when appropriate.

(93) Nursing facility or nursing home--See definition of "facility."

(94) Nursing personnel--Persons assigned to give direct personal and nursing services to residents, including registered nurses, licensed vocational nurses, nurse aides, and medication aides. Unlicensed personnel function under the authority of licensed personnel.

(95) Objectives--See Goals in paragraph (47) of this section. [definition of "goals."]

(96) OBRA--Omnibus Budget Reconciliation Act of 1987, which includes provisions relating to nursing home reform.

(97) Ombudsman intern--Has the meaning given in §88.2 of this title.

(98) Ombudsman Program--Has the meaning given in §88.2 of this title.

(99) Paid feeding assistant--An individual who meets the requirements of §554.1113 of this chapter (relating to Paid Feeding Assistants) and who is paid to feed residents by a facility or who is used under an arrangement with another agency or organization.

(100) Palliative plan of care [Plan of Care]--Appropriate medical and nursing care for residents with advanced and progressive diseases for whom the focus of care is controlling pain and symptoms while maintaining optimum quality of life.

(101) PASARR or PASRR--Preadmission Screening and Resident Review.

(102) Patient care-related electrical appliance--An electrical appliance that is intended to be used for diagnostic, therapeutic, or monitoring purposes in a patient care area, as defined in Standard 99 of the National Fire Protection Association.

(103) Person--An individual, firm, partnership, corporation, association, joint stock company, limited partnership, limited liability company, or any other legal entity, including a legal successor of those entities.

(104) Person-centered care--To focus on the resident as the locus of control, and to support the resident in making choices and having control over the resident's daily life.

(105) Pharmacist--An individual, licensed by the Texas State Board of Pharmacy to practice pharmacy, who prepares and dispenses medications prescribed by a practitioner.

(106) Physical restraint--Any manual method, or physical or mechanical device, material or equipment attached, or adjacent to the resident's body, that the individual cannot remove easily which re-

stricts freedom of movement or normal access to one's body. The term includes a restraint hold.

(107) Physician--A doctor of medicine or osteopathy currently licensed by the Texas Medical Board to practice medicine.

(108) Physician assistant (PA)--An individual who is licensed as a physician assistant under Texas Occupations Code[§] Chapter 204.

(109) Podiatrist--A practitioner whose profession encompasses the care and treatment of feet who is licensed to practice podiatry by the Texas State Board of Podiatric Medical Examiners.

(110) Poison--Any substance that federal or state regulations require the manufacturer to label as a poison and is to be used externally by the consumer from the original manufacturer's container. Drugs to be taken internally that contain the manufacturer's poison label, but are dispensed by a pharmacist only by or on the prescription order of a practitioner, are not considered a poison, unless regulations specifically require poison labeling by the pharmacist.

(111) Practitioner--A physician, podiatrist, dentist, or an advanced practice registered nurse or physician assistant to whom a physician has delegated authority to sign a prescription order, when relating to pharmacy services.

(112) Private and unimpeded access--Access to enter a facility, or communicate with a resident outside of the hearing or view of others, without interference or obstruction from facility employees, volunteers, or contractors.

(113) PRN (pro re nata)--As needed.

(114) Provider--The individual or legal business entity that is contractually responsible for providing Medicaid services under an agreement with HHSC.

(115) QMHP-CS--Qualified mental health professional-community services. [~~community services~~] Has the meaning given in §301.303 of this title (relating to Definitions).

(116) Qualified surveyor--An employee of HHSC who has completed state and federal training on the survey process and passed a federal standardized exam.

(117) Quality assessment and assurance committee--A group of health care professionals in a facility who develop and implement appropriate action to identify and rectify substandard care and deficient facility practice.

(118) Quality measure report--A report that provides information derived from an MDS that provides a numeric value to quality indicators. This data is available to the public as part of the Nursing Home Quality Initiative (NHQI)[§] and is intended to provide objective measures for consumers to make informed decisions about the quality of care in a nursing facility.

(119) Quality-of-care monitor--A registered nurse, pharmacist, or dietitian employed by HHSC who is trained and experienced in long-term care facility regulation, standards of practice in long-term care, and evaluation of resident care, and functions independently of HHSC Regulatory Services Division.

(120) RAI--Resident Assessment Instrument. An assessment tool used to conduct comprehensive, accurate, standardized, and reproducible assessments of each resident's functional capacity as specified by the Secretary of the U. S. Department of Health and Human Services. At a minimum, this instrument must consist of the MDS core elements as specified by CMS; utilization guidelines; and Care Area Assessment process.

(121) Recipient--Any individual residing in a Medicaid certified facility or a Medicaid certified distinct part of a facility whose daily vendor rate is paid by Medicaid.

(122) Rehabilitative services--Rehabilitative therapies and devices provided to help a person regain, maintain, or prevent deterioration of a skill or function that has been acquired but then lost or impaired due to illness, injury, or disabling condition. The term includes physical and occupational therapy, speech-language pathology, and psychiatric rehabilitation services.

(123) Reportable conduct--Conduct subject to reporting to the Employee Misconduct Registry (EMR) established under Texas Health and Safety Code[§] Chapter 253, including:

(A) abuse or neglect that causes or may cause death or harm to a resident;

(B) sexual abuse of a resident;

(C) financial exploitation of a resident in an amount of \$25 or more; and

(D) emotional, verbal, or psychological abuse that causes harm to a resident.

(124) Representative payee--A person designated by the Social Security Administration to receive and disburse benefits, act in the best interest of the beneficiary, and ensure that benefits will be used according to the beneficiary's needs.

(125) Resident--Any individual residing in a nursing facility.

(126) Resident group--A group or council of residents who meet regularly.

(127) Resident representative--

(A) Any of the following:

(i) an individual chosen by the resident to act on behalf of the resident in order to support the resident in decision-making; access medical, social, or other personal information of the resident; manage financial matters; or receive notifications;

(ii) a person authorized by state or federal law (including agents under power of attorney, representative payees, and other fiduciaries) to act on behalf of the resident in order to support the resident in decision-making; access medical, social, or other personal information of the resident; manage financial matters; or receive notifications;

(iii) legal representative, as used in Section 712 of the Older Americans Act (40 United States Code (U.S.C.) [U.S.C.] §3058g); or

(iv) the court-appointed guardian of a resident.

(B) This definition is not intended to expand the scope of authority of any resident representative beyond that authority specifically authorized by the resident, state or federal law, or a court of competent jurisdiction.

(128) Responsible party--An individual authorized by the resident to act for him as an official delegate or agent. Responsible party is usually a family member or relative, but may be a legal guardian or other individual. Authorization may be in writing or may be given orally.

(129) Restraint--A chemical or physical restraint.

(130) Restraint hold--

(A) A manual method, except for physical guidance or prompting of brief duration, used to restrict:

(i) free movement or normal functioning of all or a portion of a resident's body; or

(ii) normal access by a resident to a portion of the resident's body.

(B) Physical guidance or prompting of brief duration becomes a restraint if the resident resists the guidance or prompting.

(131) RN--Registered nurse. An individual currently licensed by the Texas Board of Nursing as a registered nurse.

(132) RN assessment coordinator--A registered nurse who signs and certifies a comprehensive assessment of a resident's needs, using the RAI, including the MDS, as specified by HHSC.

(133) RUG--Resource Utilization Group. A categorization method, consisting of 34 categories based on the MDS, that is used to determine a recipient's service and care requirements and to determine the daily rate HHSC pays a nursing facility for services provided to the recipient.

(134) Secretary--Secretary of the U.S. Department of Health and Human Services.

(135) Services required on a regular basis--Services which are provided at fixed or recurring intervals and are needed so frequently that it would be impractical to provide the services in a home or family setting. Services required on a regular basis include continuous or periodic nursing observation, assessment, and intervention in all areas of resident care.

(136) SNF--A skilled nursing facility or distinct part of a facility that participates in the Medicare program. SNF requirements apply when a certified facility is billing Medicare for a resident's per diem rate.

(137) Social Security Administration--Federal agency for administration of social security benefits. Local social security administration offices take applications for Medicare, assist beneficiaries file claims, and provide information about the Medicare program.

(138) Social worker--An [A qualified social worker is an] individual [who is] licensed, or provisionally licensed, by the Texas State Board of Social Work Examiners as prescribed by the Texas Occupations Code[,] Chapter 505, and [who] has at least:

(A) a bachelor's degree in social work; or

(B) similar professional qualifications, which include a minimum educational requirement of a bachelor's degree and one year experience met by supervised employment providing social services in a health care setting.

(139) Standards--The minimum conditions, requirements, and criteria established in this chapter with which an institution must comply to be licensed under this chapter.

(140) State Medicaid claims administrator--The entity under contract with HHSC to process Medicaid claims in Texas.

(141) State Ombudsman--Has the meaning given in §88.2 of this title.

(142) State plan--A formal plan for the medical assistance program, submitted to CMS, in which the State of Texas agrees to administer the program in accordance with the provisions of the State Plan, the requirements of Titles XVIII and XIX, and all applicable federal regulations and other official issuances of the U.S. Department of Health and Human Services.

(143) Stay agreement--An agreement between a license holder and the executive commissioner that sets forth all requirements necessary to lift a stay and rescind a license revocation proposed under §554.2107 of this chapter (relating to Revocation of a License by the HHSC Executive Commissioner).

(144) Substandard quality of care violation--A violation of §554.401(a) or (b) of this chapter (relating to Introduction); §554.402(b) or (c) of this chapter (relating to Exercise of Rights); §554.406[(d) - (h)] of this chapter (relating to Free Choice); §554.417 of this chapter (relating to Married Couples); §554.504(a) of this chapter (relating to Equal Access to Quality Care in Medicaid-certified Facilities); §554.601 of this chapter (relating to Freedom from Abuse, Neglect and Exploitation); §554.602 of this chapter (relating to Incidents of Abuse, Neglect, and Exploitation Reportable to the Texas Health and Human Services Commission and Law Enforcement Agencies by Facilities); §554.701 of this chapter (relating to Quality of Life); §554.703 of this chapter (relating to Social Services General Requirements); §554.706(a), (c), (d)(1) - (5), or (e)(7) of this chapter (relating to Resident Group and Family Council); §554.801 of this chapter (relating to Resident Assessment); §554.901 of this chapter (relating to Quality of Care); §554.904(2) or (4) of this chapter (relating to Behavioral Health Services); §554.1501(5), (6), or (7) of this chapter (relating to Pharmacy Services); or §554.1601(e)(2) of this chapter (relating to Infection Control) that constitutes:

(A) an immediate threat to resident health or safety;

(B) a pattern of or actual harm that is not an immediate threat; or

(C) a widespread potential for more than minimal harm, but less than an immediate threat, with no actual harm.

(145) Supervision--General supervision, unless otherwise identified.

(146) Supervision (direct)--Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within the qualified person's sphere of competence. If the person being supervised does not meet assistant-level qualifications specified in this chapter and in federal regulations, the supervisor must be on the premises and directly supervising.

(147) Supervision (general)--Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within the qualified person's sphere of competence. The person being supervised must have access to the qualified person providing the supervision.

(148) Survey agency--HHSC is the agency that, through contractual agreement with CMS, is responsible for Title XIX (Medicaid) survey and certification of nursing facilities.

(149) *Texas Register*--A publication of the Texas Register Publications Section of the Office of the Secretary of State that contains emergency, proposed, withdrawn, and adopted rules issued by Texas state agencies.

(150) Therapeutic diet--A diet ordered by a physician as part of treatment for a disease or clinical condition, in order to eliminate, decrease, or increase certain substances in the diet or to provide food which has been altered to make it easier for the resident to eat.

(151) Threatened violation--A situation that, unless immediate steps are taken to correct, may cause injury or harm to a resident's health and safety.

(152) Title II--Federal Old-Age, Survivors, and Disability Insurance Benefits of the Social Security Act (42 U.S.C. §§401 - 434).

(153) Title XVI--Supplemental Security Income (SSI) of the Social Security Act (42 U.S.C. §§1381 - 1385).

(154) Title XVIII--Medicare provisions of the Social Security Act (42 U.S.C. §§1390 - 1395III).

(155) Title XIX--Medicaid provisions of the Social Security Act (42 U.S.C. §§1396 - 1396w-5).

(156) Total health status--Includes functional status, medical care, nursing care, nutritional status, rehabilitation and restorative potential, activities potential, cognitive status, oral health status, psychosocial status, and sensory and physical impairments.

(157) Universal precautions--The use of barrier precautions and other precautions to prevent the spread of blood-borne diseases.

(158) Unreasonable confinement--Involuntary seclusion.

(159) Vaccine preventable diseases--The diseases included in the most current recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention.

(160) Vendor payment--Payment made by HHSC on a daily-rate basis for services delivered to recipients in Medicaid-certified nursing facilities. Vendor payment is based on the nursing facility's approved-to-pay claim processed by the state Medicaid claims administrator. The Nursing Facility Billing Statement, subject to adjustments and corrections, is prepared from information submitted by the nursing facility, which is currently on file in the computer system as of the billing date. Vendor payment is made at periodic intervals, but not less than once per month for services rendered during the previous billing cycle.

(161) Widespread--When the problem causing a violation is pervasive in a facility or represents systemic failure that affected or has the potential to affect a large portion or all facility residents.

(162) Willfully interfere--To act or not act to intentionally prevent, interfere with, or impede or to attempt to intentionally prevent, interfere with, or impede.

(163) Working day--Any 24-hour period, Monday through Friday, excluding state and federal holidays.

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-3161



SUBCHAPTER T. ADMINISTRATION

26 TAC §554.1921

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system; Texas

Health and Safety Code Chapter 810, which requires HHSC and LTCR providers to use a new interagency search engine to verify employability; and Texas Health and Safety Code Chapter 242, which authorizes the executive commissioner of HHSC to adopt rules for nursing facilities.

The amendment implements Texas Government Code §524.0151 and Texas Health and Safety Code Chapter 810.

§554.1921. *General Requirements for a Nursing Facility.*

(a) The facility must admit and retain only residents whose needs can be met through service from the facility staff, or in cooperation with community resources or other providers under contract.

(b) Individuals who have met the requirements of Chapter 303 [47] of this title (relating to Preadmission Screening and Resident Review (PASRR)) and have mental or physical diseases, or both, that endanger other residents may be admitted or retained if adequate rooms and care are provided to protect the other residents.

(c) The term "hospital" may not be used as part of the name of a nursing facility unless it has been classified and duly licensed as a hospital by the appropriate state agency.

(d) A facility that ceases operation, temporarily or permanently, voluntarily or involuntarily, must provide notice to the residents and residents' relatives or responsible parties of closure. See §554.2310 of this chapter (relating to Nursing Facility Ceases to Participate) for additional notice requirements that apply to a Medicaid or Medicare certified facility.

(1) If the closure is voluntary, within one week after the date on which the decision to close is made, the facility must send written notice to residents' relatives or responsible parties stating that the closure will occur no earlier than 60 days after receipt of the notice.

(2) If the closure is involuntary, the facility must make the notification, whether orally or in writing, immediately on receiving notice of the closure.

(e) Each licensed facility must conspicuously and prominently post the information listed in ~~paragraphs (1) - (13) of~~ this subsection in an area of the facility that is readily available to residents, employees, and visitors. The posting must be in a manner that each item of information is directly visible at a single time. In the case of a licensed section that is part of a larger building or complex, the posting must be in the licensed section or public way leading to it. Any exceptions must be approved by HHSC. The following items must be posted:

(1) the facility license;

(2) a complaint sign provided by HHSC giving the toll-free telephone number;

(3) a notice in a form prescribed by HHSC that inspection and related reports are available at the facility for public inspection;

(4) a concise summary prepared by HHSC of the most recent inspection report;

(5) a notice of HHSC toll-free telephone number 1-800-458-9858 to request summary reports relating to the quality of care, recent investigations, litigation or other aspects of the operation of the facility that are available to the public;

(6) a notice that HHSC can provide information about the nursing facility administrator at (512) 438-2015;

(7) if a facility has been ordered to suspend admissions, a notice of the suspension, which must be posted also on all doors providing public ingress to and egress from the facility;

(8) the statement of resident rights provided in §554.401 of this chapter (relating to Introduction) and any additional facility requirements involving resident rights and responsibilities;

(9) a notice that employees, other staff, residents, volunteers, and family members and guardians of residents are protected from discrimination or retaliation as provided by the Texas Health and Safety Code[;] §260A.014 and §260A.015; and that the facility has available for public inspection a copy of the Texas Health and Safety Code[;] Chapter 260A;

(10) a prominent and conspicuous sign for display in a public area of the facility that is readily available to the residents, employees, and visitors and that includes the statement: CASES OF SUSPECTED ABUSE, NEGLECT, OR EXPLOITATION SHALL BE REPORTED TO HHSC BY CALLING 1-800-458-9858;

(11) for a facility that advertises, markets, or otherwise promotes that it provides services to residents with Alzheimer's disease and related disorders, a disclosure statement describing the nature of its care or treatment of residents with Alzheimer's disease and related disorders in accordance with §554.403(n)(2) of this chapter (relating to Notice of Rights and Services);

(12) at each entrance to the facility, a sign that states that a person may not enter the premises with a handgun and that complies with Texas Government Code §411.204; and

(13) daily for each shift, the current number of licensed and unlicensed nursing staff directly responsible for resident care in the facility. In addition, the nursing facility must make the information required to be posted available to the public upon request.

(f) The reports referenced in subsection (e)(3) of this section must be maintained in a well-lighted, accessible location and must include:

(1) a statement of the facility's compliance record that is updated at least bi-monthly and reflects at least one year's compliance record, in a form required by HHSC; and

(2) if a facility has been cited for a violation of residents' rights, a copy of the citation, which must remain in the reports until any regulatory action with respect to the violation is complete and HHSC has determined that the facility is in full compliance with the applicable requirement.

(g) The facility must inform the resident or responsible party or both upon the resident's admission that the inspection reports referenced in subsection (e)(3) of this section are available for review.

(h) A facility must provide the telephone number for reporting cases of suspected abuse, neglect, or exploitation to an immediate family member of a resident of the facility upon the resident's admission to the facility.

(i) A copy of the Texas Health and Safety Code[;] Chapters 242 and 260A[;] must be available for public inspection at the facility.

(j) Within 72 hours after admission, the facility must prepare a written inventory of the personal property a resident brings to the facility, such as furnishings, jewelry, televisions, radios, sewing machines, and medical equipment. See §554.416 of this chapter (relating to Personal Property).

(1) The facility does not have to inventory the resident's clothing; however, the operating policies and procedures must provide for the management of resident clothing and other personal property to prevent loss or damage.

(2) The facility administrator or his or her designee must sign and retain the written inventory and must give a copy to the resident or the resident's responsible party or both.

(3) The facility must revise the written inventory to show if property is lost, destroyed, damaged, replaced, or supplemented.

(4) Upon discharge of the resident, the facility must document the disposition of personal effects by a dated receipt bearing the signature of the resident or the resident's responsible party or both. [See §554.416 of this chapter (relating to Personal Property).]

(k) Each facility must comply with the provisions of the Texas Health and Safety Code[;] Chapter 250 (relating to Nurse Aide Registry and Criminal History Checks of Employees and Applicants for Employment in Certain Facilities Serving the Elderly or Persons with Disabilities).

(l) Before a facility hires an unlicensed employee, the facility must check the nurse aide registry (NAR) and the Search Engine for Multi-Agency Reportable Conduct (SEMARC) established under Texas Health and Safety Code Chapter 810 to determine if the person is listed as unemployable. If the person's name is on any of these lists as unemployable, the facility must not hire the person.

{(l) Before a facility hires an unlicensed employee, the facility must search the employee misconduct registry (EMR) established under §253.007, Texas Health and Safety Code, and the HHSC nurse aide registry (NAR) to determine whether the individual is designated in either registry as unemployable. Both registries can be accessed on the HHSC Internet website.}

(m) A facility is prohibited from hiring or continuing to employ a person who is listed in the [EMR or] NAR or the SEMARC as unemployable.

(n) A facility must provide notice about the SEMARC to an employee according to §561.3 of this title (relating to Employment and Registry Information).

{(n) A facility must provide notification about the EMR to an employee in accordance with 40 TAC §93.3 (relating to Employment and Registry Information).}

(o) In addition to the initial search of the [EMR and] NAR and the SEMARC, a facility must:

(1) conduct a search of the NAR and the SEMARC to determine if an employee of the facility is listed as unemployable at least once every 12 months.

{(1) conduct a search of the NAR and EMR to determine if an employee of the facility is listed as unemployable in either registry as follows:}

{(A) for an employee most recently hired before September 1, 2009, by August 31, 2011, and at least every 12 months thereafter; and}

{(B) for an employee most recently hired on or after September 1, 2009, at least every twelve months; and}

(2) keep a copy of the results of the initial and annual searches of the NAR and the SEMARC [EMR] in the employee's personnel file.

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

Filed with the Office of the Secretary of State on March 18, 2026.



CHAPTER 555. NURSING FACILITY ADMINISTRATORS

SUBCHAPTER C. LICENSES

26 TAC §555.42

The executive commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §555.42, concerning Alternate Licensing Requirements for Military Service Personnel.

BACKGROUND AND PURPOSE

The purpose of the proposal is to implement Senate Bill (SB) 1849, 88th Legislature, Regular Session, 2023, which created Texas Health and Safety Code Chapter 810, Interagency Reportable Conduct Search Engine. While the Texas Department of Information Resources (DIR) is responsible for creating the search engine, the chapter also requires HHSC to amend rules relating to the Employee Misconduct Registry search engine and required background check searches for nursing facility administrators.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §555.42 implements SB 1849 relating to an interagency reportable conduct search engine, known as the Search Engine for Multi-Agency Reportable Conduct (SEMARC), and updates the requirements for confirming if a nursing facility administrator is listed as unemployable. The amendment also includes updates to references.

FISCAL NOTE

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

There is no expected fiscal impact to state government to implement the proposed rule for this proposal. However, additional HHSC rule proposals will address the costs to state government for implementing SB 1849.

GOVERNMENT GROWTH IMPACT STATEMENT

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

- (1) the proposed rule will not create or eliminate a government program;
- (2) implementation of the proposed rule will not create new HHSC employee positions;
- (3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;
- (4) the proposed rule will not affect fees paid to HHSC;
- (5) the proposed rule will not create new regulations;

(6) the proposed rule will expand existing regulations;

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

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

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

Trey Wood has also determined that there will not be an adverse economic effect on small businesses, micro-businesses, or rural communities.

There will not be an increase in cost to nursing facility administrator applicants because HHSC Licensing and Credentialing staff will perform the required background checks.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to the rule because the rule is necessary to protect the health, safety, and welfare of the residents of Texas and is necessary to implement legislation that does not specifically state that §2001.0045 applies to the rule.

PUBLIC BENEFIT AND COSTS

Michelle Dionne-Vahalik, Associate Commissioner for Long-Term Care Regulation, has determined that for each year of the first five years the rule is in effect, the public benefit will be HHSC's ability to access a new search engine database that will protect individuals being served by LTCR regulated providers from individuals with a history of reportable conduct, including the abuse, neglect, and exploitation of vulnerable populations.

Trey Wood has also determined that for the first five years the rule is in effect, persons who are required to comply with the proposed rule will not incur economic costs due to additional administrative costs related to accessing and searching the new database because HHSC Licensing and Credentialing staff will perform the required background checks.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal, including information related to the cost, benefit, or effect of the proposed rule, as well as any applicable data, research, or analysis, may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4601 West Guadalupe Street, Austin, Texas 78751; or emailed to HHSRulesCoordinationOffice@hhs.texas.gov.

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

indicate "Comments on Proposed Rule 25R003" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services systems; Texas Health and Safety Code Chapter 810, which requires HHSC and LTCR providers to use a new interagency search engine to verify employability; and Texas Health and Safety Code Chapter 242, Subchapter I, which authorizes the executive commissioner of HHSC to adopt rules for nursing facility administrators.

The amendment implements Texas Government Code §524.0151 and Texas Health and Safety Code Chapter 810.

§555.42. *Alternate Licensing Requirements for Military Service Personnel.*

(a) Fee waiver based on military experience.

(1) HHSC [~~The Texas Health and Human Services Commission (HHSC)~~] waives the application fee described in §555.11(a)(2) of this chapter (relating to Application Requirements) and the initial license fee described in §555.31(a)(2) of this subchapter [~~chapter~~] (relating to Initial License) for an applicant if HHSC receives and approves a request for a waiver of fees from the applicant in accordance with this subsection.

(2) To request a waiver of fees under this subsection, an applicant must submit a written request for a waiver with the applicant's initial license application submitted to HHSC through the online portal in accordance with §555.11 of this chapter. The applicant must include with the request:

(A) documentation of the applicant's status as a military service member or military veteran that is acceptable to HHSC; and

(B) documentation of the type and dates of the service, training, and education the applicant received and an explanation as to why the applicant's military service, training, or education substantially meets all the requirements for licensure under this chapter.

(3) Documentation of military status that is acceptable to HHSC includes:

(A) for status as a military service member, a copy of a current military service order issued to the applicant by the armed forces of the United States, the State of Texas, or another state; and

(B) for status as a military veteran, a copy of a military service discharge order issued to the applicant by the armed forces of the United States, the State of Texas, or another state.

(4) If HHSC requests additional documentation, the applicant must submit the requested documentation.

(5) HHSC approves a request for a waiver of fees submitted in accordance with this subsection if HHSC determines that the applicant is a military service member or a military veteran and the applicant's military service, training, or education substantially meets all the requirements for licensure under this chapter.

(b) Fee waiver for a military spouse.

(1) HHSC waives the application fee described in §555.11(a)(2) of this chapter and the initial license fee described in §555.31(a)(2) of this subchapter [~~chapter~~] for an applicant who is a military spouse if HHSC receives and approves through the online portal a request for a waiver of fees from the applicant and documentation of the applicant's status as a military spouse.

(2) Documentation of military status that is acceptable to HHSC includes:

(A) a copy of a marriage certificate issued to the applicant by a state of the United States or a foreign government; and

(B) a copy of a current military service order issued to the applicant's spouse by the armed forces of the United States, the State of Texas, or another state.

(3) If HHSC requests additional documentation, the applicant must submit the requested documentation.

(c) Fee waiver based on license issued by another jurisdiction.

(1) HHSC waives the application fee described in §555.11(a)(2) of this chapter and the provisional initial license fee described in §555.32(a)(3) of this subchapter [~~chapter~~] (relating to Provisional License) for an applicant if HHSC receives and approves through the online portal a request for a waiver of fees in accordance with this subsection.

(2) To request a waiver of fees under this subsection, an applicant must include a written request for a waiver of fees with the applicant's provisional license application that is submitted to HHSC in accordance with §555.32 of this subchapter [~~chapter~~]. The applicant must include with the request documentation of the applicant's status as a military service member, military veteran, or military spouse that is acceptable to HHSC.

(3) Documentation of military status that is acceptable to HHSC includes:

(A) for status as a military service member, a copy of a current military service order issued to the applicant by the armed forces of the United States, the State of Texas, or another state;

(B) for status as a military veteran, a copy of a military service discharge order issued to the applicant by the armed forces of the United States, the State of Texas, or another state; and

(C) for status as a military spouse:

(i) a copy of a marriage certificate issued to the applicant by a state of the United States or a foreign government; and

(ii) a copy of a current military service order issued to the applicant's spouse by the armed forces of the United States, the State of Texas, or another state.

(4) If HHSC requests additional documentation, the applicant must submit the requested documentation.

(5) HHSC approves a request for a waiver of fees submitted in accordance with this subsection if HHSC determines that:

(A) the applicant holds a license in good standing in another jurisdiction with licensing requirements substantially equivalent to the requirements for a license under this chapter; and

(B) the applicant is a military service member, a military veteran, or a military spouse.

(d) Additional time for license renewal.

(1) HHSC gives a nursing facility administrator (NFA) an additional two years to complete the license renewal requirements described in §555.34 [~~§555.43~~] of this subchapter (relating to License Renewal) and §555.35 of this subchapter (relating to Continuing Education Requirements for License Renewal), if HHSC receives and approves a request for additional time to complete the licensing renewal requirements from an NFA in accordance with this subsection.

(2) To request additional time to complete license renewal requirements, an NFA must:

(A) submit a written request for additional time to HHSC through the online portal before the expiration date of the NFA's license; and

(B) include with the request, documentation of the NFA's status as a military service member that is acceptable to HHSC, which includes a copy of a current military service order issued to the NFA by the armed forces of the United States, the State of Texas, or another state.

(3) If HHSC requests additional documentation, the NFA must submit the requested documentation.

(4) HHSC approves a request for two additional years to complete license renewal requirements submitted in accordance with this subsection if HHSC determines that the NFA is a military service member, except HHSC does not approve a request if HHSC granted the NFA a previous extension and the NFA has not completed the license renewal requirements during the two-year extension period.

(5) If an NFA does not submit the written request described by paragraph (2) of this subsection before the expiration date of the NFA's license, HHSC considers a request after the expiration date of the license if the NFA establishes to the satisfaction of HHSC that the request was not submitted before the expiration date of the NFA's license because the NFA was serving as a military service member at the time the request was due.

(e) Credit toward internship requirements.

(1) HHSC gives an applicant credit toward the internship requirements for an administrator-in-training (AIT) described in §555.13 of this chapter (relating to Internship Requirements) based on the applicant's military service, training, or education if HHSC receives and approves a request for credit from an applicant in accordance with this subsection.

(2) To request credit for military service, training, or education, the applicant must submit a written request for credit to HHSC through the online portal with the applicant's initial license application. The applicant must include, with the request, documentation of the type and dates of the service, training, and education the applicant received and an explanation as to how the applicant's military service, training, or education is substantially similar to the training or education requirements described in §555.13 of this chapter.

(3) If HHSC requests additional documentation, the applicant must submit the requested documentation.

(4) HHSC approves a request for credit submitted in accordance with this subsection if HHSC determines that the military service, training, or education that the applicant received is substantially similar to the training or education requirements described in §555.12 of this chapter (relating to Licensure Requirements).

(f) Renewal of expired license.

(1) HHSC renews an expired license if HHSC receives and approves a request for renewal from a former NFA in accordance with this subsection.

(2) To request renewal of an expired license, a former NFA must submit a written request with a license renewal application through the online portal within five years after the former NFA's license expired. The former NFA must include with the request documentation of the former administrator's status as a military service member, military veteran, or military spouse that is acceptable to HHSC.

(3) Documentation of military status that is acceptable to HHSC includes:

(A) for status as a military service member, a copy of a current military service order issued to the former NFA by the armed forces of the United States, the State of Texas, or another state;

(B) for status as a military veteran, a copy of a military service discharge order issued to the former NFA by the armed forces of the United States, the State of Texas, or another state; and

(C) for status as a military spouse:

(i) a copy of a marriage certificate issued to the former NFA by a state of the United States or a foreign government; and

(ii) a copy of a current military service order issued to the former NFA's spouse by the armed forces of the United States, the State of Texas, or another state.

(4) If HHSC requests additional documentation, the former NFA must submit the requested documentation.

(5) HHSC approves a request for renewal of an expired license submitted in accordance with this subsection if HHSC determines that:

(A) the former NFA is a military service member, military veteran, or military spouse;

(B) the former NFA has not committed an offense listed in Texas Health and Safety Code (THSC) §250.006(a) and (c) and has not committed an offense listed in THSC §250.006(b) during the five years before the date the former NFA submitted the initial license application; and

(C) the former NFA is not listed on the Search Engine for Multi-Agency Reportable Conduct (SEMARC) established under THSC Chapter 810 [employee misconduct registry described in THSC Chapter 253].

(g) Recognition of Out-of-State License of Military Spouse.

(1) A military spouse may engage in the practice of nursing facility administration in Texas without obtaining a license, as required by §555.31 of this subchapter (relating to Initial License) or §555.32 of this subchapter (relating to Provisional License), if the spouse:

(A) is currently licensed in good standing by another jurisdiction that has licensing requirements substantially equivalent to the requirements for a license in Texas;

(B) notifies HHSC in writing through the online portal of the spouse's intent to practice in Texas;

(C) submits to HHSC proof of the spouse's residence in this state and a copy of the spouse's military identification; and

(D) receives from HHSC:

(i) confirmation that HHSC has verified the spouse's license in the other jurisdiction; and

(ii) a license to practice nursing facility administration in Texas.

(2) HHSC evaluates the following criteria when determining whether another state's licensing requirements are substantially equivalent to the requirement for a license under the statutes and regulations of this state:

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

(B) whether the other state requires an applicant to meet any experience qualifications to obtain the license;

(C) whether the other state requires an applicant to meet education qualifications to obtain the license;

(D) whether the other state denies an application for licensure from an applicant who has been convicted of an offense containing elements similar to offenses listed in §555.41(a) of this subchapter (relating to Licensure of Persons with Criminal Backgrounds); and

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

(3) The military spouse must submit:

(A) a written request through the online portal to HHSC for recognition of the spouse's license issued by the other state;

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

(C) proof of residence in this state, which may include a copy of the permanent change of station order for the military service member to whom the military spouse is married;

(D) a copy of the military spouse's identification card;

(E) proof the military service member is stationed at a military installation in Texas; and

(F) fingerprints for a Federal Bureau of Investigation-based criminal background check through the Texas Department of Public Safety criminal background check to enable HHSC to confirm that the military spouse is in compliance with other laws and regulations applicable to nursing facility administration in Texas.

(4) Upon verification from the licensing jurisdiction of the military spouse's license and if the license is substantially equivalent to a Texas license, HHSC issues a confirmation that HHSC has verified the spouse's license in the other jurisdiction and a license to practice nursing facility administration in Texas.

(5) The license issued under paragraph (4) of this subsection [subchapter] expires three years from date of issuance or when the military service member is no longer stationed at a military installation in Texas, whichever comes first. The license issued under paragraph (4) of this subsection may not be renewed.

(6) HHSC replaces a lost, damaged or destroyed license certificate for a military spouse as provided in §555.33 of this subchapter (relating to Duplicate License). A military spouse with an active nursing facility administrator license can print a duplicate license through the online portal. A military spouse can request a change of name through the online portal by submitting a name change application.

(7) The military spouse must comply with all applicable laws, rules and standards of this state, including applicable Texas Health and Safety Code and all relevant Texas Administrative [Administration] Code provision.

(8) HHSC may withdraw or modify the verification letter for reasons, including the following:

(A) the military spouse fails to comply with paragraph (1)(D)(i) of this subsection [section]; or

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

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-3161



CHAPTER 556. NURSE AIDES

26 TAC §§556.3, 556.12 - 556.14

The executive commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §556.3, concerning NATCEP Requirements; §556.12, concerning Waiver, Reciprocity, and Exemption Requirements; §556.13, concerning Findings and Inquiries; and §556.14, concerning Alternate Licensing Requirements for Military Service Personnel.

BACKGROUND AND PURPOSE

The purpose of the proposal is to implement Senate Bill (SB) 1849, 88th Legislature, Regular Session, 2023, which created Texas Health and Safety Code, Chapter 810, Interagency Reportable Conduct Search Engine. While the Texas Department of Information Resources (DIR) is responsible for creating the search engine, the chapter also requires HHSC to amend rules relating to the Employee Misconduct Registry search engine and required background check searches providers regulated by HHSC Long-Term Care Regulation (LTCR) or HHSC must conduct before employing individuals.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §556.3 implements SB 1849 relating to an interagency reportable conduct search engine, known as the Search Engine for Multi-Agency Reportable Conduct (SEMARC), and adds a requirement for a Nurse Aide Training and Competency Evaluation Program to verify a person is not listed as unemployable on the SEMARC. The amendment also includes minor editorial revisions for formatting, punctuation and update rule references.

The proposed amendment to §556.12 implements SB 1849 relating to an interagency reportable conduct search engine and revises the rule to state that HHSC uses the SEMARC to verify a nurse aide is not listed as unemployable before issuing a certificate of registration.

The proposed amendment to §556.13 implements SB 1849 relating to an interagency reportable conduct search engine and revises the rule to state that HHSC revokes or suspends the certificate of registration for a nurse aide that works in a different capacity at a nursing facility that is listed as unemployable on the SEMARC. The amendment updates the due process available to a nurse aide to replace employee misconduct registry with the SEMARC.

The proposed amendment to §556.14 implements SB 1849 relating to an interagency reportable conduct search engine and revises the rule to state that HHSC uses the SEMARC to verify a former nurse aide is not listed as unemployable before approving a request for active status on the nurse aide registry. The amendment also updates references in the rule.

FISCAL NOTE

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

There is no expected fiscal impact to state government to implement the proposed rules for this proposal. However, additional HHSC rule proposals will address the costs to state government for implementing SB 1849.

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Trey Wood has also determined that there will not be an adverse economic effect on small businesses, micro-businesses, or rural communities because HHSC Licensing and Credentialing staff will perform the required background checks.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Michelle Dionne-Vahalik, Associate Commissioner for Long-Term Care Regulation, has determined that for each year of the first five years the rules are in effect, the public benefit will be HHSC's ability to access a new search engine database that will protect individuals being served by LTCR regulated providers from individuals with a history of reportable conduct, including the abuse, neglect, and exploitation of vulnerable populations.

Trey Wood has also determined that for the first five years the rules are in effect, persons who are required to comply with the proposed rules will not incur additional administrative costs related to accessing and searching the new database because HHSC Licensing and Credentialing staff will perform the required background checks.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal, including information related to the cost, benefit, or effect of the proposed rule, as well as any applicable data, research, or analysis, may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4601 West Guadalupe Street, Austin, Texas 78751; or emailed to HHSRulesCoordinationOffice@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 25R003" in the subject line.

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system; Texas Health and Safety Code Chapter 810, which requires HHSC and LTCR providers to use a new interagency search engine to verify employability; and Texas Health and Safety Code 250.0035, which authorizes the executive commissioner of HHSC to adopt rules relating to the nurse aide registry.

The amendments implement Texas Government Code §524.0151 and Texas Health and Safety Code Chapter 810.

§556.3. Nurse Aide Training and Competency Evaluation Program (NATCEP) [NATCEP] Requirements.

(a) To train nurse aides, a nursing facility must apply for and obtain approval from HHSC to offer a NATCEP or contract with another entity offering a NATCEP. The nursing facility must participate in Medicare, Medicaid, or both, to apply for approval to be a NATCEP.

(b) A person who wants to offer a NATCEP must file a complete NATCEP application with HHSC through the online portal.

(c) A person applying to offer a NATCEP must submit a separate NATCEP application through the online portal for each location at which training is delivered or administered.

(d) A NATCEP application must identify one or more facilities that the NATCEP uses as a clinical site. The clinical site must have all necessary equipment needed to practice and perform skills training.

(e) A NATCEP may offer clinical training hours in a laboratory setting under the following circumstances:

(1) no appropriate and qualified clinical site is located within 20 miles of the location of the NATCEP; or

(2) HHSC has determined that clinical training provided in a facility poses a risk to an individual's health or safety based on the existence of a disaster declared at the federal or state level. A NATCEP must request the ability to complete clinical training hours in a laboratory setting under the circumstances described in paragraph (1) of this subsection [subsection (e)(1) of this section]. HHSC will alert the public of the availability of laboratory training under the circumstances described in this paragraph [subsection (e)(2) of this section].

(f) HHSC does not approve a NATCEP offered by or in a nursing facility if, within the previous two years, the nursing facility:

(1) has operated under a waiver concerning the services of a registered nurse under §1819(b)(4)(C)(ii)(II) or §1919(b)(4)(C)(i) - (ii) of the Act;

(2) has been subjected to an extended or partially extended survey under §1819(g)(2)(B)(i) or §1919(g)(2)(B)(i) of the Act;

(3) has been assessed a civil money penalty of not less than \$5,000 as adjusted annually under 45 Code of Federal Regulations (CFR) Part 102 for deficiencies in nursing facility standards, as described in §1819(h)(2)(B)(ii) or §1919(h)(2)(A)(ii) of the Act;

(4) has been subjected to denial of payment under Title XVIII or Title XIX of the Act;

(5) has operated under state-appointed temporary management to oversee the operation of the facility under §1819(h) or §1919(h) of the Act;

(6) had its participation agreement terminated under §1819(h)(4) or §1919(h)(1)(B)(i) of the Act; or

(7) pursuant to state action, closed or had its residents transferred under §1919(h)(2) of the Act.

(g) Clinical training provided by a NATCEP in a facility other than a nursing facility must be provided under the direct supervision of the NATCEP instructor and cannot be delegated to any staff of the facility.

(h) A NATCEP using an assisted living facility as a clinical site may provide clinical training only in those services that are authorized to be provided to residents under Texas Health and Safety Code[.] Chapter 247.

(i) A NATCEP using an intermediate care facility for an individual with an intellectual disability or related conditions as a clinical site may provide clinical training only in those services that are authorized to be provided to individuals under Texas Health and Safety Code[.] Chapter 252.

(j) A NATCEP using a hospice inpatient unit as a clinical site may provide clinical training only in those services that are authorized to be provided to clients under Texas Health and Safety Code[.] Chapter 142.

(k) A NATCEP using a general or special hospital as a clinical site may provide clinical training only in those services that are authorized to be provided to patients under Texas Health and Safety Code[.] Chapter 241.

(l) A nursing facility that is prohibited from offering a NATCEP under subsection (f) of this section may contract with a person to offer a NATCEP in accordance with §1819(f)(2)(C) and §1919(f)(2)(C) of the Act so long as the person has not been employed by the nursing facility or by the nursing facility's owner and:

(1) the NATCEP is offered to employees of the nursing facility that is prohibited from training nurse aides under subsection (e) of this section;

(2) the NATCEP is offered in, but not by, the prohibited nursing facility;

(3) there is no other NATCEP offered within a reasonable distance from the nursing facility; and

(4) an adequate environment exists for operating a NATCEP in the nursing facility.

(m) A person who wants to contract with a nursing facility in accordance with subsection (l) of this section must submit a completed application to HHSC through the online portal in accordance with §556.4 of this chapter (relating to Filing and Processing an Application for a Nurse Aide Training and Competency Evaluation Program (NATCEP)) and include the name of the prohibited nursing facility in the application. HHSC may withdraw the application within two years of approving it if HHSC determines that the nursing facility is no longer prohibited from offering a NATCEP.

(n) A nursing facility that is prohibited from offering a NATCEP under subsection (f)(3) of this section may request a Centers for Medicare and Medicaid Services waiver of the prohibition related to the civil money penalty in accordance with §1819(f)(2)(D) and §1919(f)(2)(D) of the Act and 42 CFR §483.151(c) if:

(1) the civil money penalty was not related to the quality of care furnished to residents;

(2) the NATCEP submits a request to HHSC for the waiver; and

(3) the Centers for Medicare and Medicaid Services approves the waiver.

(o) A NATCEP must ensure the trainee has completed 100 hours of training. The 100 hours must include:

(1) 60 hours of classroom training:

(A) taught by the NATCEP either in-person or virtually;

or

(B) completed by the trainee through HHSC's computer-based training (CBT) within the preceding 12 months; and

(2) 40 hours of clinical training provided by the NATCEP with at least one program instructor for every 10 trainees.

(p) A NATCEP that provides online training must:

(1) maintain records in accordance with subsection (z) of this section and otherwise comply with this chapter;

(2) adopt, implement, and enforce a policy and procedures for establishing that a trainee who registers in an online training is the same trainee who participates in and completes the course and that describe the procedures the NATCEP uses to:

(A) verify a trainee's identity;

(B) ensure protection of a trainee's privacy and personal information; and

(C) document the hours completed by each trainee; and

(3) verify on the NATCEP application that the online course has the security features required under paragraph (2) of this subsection.

(q) A NATCEP must teach the curriculum established by HHSC and described in 42 CFR §483.152. Except as provided in

subsection (r) of this section, the NATCEP must include at least 16 introductory hours of classroom training in the following areas before a trainee has any direct contact with a resident:

- (1) communication and interpersonal skills;
- (2) infection control;
- (3) safety and emergency procedures, including ways to assist someone who is choking, such as the Heimlich maneuver;
- (4) promoting a resident's independence;
- (5) respecting a resident's rights;
- (6) basic nursing skills, including:
 - (A) taking and recording vital signs;
 - (B) measuring and recording height and weight;
 - (C) caring for a resident's environment;
 - (D) recognizing abnormal changes in body functioning and the importance of reporting such changes to a supervisor; and
 - (E) caring for a resident when death is imminent;
- (7) personal care skills, including:
 - (A) bathing;
 - (B) grooming, including mouth care;
 - (C) dressing;
 - (D) toileting;
 - (E) assisting with eating and hydration;
 - (F) proper feeding techniques;
 - (G) skin care; and
 - (H) transfers, positioning, and turning;
- (8) mental health and social service needs, including:
 - (A) modifying the aide's behavior in response to a resident's behavior;
 - (B) awareness of developmental tasks associated with the aging process;
 - (C) how to respond to a resident's behavior;
 - (D) allowing a resident to make personal choices, providing and reinforcing other behavior consistent with the resident's dignity; and
 - (E) using a resident's family as a source of emotional support;
- (9) care of cognitively impaired residents, including:
 - (A) techniques for addressing the unique needs and behaviors of a resident with a dementia disorder, including Alzheimer's disease;
 - (B) communicating with a cognitively impaired resident;
 - (C) understanding the behavior of a cognitively impaired resident;
 - (D) appropriate responses to the behavior of a cognitively impaired resident; and
 - (E) methods of reducing the effects of cognitive impairments;

(10) basic restorative services, including:

- (A) training a resident in self-care according to the resident's abilities;
 - (B) use of assistive devices in transferring, ambulation, eating, and dressing;
 - (C) maintenance of range of motion;
 - (D) proper turning and positioning in bed and chair;
 - (E) bowel and bladder training; and
 - (F) care and use of prosthetic and orthotic devices; and
- (11) a resident's rights, including:
- (A) providing privacy and maintenance of confidentiality;
 - (B) promoting the resident's right to make personal choices to accommodate the resident's [their] needs;
 - (C) giving assistance in resolving grievances and disputes;
 - (D) providing needed assistance in getting to and participating in resident, family, group, and other activities;
 - (E) maintaining care and security of the resident's personal possessions;
 - (F) promoting the resident's right to be free from abuse, mistreatment, and neglect and the need to report any instances of such treatment to appropriate facility staff; and
 - (G) avoiding the need for restraints in accordance with current professional standards.

(r) If a trainee completes HHSC's 60-hour classroom training CBT, a NATCEP must accept proof of completion of the CBT in lieu of the 16 introductory hours of classroom training in subsection (q) of this section and the eight hours of infection control training in subsection (u) of this section. The NATCEP must ensure that the trainee:

- (1) only performs services for which the trainee has been trained and has been found to be proficient by a program instructor;
- (2) is under the direct supervision of a licensed nurse when performing skills as part of a NATCEP until the trainee has been found competent by the program instructor to perform that skill;
- (3) is under the general supervision of a licensed nurse when providing services to a resident after a trainee has been found competent by the program instructor; and
- (4) is clearly identified as a trainee during the clinical training portion of the NATCEP.

(s) A NATCEP that fails to accept proof of completion of the classroom training in accordance with subsection (o)(1)(B) of this section [chapter] may be subject to §556.8 of this chapter (relating to Withdrawal of Approval of a NATCEP).

(t) A NATCEP must have a program director and a program instructor when the NATCEP applies for initial approval by HHSC in accordance with §556.7 of this chapter (relating to Review and Reapproval of a Nurse Aide Training and Competency Evaluation Program (NATCEP)) and to maintain HHSC approval. The program director and program instructor must meet the requirements of §556.5(b) - (d) of this chapter (relating to Program Director, Program Instructor, Supplemental Trainers, and Skills Examiner Requirements).

(u) Except as provided in subsection (r) of this section, a NATCEP must teach eight hours of infection control that includes the proper use of personal protective equipment (PPE) before a trainee has any direct contact with a resident.

(v) A NATCEP must verify that a trainee:

(1) is not listed on the NAR in revoked status;

(2) is not listed as unemployable on the Search Engine for Multi-Agency Reportable Conduct established under Texas Health and Safety Code Chapter 810; and [EMR; and]

(3) has not been convicted of a criminal offense listed in Texas Health and Safety Code (THSC) §250.006(a) or convicted of a criminal offense listed in THSC §250.006(b) within the five years immediately before participating in the NATCEP.

(w) A NATCEP must ensure that a trainee:

(1) completes the first 16 introductory hours of training (Section I of the curriculum) before having any direct contact with a resident;

(2) only performs services for which the trainee has been trained and has been found to be proficient by a program instructor;

(3) is under the direct supervision of a licensed nurse when performing skills as part of the NATCEP until the trainee has been found competent by the program instructor to perform that skill;

(4) is under the general supervision of a licensed nurse when providing services to a resident after a trainee has been found competent by the program instructor; and

(5) is clearly identified as a trainee during the clinical training portion of the NATCEP.

(x) A NATCEP must submit a NATCEP application through the online portal to HHSC if the information in an approved NATCEP application changes. The NATCEP may not continue training or start new training until HHSC approves the change. HHSC conducts a review of the NATCEP information if HHSC determines the changes are substantive.

(y) A NATCEP must use HHSC Form 5497-NATCEP, Texas Nurse Aide Performance Record, to document major duties or skills taught, trainee performance of a duty or skill, satisfactory or unsatisfactory performance, and the name of the instructor supervising the performance. At the completion of the NATCEP, the trainee and the employer, if applicable, will receive a copy of the performance record. The NATCEP must maintain a copy of the performance record.

(z) A NATCEP must maintain records for each session of classroom training, whether offered in person or online, and of clinical training, and must make these records available to HHSC or its designees at any reasonable time.

(1) The classroom and clinical training records must include:

(A) dates and times of all classroom and clinical training;

(B) the full name and social security number of each trainee;

(C) a record of the date and time of each classroom and clinical training session a trainee attends;

(D) a final course grade that indicates pass or fail for each trainee; and

(E) a physical or electronic sign-in record for each classroom and clinical training session. An electronic sign-in must include a form of identity verification for the trainee conducted in compliance with the requirements of subsection (p)(2) of this section.

(2) If a trainee completes the classroom training by successfully completing HHSC's CBT, a NATCEP must retain records that include a copy of the trainee's certification of completion for the CBT. The certificate of completion must be issued by HHSC and include the date the trainee completed the CBT.

(3) A NATCEP must provide to HHSC, on the NATCEP application through the online portal, the physical address where all records are maintained and must notify HHSC of any change in the address provided.

(aa) A nursing facility must not charge a nurse aide for any portion of a NATCEP, including any fees for textbooks or other required course materials, if the nurse aide is employed by or has received an offer of employment from a facility on the date the nurse aide begins the NATCEP.

(bb) HHSC reimburses a nurse aide for a portion of the costs incurred by the nurse aide to complete a NATCEP if the nurse aide is employed by or has received an offer of employment from a nursing facility within 12 months of completing the NATCEP.

(cc) HHSC must approve a NATCEP before the NATCEP solicits or enrolls trainees.

(dd) HHSC approval of a NATCEP only applies to the required curriculum and hours. HHSC does not approve additional content or hours.

(ee) A new employee or trainee orientation given by a nursing facility to a nurse aide employed by the facility does not constitute a part of a NATCEP.

(ff) A NATCEP that provides training to renew a nurse aide's listing on the NAR must include training in geriatrics and the care of residents with a dementia disorder, including Alzheimer's disease.

§556.12. Waiver, Reciprocity, and Exemption Requirements.

(a) HHSC may waive the requirement for a nurse aide to take the NATCEP specified in §556.3 of this chapter (relating to Nurse Aide Training and Competency Evaluation Program (NATCEP) Requirements) and issue a certificate of registration and place a nurse aide on the Nurse Aide Registry (NAR) on active status if the nurse aide:

(1) submits proof of completing a nurse aide training course of at least 100 hours duration before July 1, 1989, through the online portal;

(2) submits HHSC Form 5506-NAR, Employment Verification, to HHSC through the online portal to document that the nurse aide performed nursing or nursing-related services for monetary compensation at least once every two years since July 1, 1989;

(3) is not listed as unemployable on the Search Engine for Multi-Agency Reportable Conduct (SEMARC) established under Texas Health and Safety Code Chapter 810 [EMR];

(4) has not been convicted of a criminal offense listed in Texas Health and Safety Code (THSC) §250.006(a) and (c), or convicted of a criminal offense listed in THSC §250.006(b) within the preceding five years; and

(5) completes HHSC Form 5507-NAR, Waiver of Nurse Aide Training and Competency Evaluation Program, and submits it to HHSC through the online portal.

(b) HHSC issues the certificate of registration through the online portal and places a nurse aide on the NAR by reciprocity if:

(1) the nurse aide is listed as having active status on another state's registry of nurse aides;

(2) the other state's registry of nurse aides is in compliance with the Act;

(3) the nurse aide is not listed as unemployable on the SEMARC [EMR];

(4) the nurse aide has not been convicted of a criminal offense listed in THSC §250.006(a) and (c), or convicted of a criminal offense listed in THSC §250.006(b) within the preceding five years; and

(5) the nurse aide completes a Request for Entry on the Texas Nurse Aide Registry Through Reciprocity, via the online portal.

(c) A person is eligible to take a competency evaluation with an exemption from the nurse aide training specified in §556.3 of this chapter if the individual:

(1) meets one of the following requirements for eligibility:

(A) is seeking renewal under §556.9 of this chapter (relating to Certificate of Registration, Nurse Aide Registry, and Renewal);

(B) has successfully completed at least 100 hours of training at a NATCEP in another state within the preceding 24 months but has not taken the competency evaluation or been placed on an NAR in another state;

(C) has successfully completed at least 100 hours of military training, equivalent to civilian nurse aide training, on or after July 1, 1989;

(D) has successfully completed an RN or LVN program at an accredited school of nursing in the United States within the preceding 24 months;

(i) is not licensed as an RN or LVN in the state of Texas; and

(ii) has not held a license as an RN or LVN in another state that has been revoked; or

(E) is enrolled or has been enrolled within the preceding 24 months in an accredited school of nursing in the United States and demonstrates competency in providing basic nursing skills in accordance with the school's curriculum;

(2) is not listed as unemployable on the SEMARC [EMR];

(3) has not been convicted of a criminal offense listed in THSC §250.006(a) and (c), or convicted of a criminal offense listed in THSC §250.006(b) within the preceding five years;

(4) submits documentation to verify at least one of the requirements in paragraph (1) of this subsection;

(5) arranges for a nursing facility or NATCEP to serve as a competency evaluation site; and

(6) before taking the competency evaluation, presents to the skills examiner an original letter from HHSC authorizing the person to take the competency evaluation.

§556.13. *Findings and Inquiries.*

(a) HHSC reviews and investigates allegations of abuse, neglect, or misappropriation of resident property by a nurse aide em-

ployed in a nursing facility. If HHSC finds that a nurse aide committed an act of abuse, neglect, or misappropriation of resident property, before entry of the finding on the Nurse Aide Registry (NAR), HHSC provides the nurse aide an opportunity to dispute the finding through an informal review (IR) and a hearing as described in this section.

(b) If HHSC finds that a nurse aide committed an act of abuse, neglect, or misappropriation of resident property, HHSC sends the nurse aide a written notice regarding the finding. The notice includes:

(1) a summary of the findings and facts on which the findings are based;

(2) a statement informing the nurse aide of the right to an IR to dispute HHSC findings;

(3) a statement informing the nurse aide that a request for an IR must be made within 10 days after the date the nurse aide receives the written notice; and

(4) the address and contact information where the nurse aide must submit a request for an IR.

(c) If a nurse aide requests an IR, HHSC sets a date to allow the nurse aide to dispute the findings of the investigation of abuse, neglect, or misappropriation of resident property. The nurse aide may dispute the findings by providing testimony, in person or by telephone, to impartial HHSC staff.

(1) If HHSC does not uphold the findings, HHSC notifies the nurse aide of the results of the IR and closes the investigation. HHSC does not record information related to the investigation in the NAR.

(2) If HHSC upholds the findings, HHSC notifies the nurse aide of the results of the IR. The nurse aide may request a hearing in accordance with subsection (d) of this section.

(3) If the nurse aide does not request an IR, or fails to appear for a requested IR, HHSC upholds the findings. The nurse aide may request a hearing in accordance with subsection (d) of this section.

(d) A nurse aide may request a hearing after receipt of HHSC notice of the results of an IR described in subsection (c)(2) of this section. Texas Administrative Code (TAC), Title 1, Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act), and Chapter 110 of this title (relating to Hearings Under the Administrative Procedure Act) govern the hearing, except that a nurse aide must request a formal hearing within 30 days after receipt of HHSC notice in compliance with 42 Code of Federal Regulations §488.335. If the nurse aide fails to request a hearing, the nurse aide waives the opportunity for a hearing and HHSC enters the finding of abuse, neglect, or misappropriation of resident property, as appropriate, on the NAR.

(e) If HHSC receives an allegation that a nurse aide, who has a medication aide permit under Chapter 557 of this title (relating to Medication Aides--Program Requirements), committed an act of abuse, neglect, or misappropriation of resident property, HHSC investigates the allegation under this section regarding the nurse aide practice and under Chapter 557 of this title to determine if the allegation violates the medication aide practice. The investigations run concurrently. If after the investigations, the nurse aide requests hearings on the findings under the nurse aide practice and the medication aide practice, only one hearing, conducted in accordance with subsection (d) of this section, is available to the nurse aide.

(f) If HHSC finds that a nurse aide committed an act of abuse, neglect, or misappropriation of resident property, HHSC reports the finding to:

- (1) the NAR;
- (2) the nurse aide;
- (3) the administrator of the nursing facility in which the act occurred; and
- (4) the administrator of the nursing facility that employs the nurse aide, if different from the nursing facility in which the act occurred.

(g) The NAR must include the findings involving a nurse aide listed on the NAR as well as any brief statement of the nurse aide disputing the findings.

(h) The information on the NAR is available to the public.

(i) If an inquiry is made about a nurse aide's status on the NAR, HHSC must:

- (1) verify if the nurse aide is listed on the NAR;
- (2) disclose information concerning a finding of abuse, neglect, or misappropriation of resident property involving the nurse aide; and
- (3) disclose any statement by the nurse aide related to the finding.

(j) If a nurse aide works in a capacity other than a nurse aide in a nursing facility and is listed as unemployable in the Search Engine for Multi-Agency Reportable Conduct (SEMARC) established under Texas Health and Safety Code Chapter 810 [EMR], HHSC revokes or suspends the certificate of registration and changes the status of the nurse aide's listing on the NAR to revoked or suspended. The due process available to the nurse aide before placement on the SEMARC [EMR] satisfies the due process required before HHSC revokes or suspends the certificate of registration and changes the nurse aide's status on the NAR.

(k) If HHSC revokes or suspends the certificate of registration and lists a nurse aide's status on the NAR as suspended or revoked because of a single finding of neglect, the nurse aide may request that HHSC reissue the certificate of registration and remove the finding after the finding has been listed on the NAR for one year. To request removal of the finding, the nurse aide must submit a HHSC Petition for Removal of Neglect Finding to HHSC in accordance with the petition's instructions.

§556.14. Alternate Licensing Requirements for Military Service Personnel.

(a) Additional time for in-service education.

(1) HHSC gives a nurse aide an additional two years to complete in-service education required for a nurse aide to maintain his or her certificate of registration and an active listing on the Nurse Aide Registry (NAR), as described in §556.9(c) [§556.9(f)] of this chapter (relating to Certificate of Registration, Nurse Aide Registry, and Renewal), if HHSC receives and approves a request through the online portal for additional time to complete in-service training from a nurse aide in accordance with this subsection.

(2) To request additional time to complete in-service education, a nurse aide must submit a written request for additional time to HHSC through the online portal before the expiration date of the nurse aide's certification. The nurse aide must include with the request documentation of the nurse aide's status as a military service member that is acceptable to HHSC. Documentation as a military service member that is acceptable to HHSC includes a copy of a military service order issued by the United States Armed Forces, the State of Texas, or another state.

(3) If HHSC requests additional documentation, the nurse aide must submit the requested documentation.

(4) HHSC approves a request for two additional years to complete in-service education submitted in accordance with this subsection if HHSC determines that the nurse aide is a military service member, except HHSC does not approve a request if HHSC granted the nurse aide a previous extension and the nurse aide did not complete the in-service education requirements during the previous extension period.

(b) Renewal of expired certificate of registration and NAR listing.

(1) HHSC renews the certificate of registration and changes the status of a listing from expired to active if HHSC receives and approves a request through the online portal for renewal and an active status listing from a former nurse aide in accordance with this subsection.

(2) To request renewal and an active status listing, a former nurse aide must submit a written request with the documents required for renewal through the online portal in accordance with §556.9(c) [§556.9(f)] of this chapter within five years after the former nurse aide's certificate of registration and listing expired. The former nurse aide must include with the request documentation of the former nurse aide's status as a military service member, military veteran, or military spouse that is acceptable to HHSC.

(3) Documentation of military status that is acceptable to HHSC includes:

(A) for status as a military service member, a copy of a current military service order issued to the former nurse aide by the armed forces of the United States, the State of Texas, or another state;

(B) for status as a military veteran, a copy of a military service discharge order issued to the former nurse aide by the armed forces of the United States, the State of Texas, or another state; and

(C) for status as a military spouse:

(i) a copy of a marriage certificate issued to the former nurse aide by a state of the United States or a foreign government; and

(ii) a copy of a current military service order issued to the former nurse aide's spouse by the armed forces of the United States, the State of Texas, or another state.

(4) If HHSC requests additional documentation, the former nurse aide must submit the requested documentation.

(5) HHSC approves a request for an active status listing submitted in accordance with this subsection if HHSC determines that:

(A) the former nurse aide meets the requirements for renewal described in §556.9(c) [§556.9(f)] of this chapter;

(B) the former nurse aide is a military service member, military veteran, or military spouse;

(C) the former nurse aide has not committed an offense listed in Texas Health and Safety Code (THSC) §250.006(a) and (c) and has not committed an offense listed in THSC §250.006(b) during the five years before the date the former nurse aide submitted the initial license application; and

(D) the former nurse aide is not listed on the Search Engine for Multi-Agency Reportable Conduct (SEMARC) established under Texas Health and Safety Code Chapter 810 [EMR].

(c) HHSC replaces a lost, damaged, or destroyed certificate for a military spouse. A military spouse with an active nurse aide certificate can print a duplicate license through the online portal. A military spouse can request a change of name through the online portal by submitting a name change application.

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

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TRD-202601309

Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-3161



CHAPTER 557. MEDICATION AIDES-- PROGRAM REQUIREMENTS

26 TAC §§557.107, 557.113, 557.115, 557.119, 557.129

The executive commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §557.107, concerning Training Requirements; Nursing Graduates; Reciprocity; §557.113, concerning Determination of Eligibility; §557.115, concerning Permit Renewal; §557.119, concerning Training Program Requirements; and §557.129, concerning Alternate Licensing Requirements for Military Service.

BACKGROUND AND PURPOSE

The purpose of the proposal is to implement Senate Bill (SB) 1849, 88th Legislature, Regular Session, 2023, which created Texas Health and Safety Code Chapter 810, Interagency Reportable Conduct Search Engine. While the Texas Department of Information Resources (DIR) is responsible for creating the search engine, the chapter also requires HHSC to amend rules relating to the Employee Misconduct Registry search engine and required background check searches providers regulated by HHSC Long Term Care Regulatory (LTCR) or HHSC must conduct before employing individuals.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §557.107 implements SB 1849 relating to an interagency reportable conduct search engine, known as the Search Engine for Multi-Agency Reportable Conduct (SEMARC), and revises the rule to state that an applicant must not be listed as unemployable on the SEMARC.

The proposed amendment to §557.113 implements SB 1849 relating to an interagency reportable conduct search engine and revises the rule to state that HHSC denies an application for a medication aide permit if the applicant is listed as unemployable on the SEMARC.

The proposed amendment to §557.115 implements SB 1849 relating to an interagency reportable conduct search engine and revises the rule to state that HHSC denies a permit renewal if the medication aide is listed as unemployable on the SEMARC.

The proposed amendment to §557.119 implements SB 1849 relating to an interagency reportable conduct search engine and

revises the rule to state that training programs accredited by the Texas Workforce Commission or Texas Higher Education Coordinating Board must check the SEMARC to verify a student is not listed as unemployable before beginning the training program. The amendment also revises grammar and punctuation.

The proposed amendment to §557.129 implements SB 1849 relating to an interagency reportable conduct search engine and revises the rule to state that HHSC uses the SEMARC to verify a former medication aide is not listed as unemployable before approving a request for renewal of an expired permit. The amendment also updates references in the rule.

FISCAL NOTE

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

There is no expected fiscal impact to state government to implement the proposed rules for this proposal. However, additional HHSC rule proposals will address the costs to state government for implementing SB 1849.

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Trey Wood has also determined that there will not be an adverse economic effect on small businesses, micro-businesses, or rural communities because HHSC Licensing and Credentialing staff will perform the required background checks.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Michelle Dionne-Vahalik, Associate Commissioner for Long-Term Care Regulation, has determined that for each year

of the first five years the rules are in effect, the public benefit will be HHSC's ability to access a new search engine database that will protect individuals being served by LTCR regulated providers from individuals with a history of reportable conduct, including the abuse, neglect, and exploitation of vulnerable populations.

Trey Wood has also determined that for the first five years the rules are in effect, persons who are required to comply with the proposed rules will not incur additional administrative costs related to accessing and searching the new database because HHSC Licensing and Credentialing staff will perform the required background checks.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal, including information related to the cost, benefit, or effect of the proposed rule, as well as any applicable data, research, or analysis, may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4601 West Guadalupe Street, Austin, Texas 78751; or emailed to HHSRulesCoordinationOffice@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be post-marked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 25R003" in the subject line.

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system; Texas Health and Safety Code Chapter 810, which requires HHSC and LTCR providers to use a new interagency search engine to verify employability; and Texas Health and Safety Code Chapter 142, Subchapter B, and Chapter 242, Subchapter N, and Texas Human Resources Code Sec. 161.083, which authorizes the executive commissioner of HHSC to adopt rules for the administration of medication.

The amendments implement Texas Government Code §524.0151 and Texas Health and Safety Code Chapter 810.

§557.107. *Training Requirements; Nursing Graduates; Reciprocity.*

(a) Each applicant for a permit issued under this chapter must complete a training program unless the applicant meets the requirements of subsection (c) or (e) of this section.

(b) Before submitting an application for a permit under this chapter, an applicant must:

- (1) be able to read, write, speak, and understand English;
- (2) be at least 18 years of age;

(3) be free of communicable diseases and in suitable physical and emotional health to safely administer medications;

(4) be a high school graduate or have proof of successfully passing a general educational development test;

(5) if a home health medication aide, have satisfactorily completed a home health aide training and competency evaluation program or a competency evaluation program under §558.701 of this title (relating to Home Health Aides);

(6) be employed in a facility or home health agency[²] as a nurse aide or nonlicensed direct care staff person on the first official day of the applicant's medication aide training program;

(7) have been employed:

(A) as a nurse aide in a Medicare-skilled nursing facility or a Medicaid nursing facility; or

(B) in a facility or by a home health agency[²] for 90 days as a nonlicensed direct care staff person during the 12-month period before the first official day of the applicant's medication aide training program;

(8) not have a criminal history that HHSC determines is a basis for denying the permit under §557.121 of this chapter (relating to Permitting of Persons with Criminal Backgrounds);

(9) not be listed as unemployable on the Search Engine for Multi-Agency Reportable Conduct established under Texas Health and Safety Code Chapter 810 [EMR]; and

(10) not be listed with a revoked or suspended status on the NAR.

(c) A person who is attending or has attended an accredited school of nursing and who does not hold a license to practice professional or vocational nursing meets the training requirement for issuance of a permit under this chapter if the person:

(1) attended the nursing school no earlier than January 1 of the year immediately preceding the year of application for a permit under this chapter;

(2) successfully completed courses at the nursing school that covered the HHSC curriculum for a medication aide training program;

(3) submits a statement, with the application for a permit and combined permit application and examination fee as provided in §557.109 of this chapter (relating to Application Procedures), on the form provided by HHSC, signed by the nursing school's administrator or other authorized individual, certifying that the person completed the courses specified in paragraph (2) of this subsection; and

(4) complies with subsection (e)(5) and (6) of this section.

(d) The administrator or other authorized individual referred to in subsection (c)(3) of this section is responsible for determining that the nursing school courses cover HHSC curriculum.

(e) A person who is a graduate of an accredited school of nursing and who does not hold a license to practice professional or vocational nursing meets the training requirement for issuance of a permit under this chapter if the date of graduation from the nursing school was no earlier than January 1 of the year immediately preceding the year of application for a permit under this chapter.

(1) The applicant must submit an official application form to HHSC through the online portal. The applicant must meet the requirements of subsection (b)(1) - (4), (8), and (9) of this section.

(2) The application must be accompanied by the combined permit application and examination fee as set out in §557.109(c) of this chapter.

(3) The applicant must include an official transcript documenting graduation from an accredited school of nursing.

(4) HHSC acknowledges receipt of the application by sending the applicant a copy of this chapter and the HHSC open book examination.

(5) The applicant must complete the open book examination and return it to HHSC via email by the date given in the examination notice.

(6) The applicant must complete the HHSC written examination. HHSC denies the application of an applicant who fails to schedule and take the written examination by the date given in the examination notice.

(7) The open-book or written examination may not be retaken if the applicant fails the examination.

(8) Upon successful completion of the open-book and written examinations, HHSC evaluates all application documents submitted by the applicant.

(9) HHSC notifies the applicant of the examination results through the online portal.

(f) A person who holds a valid license, registration, certificate, or permit as a medication aide issued by another state whose minimum standards or requirements are substantially equivalent to or exceed the requirements of this chapter that is in effect at the time of application, may request a waiver of the training program requirement as follows:

(1) The applicant must submit an official application form to HHSC through the online portal. The applicant must meet the requirements of subsection (b)(1) - (4), (8), and (9) of this section.

(2) The application must be accompanied by the combined permit application and examination fee required in §557.109(c) of this chapter.

(3) The application must include a current copy of the rules of the other state governing its licensing and regulation of medication aides, a copy of the legal authority (law, act, code, or other) for the state's licensing program, and a certified copy of the license or certificate for which the reciprocal permit is requested.

(4) HHSC acknowledges receipt of the application by sending the applicant a copy of this chapter and the HHSC open book examination.

(5) HHSC may contact the issuing agency to verify the applicant's status with the agency.

(6) The applicant must complete the HHSC open-book examination and return it to HHSC via email by the date given in the examination notice.

(7) The applicant must complete the HHSC written examination. The site of the examination is determined by HHSC. HHSC denies the application of an applicant failing to schedule and take the examination by the date given in the examination notice.

(8) An open-book or written examination may not be retaken if the applicant fails the examination.

(9) Upon successful completion of the two examinations, HHSC evaluates all application documents submitted by the applicant.

(10) HHSC notifies the applicant of the examination results through the online portal.

§557.113. *Determination of Eligibility.*

(a) HHSC approves or denies each application for a permit.

(b) HHSC provides notices of application approval, denial, or deficiency in accordance with §557.127 of this chapter (relating to Application Processing).

(c) HHSC denies an application for a permit if the applicant:

(1) does not meet the requirements in §557.107 of this chapter (relating to Training Requirements; Nursing Graduates; Reciprocity) or §557.125 of this chapter (relating to Requirements for Corrections Medication Aides);

(2) fails to pass the examination prescribed by HHSC, as referenced in §557.111 of this chapter (relating to Examination), or developed by TDCJ, as referenced in §557.125(h) of this chapter;

(3) fails or refuses to properly complete or submit an application form or fee through the online portal, or deliberately submits false information on any form or document required by HHSC;

(4) violates or conspires to violate Texas Health and Safety Code^[5] Chapter 242, Subchapter N, Texas Human Resources Code §161.083, or any provision of this chapter;

(5) has a criminal history that HHSC determines is a basis for denying the permit under §557.121 of this chapter (relating to Permitting of Persons with Criminal Backgrounds);

(6) is listed with a revoked or suspended status on the HHSC NAR; or

(7) is listed as unemployable on the Search Engine for Multi-Agency Reportable Conduct established under Texas Health and Safety Code Chapter 810 [EMR].

(d) If, after review, HHSC determines that the application should be denied, HHSC gives the applicant written notice of the reason for the proposed decision and of the opportunity for a formal hearing in accordance with §557.123(c)(3) of this chapter (relating to Violations, Complaints, and Disciplinary Actions).

§557.115. *Permit Renewal.*

(a) General.

(1) An initial permit is valid for 12 months from the date of issue.

(2) A medication aide must renew his or her permit annually.

(3) Each medication aide is responsible for renewing the permit before the expiration date. Failure to receive notification from HHSC before the expiration date of the permit does not excuse a medication aide's failure to file for timely renewal.

(4) Continuing education hours are not required for the first renewal. However, after a permit is renewed for the first time, a medication aide must complete a seven-hour continuing education program approved by HHSC annually before expiration of his or her permit to renew the permit for each additional year.

(5) HHSC denies renewal of the permit of a medication aide who:

(A) is in violation of Texas Health and Safety Code^[5] Chapter 242, Subchapter N, Texas Human Resources Code §161.083, or this chapter at the time of application for renewal;

(B) has a conviction of a criminal offense listed in Texas Health and Safety Code §250.006(a) or (c), or a conviction of a criminal offense listed in Texas Health and Safety Code §250.006(b) within five years before the date HHSC receives the renewal application;

(C) is listed as unemployable on the Search Engine for Multi-Agency Reportable Conduct (SEMARC) established under Texas Health and Safety Code Chapter 810 [EMR]; or

(D) is listed with a revoked or suspended status on the NAR.

(6) A person whose permit has expired may not engage in activities that require a permit until the permit has been renewed.

(b) Permit renewal procedures.

(1) After receiving proof of the successful completion of the seven hour continuing education requirement, HHSC sends notice of the amount of the renewal fee due[;] and a renewal form to the medication aide through the online portal.

(2) The renewal form located in the online portal, which includes the contact information and preferred mailing address of the medication aide.

(3) Medication aides are required to submit fingerprints to the Texas Department of Public Safety for a Federal Bureau of Investigation criminal background check, if not submitted previously.

(4) HHSC issues a renewal permit to a medication aide who meets all requirements for renewal, including payment of the renewal fee.

(c) Late renewal procedures.

(1) If a medication aide submits a renewal application to HHSC through the online portal that is late or incomplete, HHSC assesses the appropriate late fee described in §557.109(c)(1)(C) of this chapter (relating to Application Procedures). HHSC uses the submission date in the online portal to determine if a renewal application is late.

(2) A person whose permit has been expired for less than one year may renew the permit through the online portal by submitting to HHSC:

(A) the permit renewal form;

(B) all accrued renewal fees;

(C) proof of having earned, during the expired period, seven hours in an approved continuing education program for each year, or part of a year, since the permit expired; and

(D) proof of having earned, before expiration of the permit, seven hours in an approved continuing education program as required by subsection (a)(4) of this section.

(3) A person whose permit has been expired for 90 days or less must pay HHSC the late renewal fee provided in §557.109(c)(1)(C)(i) of this chapter [~~relating to Application Procedures~~] or §557.125(g)(3)(A) of this chapter (relating to Requirements for Corrections Medication Aides).

(4) A person whose permit has been expired for more than 90 days but less than one year must pay HHSC the late renewal fee stated in §557.109(c)(1)(C)(ii) or §557.125(g)(3)(B) of this chapter.

(5) A person who previously held a permit in Texas issued under this chapter may obtain a new permit without reexamination if the person holds a medication aide permit from another state, practiced in that state for at least the two years preceding the application date,

and pays to HHSC the late renewal fee stated in §557.109(c)(1)(C)(iii) of this chapter.

(6) HHSC denies late renewal of the permit if a permit holder:

(A) is in violation of Texas Health and Safety Code[;] Chapter 242, Subchapter N, Texas Human Resources Code §161.083, or this chapter on the date HHSC receives the application for late renewal;

(B) has a conviction of a criminal offense listed in Texas Health and Safety Code §250.006(a) or (c), or a conviction of a criminal offense listed in Texas Health and Safety Code §250.006(b) within five years before the date HHSC receives the application for late renewal;

(C) is listed as unemployable on the SEMARC [EMR]; or

(D) is listed with a revoked or suspended status on the NAR.

(d) A person whose permit has been expired for one year or more may not renew the permit. To obtain a new permit, the person must apply for a permit in accordance with §557.109 of this chapter [~~relating to Application Procedures~~] and in §557.111 of this chapter (relating to Examination).

§557.119. Training Program Requirements.

(a) Application. An educational institution accredited by the Texas Workforce Commission or Texas Higher Education Coordinating Board that wants [desires] to offer a training program must file an application for approval on an HHSC form through the online portal. Programs sponsored by state agencies for the training and preparation of state [their own] employees are exempt from the accreditation requirement. An approved institution may offer the training program and a continuing education program.

(1) The application through the online portal must include:

(A) the anticipated dates of the program;

(B) the location of the classroom instruction and training course;

(C) the name of the coordinator of the program;

(D) a list that includes the address and telephone number of each instructor and any other persons responsible for the conduct of the program; and

(E) an outline of the program content and curriculum if the curriculum covers more than HHSC established curricula.

(2) HHSC may conduct an inspection of the classroom instruction and training site.

(3) HHSC sends notice of approval or proposed denial of the application to the program within 30 days after receiving a complete application through the online portal. If HHSC proposes to deny the application due to noncompliance with the requirements of this chapter, it provides the reasons for denial in the notice.

(4) An applicant may request in writing a hearing on a proposed denial. The applicant must submit a request within 15 days after the applicant receives notice of the proposed denial. The hearing is governed by 1 Texas Administrative Code Chapter 357, Subchapter I (relating to Hearings under the Administrative Procedure Act); Chapter 110 of this title (relating to Hearings under the Administrative Procedure Act); and Texas Government Code[;] Chapter 2001. If no request is made, the applicant has waived the opportunity for a hearing, and HHSC takes the proposed action.

(b) Basic training program.

(1) A training program must include the following instruction and training:

(A) procedures for preparation and administration of medications;

(B) responsibility, control, accountability, storage, and safeguarding of medications;

(C) use of reference material;

(D) documentation of medications in resident's or client's clinical records, including PRN medications;

(E) minimum licensing standards for facilities covering pharmaceutical service, nursing service, and clinical records;

(F) federal and state certification standards for participation under Title XVIII (Medicare) and Title XIX (Medicaid) of the Social Security Act pertaining to pharmaceutical service, nursing service, and clinical records;

(G) lines of authority in the facility, including facility personnel who are immediate supervisors;

(H) responsibilities and liabilities associated with the administration and safeguarding of medications;

(I) allowable and prohibited practices of medication aides in the administration of medication;

(J) drug reactions and side effects of medications commonly administered to residents or clients; and

(K) rules covering the medication aide program.

(2) The program must consist of 140 hours in the following sequence: 100 hours of classroom instruction and training; 20 hours of return skills demonstration laboratory; 10 hours of clinical experience, including clinical observation and skills demonstration under the direct supervision of a licensed nurse in a facility; and 10 hours of return skills demonstration laboratory. A classroom instruction and training or laboratory hour must include 50 minutes of actual classroom instruction and training or laboratory time.

(A) Class time must not exceed:

(i) four hours in a 24-hour period for a facility training program; or

(ii) eight hours in a 24-hour period for a correctional facility training program.

(B) The completion date of the program must be:

(i) a minimum of 60 days and a maximum of 180 days after the starting date of the facility training program; or

(ii) a minimum of 30 days and a maximum of 180 days after the starting date of a correctional facility training program.

(3) Each program must follow the curricula established by HHSC.

(4) Before a student begins a training program, the program must:

(A) ensure the student meets training requirements in §557.107(b)(1) - (9) of this chapter (relating to Training Requirements; Nursing Graduates; Reciprocity);

(B) check the Search Engine for Multi-Agency Reportable Conduct (SEMARC) established under Texas Health and

Safety Code Chapter 810 to ensure [~~EMR to verify that~~] the student is not listed as unemployable; and

(C) check the NAR to verify if the student is listed in revoked or suspended status.

(5) At least seven days before the beginning of a training program, the coordinator must notify HHSC in writing through the online portal of the dates and daily hours of the program[;] and the projected number of students.

(6) A change in any information presented by the program in an approved application, including location, instructors, and content must be approved by HHSC through the online portal before the change is implemented.

(7) The program instructors of the classroom instruction and training hours must be a registered nurse and registered pharmacist.

(A) The nurse instructor must have:

(i) a minimum of two years of experience in caring for individuals in a long-term care setting or be an instructor in a school of nursing, for a facility training program; or

(ii) a minimum of two years of experience employed in a correctional setting or be an instructor in a school of nursing, for a correctional facility program.

(B) The pharmacist instructor must have:

(i) a minimum of one year of experience and be currently employed or contracted as a consultant pharmacist in a facility; or

(ii) a minimum of one year of experience employed or contracted as a pharmacist in a correctional setting.

(8) The program coordinator must provide clearly defined and written policies regarding each student's clinical experience to the student, the administrator, and the director of nursing in the facility used for the clinical experience.

(A) The clinical experience must be counted only when the student is performing functions involving medication administration and under the direct supervision of a licensed nurse.

(B) The program coordinator must be responsible for final evaluation of the student's clinical experience.

(9) Each program must issue to each student, upon successful completion of the program, a certificate of completion, which must include the program's name, the student's name, the date of completion, and the signature of the program coordinator or administrative official.

(10) Each program must inform HHSC through the online portal on the HHSC class roster form of the final grade results for each student within 15 days after the student's completion of the course and prior to scheduling the exam.

(11) A student without an HHSC-approved criminal background check will not be allowed to take the exam.

(c) Continuing education training program.

(1) The program must consist of at least seven hours of classroom instruction and training or online instruction.

(2) The instructors must meet the requirements in subsection (b)(7) of this section.

(3) Each program must follow the curricula established by HHSC or the curriculum established by TDCJ for corrections medication aides, as applicable.

(4) Within 10 days after a medication aide's completion of the course, each program must inform HHSC through the online portal using the HHSC class roster form of the name of each medication aide who has completed the course.

(d) In developing a training program for corrections medication aides that complies with Texas Government Code §501.1485, TDCJ may modify, as appropriate, the content of the training program curriculum originally developed under Texas Health and Safety Code[;] Chapter 242[;] to produce content suitable for administering medication in a correctional facility. The training program curriculum must be approved by HHSC.

(e) Subsection (c) of this section applies to a training program for medication aides and corrections medication aides.

§557.129. Alternate Licensing Requirements for Military Service.

(a) Fee waiver based on military experience.

(1) HHSC waives the combined permit application and examination fee described in §557.109(c)(1)(A) of this chapter (relating to Application Procedures) and the permit application fee described in §557.125(g)(1) of this chapter (relating to Requirements for Corrections Medication Aides) for an applicant if HHSC receives and approves a request for a waiver of fees through the online portal from the applicant in accordance with this subsection.

(2) To request a waiver of fees under this subsection, an applicant must submit a written request for a waiver with the applicant's application for a permit submitted to HHSC through the online portal in accordance with this section. The applicant must include with the request:

(A) documentation of the applicant's status as a military service member, military veteran, or military spouse that is acceptable to HHSC;

(B) documentation of the type and dates of the service, training, and education the applicant received and an explanation as to why the applicant's military service, training, and education substantially meets all of the requirements for a permit under this chapter; and

(C) for status as a military spouse:

(i) a copy of a marriage certificate issued to the applicant by a state of the United States or a foreign government; and

(ii) a copy of a current military service order issued to the applicant's spouse by the armed forces of the United States, the State of Texas, or another state.

(3) Documentation of military status that is acceptable to HHSC includes:

(A) for status as a military service member, a copy of a current military service order issued to the applicant by the armed forces of the United States, the State of Texas, or another state; and

(B) for status as a military veteran, a copy of a military service discharge order issued to the applicant by the armed forces of the United States, the State of Texas, or another state.

(4) If HHSC requests additional documentation, the applicant must submit the requested documentation.

(5) HHSC approves a request for a waiver of fees submitted in accordance with this subsection if HHSC determines that the applicant is a military service member or a military veteran and the ap-

plicant's military service, training, and education substantially meet all of the requirements for licensure under this chapter.

(b) Fee waiver based on reciprocity.

(1) HHSC waives the combined permit application and examination fee described in §557.109(c)(1)(A) of this chapter and the permit application fee described in §557.125(g)(1) of this chapter for an applicant if HHSC receives and approves a request through the online portal for a waiver of fees from the applicant in accordance with this subsection.

(2) To request a waiver of the fee under this subsection, an applicant must include a written request for a waiver of the fee with the applicant's application that is submitted to HHSC through the online portal in accordance with §557.107(f) of this chapter (relating to Training Requirements; Nursing Graduates; Reciprocity) [of this chapter]. The applicant must include with the request documentation of the applicant's status as a military service member, military veteran, or military spouse that is acceptable to HHSC.

(3) Documentation of military status that is acceptable to HHSC includes:

(A) for status as a military service member, a copy of a current military service order issued to the applicant by the armed forces of the United States, the State of Texas, or another state;

(B) for status as a military veteran, a copy of a military service discharge order issued to the applicant by the armed forces of the United States, the State of Texas, or another state; and

(C) for status as a military spouse:

(i) a copy of a marriage certificate issued to the applicant by a state of the United States or a foreign government; and

(ii) a copy of a current military service order issued to the applicant's spouse by the armed forces of the United States, the State of Texas, or another state.

(4) If HHSC requests additional documentation, the applicant must submit the requested documentation.

(5) HHSC approves a request for a waiver of the fee submitted in accordance with this subsection if HHSC determines that:

(A) the applicant holds a license, registration, certificate, or permit as a medication aide in good standing in another jurisdiction with licensing requirements substantially equivalent to or that exceed the requirements for a permit under this chapter; and

(B) the applicant is a military service member, a military veteran, or a military spouse.

(c) Additional time for permit renewal.

(1) HHSC gives a medication aide an additional two years to complete the permit renewal requirements described in §557.115 of this chapter (relating to Permit Renewal) if HHSC receives and approves through the online portal a request for additional time to complete the permit renewal requirements from a medication aide in accordance with this subsection.

(2) To request additional time to complete permit renewal requirements, a medication aide must:

(A) submit a written request for additional time to HHSC through the online portal before the expiration date of the medication aide's permit; and

(B) include, along with the request, documentation of the medication aide's status as a military service member that is ac-

ceptable to HHSC, which includes a copy of a current military service order issued to the medication aide by the armed forces of the United States, the State of Texas, or another state.

(3) If HHSC requests additional documentation, the medication aide must submit the requested documentation.

(4) HHSC approves a request for two additional years to complete permit renewal requirements submitted in accordance with this subsection if HHSC determines that the medication aide is a military service member, except HHSC does not approve a request if HHSC granted the medication aide a previous extension and the medication aide has not completed the permit renewal requirements during the two-year extension period.

(5) If a medication aide does not submit the written request described by paragraph (2) of this subsection before the expiration date of the medication aide's permit, HHSC will consider a request after the expiration date of the permit if the medication aide establishes to the satisfaction of HHSC that the request was not submitted before the expiration date of the medication aide's permit because the medication aide was serving as a military service member at the time the request was due.

(d) Renewal of expired permit.

(1) HHSC renews an expired permit if HHSC receives and approves a request for renewal from a former medication aide through the online portal in accordance with this subsection.

(2) To request renewal of an expired permit, a former medication aide must submit a written request with a permit renewal application through the online portal within five years after the former medication aide's permit expired. The former medication aide must include with the request documentation of the former medication aide's status as a military service member, military veteran, or military spouse that is acceptable to HHSC.

(3) Documentation of military status that is acceptable to HHSC includes:

(A) for status as a military service member, a copy of a current military service order issued to the former medication aide by the armed forces of the United States, the State of Texas, or another state;

(B) for status as a military veteran, a copy of a military service discharge order issued to the former medication aide by the armed forces of the United States, the State of Texas, or another state; and

(C) for status as a military spouse:

(i) a copy of a marriage certificate issued to the former medication aide by a state of the United States or a foreign government; and

(ii) a copy of a current military service order issued to the former medication aide's spouse by the armed forces of the United States, the State of Texas, or another state.

(4) If HHSC requests additional documentation, the former medication aide must submit the requested documentation.

(5) HHSC approves a request for renewal of an expired permit submitted in accordance with this subsection if HHSC determines that:

(A) the former medication aide is a military service member, military veteran, or military spouse;

(B) the former medication aide has not committed an offense listed in Texas Health and Safety Code §250.006(a) or (c) and has not committed an offense listed in Texas Health and Safety Code §250.006(b) during the five years before the date the former medication aide submitted the initial permit application;

(C) the former medication aide is not listed on the Search Engine for Multi-Agency Reportable Conduct established under Texas Health and Safety Code Chapter 810 [EMR]; and

(D) the former medication aide is not listed with revoked or suspended status on the NAR.

(e) Recognition of Out-of-State Permit of Military Spouse.

(1) A military spouse may engage in the practice of a medication aide in Texas without obtaining a permit, according to the application requirements of §557.103 of this chapter (relating to Requirements for Administering Medications), §557.125 of this chapter (relating to Requirements for Corrections Medication Aides) or §557.128 of this chapter (relating to Home Health Medication Aides), if the spouse:

(A) is currently licensed in good standing by another jurisdiction that has permitting requirements substantially equivalent to the requirements for a permit in Texas;

(B) notifies HHSC in writing of the spouse's intent to practice in Texas;

(C) submits to HHSC proof of the spouse's residence in this state and a copy of the spouse's military identification; and

(D) receives from HHSC:

(i) confirmation that HHSC has verified the spouse's permit in the other jurisdiction; and

(ii) a permit to practice as a medication aide in Texas.

(2) HHSC will review and evaluate the following criteria when determining whether another state's permitting requirements are substantially equivalent to the requirement for a permit under the statutes and regulations of this state:

(A) whether the other state requires an applicant to pass an examination that demonstrates competence in the field to obtain the permit;

(B) whether the other state requires an applicant to meet any experience qualifications to obtain the permit;

(C) whether the other state requires an applicant to meet education qualifications to obtain the permit;

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

(3) The military spouse must submit:

(A) a written request to HHSC for recognition of the spouse's permit issued by the other state;

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

(C) proof of residence in this state, which may include a copy of the permanent change of station order for the military service member to whom the military spouse is married;

(D) a copy of the military spouse's identification card;

(E) proof the military service member is stationed at a military installation in Texas; and

(F) proof that fingerprints submitted to the Texas Department of Public Safety for a Federal Bureau of Investigation criminal background check enable HHSC to confirm that the military spouse is in compliance with other laws and regulations applicable to medication aides in Texas.

(4) Upon verification from the permitting jurisdiction of the military spouse's permit, and if the permit is substantially equivalent to a Texas permit, HHSC shall issue a confirmation that HHSC has verified the spouse's permit in the other jurisdiction and a permit to practice as a medication aide in Texas.

(5) The permit issued under paragraph (4) of this subsection will expire three years from date of issuance or when the military service member is no longer stationed at a military installation in Texas, whichever comes first. The permit issued under paragraph (4) of this subsection may not be renewed.

(6) HHSC replaces a lost, damaged, or destroyed permit for a military spouse as provided in §557.117 of this chapter (relating to Changes). A military spouse with an active medication aide permit can print a duplicate permit through the online portal. A military spouse can request a change of name through the online portal by submitting a name change application.

(7) The military spouse shall comply with all applicable laws, rules, and standards of this state, including applicable Texas Health and Safety Code and Texas Administration Code provisions.

(8) HHSC may withdraw or modify the verification letter for reasons including:

(A) the military spouse fails to comply with this subsection [(+) of this section]; or

(B) the military spouse's licensure required under paragraph (1)(A) of this subsection expires or is suspended or revoked in another jurisdiction.

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

Filed with the Office of the Secretary of State on March 18, 2026.
TRD-202601316
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: May 3, 2026
For further information, please call: (512) 438-3161



CHAPTER 559. DAY ACTIVITY AND HEALTH SERVICES REQUIREMENTS

The executive commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §559.3, concerning Definitions; §559.51, concerning Compliance; and §559.225, concerning General Requirements.

BACKGROUND AND PURPOSE

The purpose of the proposal is to implement Senate Bill (SB) 1849, 88th Legislature, Regular Session, 2023, which created Texas Health and Safety Code Chapter 810, Interagency Re-

portable Conduct Search Engine. While the Texas Department of Information Resources (DIR) is responsible for creating the search engine, the chapter also requires HHSC to amend rules relating to the Employee Misconduct Registry search engine and required background check searches providers regulated by HHSC Long-Term Care Regulation (LTCR) must conduct before employing individuals.

The proposal is also necessary to update rules and to improve the readability and understanding of the rules.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §559.3 revises the definition for "NFPA 72" to clarify that the definition includes fire alarm system components and updates formatting and punctuation in the section.

The proposed amendments to §559.51 and §559.225 implement SB 1849 relating to an interagency reportable conduct search engine, known as the Search Engine for Multi-Agency Reportable Conduct (SEMARC), and updates the requirements for providers to use the SEMARC when verifying employability of a new employee or current employee. The amendments also include revisions for formatting and punctuation.

FISCAL NOTE

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

There is no expected fiscal impact to state government to implement the proposed rules for this proposal. However, additional HHSC rule proposals will address the costs to state government for implementing SB 1849.

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Trey Wood has also determined that there may be an adverse economic effect on small businesses, micro-businesses, or rural communities.

LTCR providers that are required to comply with the rules may incur increased administrative costs and this may have an ad-

verse economic effect on small businesses, microbusinesses, or rural communities.

HHSC is unable to estimate the number of small businesses, micro-businesses, or rural communities subject to the proposed rules. The projected economic impact for a small business, micro-business, or rural community is the cost to comply.

HHSC determined that alternative methods to achieve the purpose of the proposed rules for small businesses, micro-businesses, or rural communities would not be consistent with ensuring the health and safety of clients served by day activity and health services and individualized skills and socialization providers.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Michelle Dionne-Vahalik, Associate Commissioner for Long-Term Care Regulation, has determined that for each year of the first five years the rules are in effect, the public benefit will be HHSC's ability to access a new search engine database that will protect clients being served by day activity and health services and individualized skills an socialization providers, from individuals with a history of reportable conduct, including the abuse, neglect, and exploitation of vulnerable populations.

Trey Wood has also determined that for the first five years the rules are in effect, persons who are required to comply with the proposed rules may incur economic costs due to additional administrative costs related to accessing and searching the new database.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal, including information related to the cost, benefit, or effect of the proposed rule, as well as any applicable data, research, or analysis, may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4601 West Guadalupe Street, Austin, Texas 78751; or emailed to HHSRulesCoordinationOffice@hhs.texas.gov.

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

indicate "Comments on Proposed Rule 25R003" in the subject line.

SUBCHAPTER A. INTRODUCTION

26 TAC §559.3

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system and Texas Health and Safety Code Chapter 810, which requires HHSC and LTCR providers to use a new interagency search engine to verify employability; and Texas Human Resources Code Sec. 103.004, which authorizes the executive commissioner of HHSC to adopt rules for day activity and health services.

The amendment implements Texas Government Code §524.0151 and Texas Health and Safety Code Chapter 810.

§559.3. Definitions.

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

(1) Abuse--[]Negligent or willful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical or emotional harm or pain to an elderly or person by the person's caretaker, family member, or other individual who has an ongoing relationship with the person, or sexual abuse of an elderly or disabled person, including any involuntary or nonconsensual sexual conduct that would constitute an offense under Texas Penal Code §21.08 (relating to Indecent Exposure) or Texas Penal Code[;] Chapter 22 (relating to Assaultive Offenses) committed by the person's caretaker, family member, or other individual who has an ongoing relationship with the person.

(2) Actual harm--A negative outcome that compromises the physical, mental, or emotional well-being of an elderly person or a person with a disability receiving services at a facility.

(3) Adult--A person 18 years of age or older or an emancipated minor.

(4) Affiliate--With respect to a:

(A) partnership, each partner of the partnership;

(B) corporation, each officer, director, principal stockholder, and subsidiary; and each person with a disclosable interest;

(C) natural person, includes each:

(i) person's spouse;

(ii) partnership and each partner thereof, of which said person or any affiliate of said person is a partner; and

(iii) corporation in which the person is an officer, director, principal stockholder, or person with a disclosable interest.

(5) Alzheimer's disease and related disorders--Alzheimer's disease and any other irreversible dementia described by the Centers for Disease Control and Prevention (CDC) or the most current edition of the Diagnostic and Statistical Manual of Mental Disorders.

(6) Ambulatory--Mobility not relying on walker, crutch, cane, or other physical object or use of wheelchair.

(7) Applicant--A person applying for a license under Texas Human Resources Code[;] Chapter 103.

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

(9) Client--An individual receiving day activity and health services.

(10) Construction, existing--See [definition of] existing building in paragraph (27) of this section.

(11) Construction, new--Construction begun after April 1, 2007.

(12) Construction, permanent--A building or structure that meets a nationally recognized building code's details for foundations, floors, walls, columns, and roofs.

(13) Controlling person--A person with the ability, acting alone or with others, to directly or indirectly influence, direct, or cause the direction of management, expenditure of money, or policies of a facility or other person. A controlling person includes:

(A) a management company, landlord, or other business entity that operates or contracts with others for the operation of a facility;

(B) any person who is a controlling person of a management company or other business entity that operates a facility or that contracts with another person for the operation of a facility;

(C) an officer or director of a publicly traded corporation that is, or that controls, a facility, management company, or other business entity described in subparagraph (A) of this paragraph but does not include a shareholder or lender of the publicly traded corporation; and

(D) any other individual who, because of a personal, familial, or other relationship with the owner, manager, landlord, tenant, or provider of a facility, is in a position of actual control or authority with respect to the facility, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the facility, except an employee, lender, secured creditor, landlord, or other person who does not exercise formal or actual influence or control over the operation of a facility.

(14) DADS--The term referred to the Texas Department of Aging and Disability Services; it now refers to HHSC.

(15) DAHS--Day activity and health services. Health, social, and related support services as defined in this section.

(16) DAHS facility--A facility that provides services through a day activity and health services program on a daily or regular basis, but not overnight, to four or more elderly persons or persons with disabilities who are not related to the owner of the facility by blood, marriage, or adoption.

(17) DAHS program--A structured, comprehensive program offered by a DAHS facility that is designed to meet the needs of adults with functional impairments by providing DAHS in accordance with individual plans of care in a protective setting.

(18) Days--Calendar days, unless otherwise specified.

(19) Department--HHSC.

(20) Dietitian consultant--A person licensed as a dietitian by the Texas Department of Licensing and Regulation or a person with a bachelor's degree with major studies in food and nutrition, dietetics, or food service management.

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

(22) Direct service staff--An employee or contractor of a facility who directly provides services to individuals, including the director, a licensed nurse, the activities director, and an attendant. An attendant includes a driver, food service worker, aide, janitor, housekeeper, and laundry worker. A dietitian consultant is not a member of the direct service staff.

(23) Director--The person responsible for the overall operation of a facility.

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

(25) Elderly person--A person 65 years of age or older.

(26) Executive commissioner [~~Commissioner~~]-The executive commissioner of HHSC.

(27) Existing building--A building or portion thereof that, at the time of initial inspection by HHSC, is used as an adult day care occupancy, as defined by Life Safety Code, NFPA 101, 2000 edition, Chapter 17[.] for existing adult day care occupancies; or has been converted from another occupancy or use to an adult day care occupancy, as defined by Chapter 16 for new adult day care occupancies.

(28) Exploitation--An illegal or improper act or process of a caretaker, family member, or other individual who has an ongoing relationship with the elderly person or person with a disability, using the resources of an elderly person or person with a disability for monetary or personal benefit, profit, or gain without the informed consent of the elderly person or person with a disability.

(29) Facility--A licensed DAHS facility.

(30) Fence--A barrier to prevent elopement of an individual or intrusion by an unauthorized person, consisting of posts, columns, or other support members, and vertical or horizontal members of wood, masonry, or metal.

(31) FM--FM Global (formerly known as Factory Mutual). A corporation whose approval of a product indicates a level of testing and certification that is acceptable to HHSC.

(32) Fraud--A deliberate misrepresentation or intentional concealment of information to receive or to be reimbursed for service delivery to which an individual is not entitled.

(33) Functional impairment--A condition that requires assistance with one or more personal care services.

(34) Health assessment--An assessment of an individual by a facility used to develop the individual's plan of care.

(35) Health services--Services that include personal care, nursing, and therapy services.

(A) Personal care services include:

(i) bathing;

(ii) dressing;

(iii) preparing meals;

(iv) feeding;

(v) grooming;

(vi) taking self-administered medication;

(vii) toileting;

- (viii) ambulation; and
- (ix) assistance with other personal needs or maintenance.
- (B) Nursing services may include:
 - (i) administering medications;
 - (ii) physician-ordered treatments, such as dressing changes; and
 - (iii) monitoring the health condition of the individual.
- (C) Therapy services may include:
 - (i) physical therapy;
 - (ii) occupational therapy; and
 - (iii) speech therapy.
- (36) HHSC--The Texas Health and Human Services Commission.
- (37) Human service program--An intentional, organized, ongoing effort designed to provide good to others. The characteristics of a human service program are:
 - (A) dependent on public resources and are planned and provided by the community;
 - (B) directed toward meeting human needs arising from day-to-day socialization, health care, and developmental experiences; and
 - (C) used to aid, rehabilitate, or treat people in difficulty or need.
- (38) Human services--Include:
 - (A) personal social services, including:
 - (i) DAHS;
 - (ii) counseling;
 - (iii) in-home care; and
 - (iv) protective services;
 - (B) health services, including:
 - (i) home health;
 - (ii) family planning;
 - (iii) preventive health programs;
 - (iv) nursing facility; and
 - (v) hospice;
 - (C) education services, meaning:
 - (i) all levels of school;
 - (ii) Head Start; and
 - (iii) vocational programs;
 - (D) housing and urban environment services, including public housing;
 - (E) income transfer services, including:
 - (i) Temporary Assistance for Needy Families; and
 - (ii) Supplemental Nutrition Assistance Program;

(F) justice and public safety services, including:

- (i) parole and probation; and
- (ii) rehabilitation.
- (39) Immediate threat to the health or safety of an elderly person or a person with a disability--A situation that causes, or is likely to cause, serious injury, harm, or impairment to, or the death of[§] an elderly person or a person with a disability receiving services at a facility.
- (40) Indirect ownership interest--Any ownership or membership interest in a person who has a direct ownership interest in an applicant or license holder.
- (41) Individual--A person who applies for or is receiving services at a facility.
- (42) Isolated--When a very limited number of elderly persons, or persons with disabilities, receiving services at a facility are affected and a very limited number of staff are involved, or the situation has occurred only occasionally.
- (43) License holder--A person who holds a license to operate a facility.
- (44) Life Safety Code, NFPA 101--The Code for Safety to Life from Fire in Buildings and Structures, NFPA 101, a publication of the National Fire Protection Association, Inc. that:
 - (A) addresses the construction, protection, and occupancy features necessary to minimize danger to life from fire, including smoke, fumes, or panic; and
 - (B) establishes minimum criteria for the design of egress features to permit prompt escape of occupants from buildings or, where desirable, into safe areas within the building.
- (45) Long-term care facility--A facility that provides care and treatment or personal care services to four or more unrelated persons, including:
 - (A) a nursing facility licensed under Texas Health and Safety Code[§] Chapter 242;
 - (B) an assisted living facility licensed under Texas Health and Safety Code[§] Chapter 247; and
 - (C) an intermediate care facility serving individuals with an intellectual disability or related conditions licensed under Texas Health and Safety Code[§] Chapter 252.
- (46) LVN--Licensed vocational nurse. A person licensed by the Texas Board of Nursing who works under the supervision of an RN or a physician.
- (47) Management services--Services provided under contract between the owner of a facility and a person to provide for operation of a facility, including administration, staffing, maintenance, and delivery of services. Management services do not include contracts solely for maintenance, laundry, or food services.
- (48) Manager--A person who has a contractual relationship to provide management services to a facility.
- (49) Medically related program--A program providing the services listed in paragraph (37)(B) of this section.
- (50) Neglect--Failure to provide for oneself goods or services, including medical services, that are necessary to avoid physical harm, mental anguish, or mental illness; or failure of a caregiver to provide these goods or services.

(51) NFPA--The National Fire Protection Association. The NFPA is an organization that develops codes, standards, recommended practices, and guides through a consensus standards development process approved by the American National Standards Institute.

(52) NFPA 10--Standard for Portable Fire Extinguishers. A standard developed by the NFPA for selection, installation, inspection, maintenance, and testing of portable fire extinguishing equipment.

(53) NFPA 13--Standard for the Installation of Sprinkler Systems. A standard developed by the NFPA for the minimum requirements for design and installation of automatic fire sprinkler systems, including the character and adequacy of water supplies and selection of sprinklers, fittings, pipes, valves, and all maintenance and accessories.

(54) NFPA 70--National Electrical Code. A code developed by the NFPA for installation of electric conductors and equipment.

(55) NFPA 72--National Fire Alarm Code. A code developed by the NFPA for the application, installation, performance, and maintenance of fire alarm systems and fire alarm system [their] components.

(56) NFPA 90A--Standard for the Installation of Air Conditioning and Ventilating Systems. A standard developed by the NFPA for systems for the movement of environmental air in structures that serve spaces over 25,000 cubic feet or buildings of certain heights and construction types, or both.

(57) NFPA 90B--Standard for the Installation of Warm Air Heating and Air-Conditioning Systems. A standard developed by the NFPA for systems for movement of environmental air in one- or two-family dwellings and structures that serve spaces not exceeding 25,000 cubic feet.

(58) NFPA 96--Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations. A standard developed by the NFPA that provides the minimum fire safety requirements related to design, installation, operation, inspection, and maintenance of all public and private cooking operations, except for single-family residential usage.

(59) Nurse--An RN or LVN licensed in the state of Texas.

(60) Nursing services--Services provided by a nurse, including:

- (A) observation;
- (B) promoting and maintaining health;
- (C) preventing illness and disability;
- (D) managing health care during acute and chronic phases of illness;
- (E) guiding and counseling individuals and families; and
- (F) referral to physicians, other health care providers, and community resources when appropriate.

(61) Online portal--A secure portal provided on the HHSC website for licensure activities, including for a DAHS facility applicant to submit licensure applications and information.

(62) Pattern of violation--Repeated, but not widespread in scope, failures of a facility to comply with Texas Human Resources Code[.] Chapter 103, or a rule, standard, or order adopted under Texas Human Resources Code[.] Chapter 103 that:

- (A) result in a violation; and

(B) are found throughout the services provided by the facility or that affect or involve the same elderly persons or persons with disabilities receiving services at the facility or the same facility employees.

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

(64) Person with a disability--A person whose functioning is sufficiently impaired to require frequent medical attention, counseling, physical therapy, therapeutic or corrective equipment, or another person's attendance and supervision.

(65) Plan of care--A written plan, based on a health assessment and developed jointly by a facility and an individual or the individual's responsible party, that documents the functional impairment of the individual and the DAHS needed by the individual.

(66) Potential for minimal harm--A violation that has the potential for causing no more than a minor negative impact to an individual.

(67) Protective setting--A setting in which an individual's safety is ensured by the physical environment by staff.

(68) Related support services--Services to an individual, family member, or caregiver that may improve the person's ability to assist with an individual's independence and functioning. Services include:

- (A) information and referral;
- (B) transportation;
- (C) teaching caregiver skills;
- (D) respite;
- (E) counseling;
- (F) instruction and training; and
- (G) support groups.

(69) Responsible party--A person designated by an individual as the individual's representative.

(70) RN--Registered nurse. A person licensed by the Texas Board of Nursing to practice professional nursing.

(71) Safety--Protection from injury or loss of life due to conditions such as fire, electrical hazard, unsafe building or site conditions, and presence of hazardous materials.

(72) Sanitation--Protection from illness, transmission of disease, or loss of life due to unclean surroundings, the presence of disease transmitting insects or rodents, unhealthful conditions or practices in preparation of food and beverage, or care of personal belongings.

(73) Semi-ambulatory--Mobility relying on a walker, crutch, cane, or other physical object, or independent use of wheelchair.

(74) Serious injury--An injury requiring emergency medical intervention or treatment by medical personnel, either at a facility or at an emergency room or medical office.

(75) Social activities--Therapeutic, educational, cultural enrichment, recreational, and other activities in a facility or in the community provided as part of a planned program to meet the social needs and interests of an individual.

(76) TAC--Texas Administrative Code.

(77) UL--Underwriters Laboratories, Inc. A corporation whose approval of a product indicates a level of testing and certification that is acceptable to HHSC.

(78) Widespread in scope--A violation of Texas Human Resources Code[.] Chapter 103, or a rule, standard, or order adopted under Texas Human Resources Code[.] Chapter 103, that:

(A) is pervasive throughout the services provided by the facility; or

(B) represents a systematic failure by the facility that affects or has the potential to affect a large portion or all the elderly persons or persons with disabilities receiving services at the facility.

(79) Willfully interfere--To act or not act to intentionally prevent, interfere with, or impede.

(80) Working with people--Acts involving delivery of services to individuals either directly or indirectly. Experience as a manager would meet this definition; however, experience in an administrative support position such as a bookkeeper does not. Experience does not have to be in a paid capacity.

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

Filed with the Office of the Secretary of State on March 18, 2026.

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Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: May 3, 2026

For further information, please call: (512) 438-3161



SUBCHAPTER D. STANDARDS FOR LICENSURE

26 TAC §559.51

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system and Texas Health and Safety Code Chapter 810, which requires HHSC and LTCR providers to use a new interagency search engine to verify employability; and Texas Human Resources Code Sec. 103.004, which authorizes the executive commissioner of HHSC to adopt rules for day activity and health services.

The amendment implements Texas Government Code §524.0151 and Texas Health and Safety Code Chapter 810.

§559.51. Compliance.

(a) For purposes of this section, "reportable conduct" includes:

(1) abuse or neglect that causes or may cause death or harm to a client;

(2) sexual abuse of a client;

(3) financial exploitation of a client in the amount of \$25 or more; or

(4) emotional, verbal, or psychological abuse that causes harm to a client.

(b) A facility must:

(1) comply with the requirements for advance directives as outlined under §559.53 of this subchapter (relating to Maintenance of Policies and Procedures);

(2) comply with the provisions of Texas Health and Safety Code[.] Chapter 250 (relating to Nurse Aide Registry and Criminal History Checks of Employees and Applicants for Employment in Certain Facilities Serving the Elderly, Persons with Disabilities, or Persons with Terminal Illness);

(3) before hiring an individual, the facility must search the HHSC internet website, nurse aide registry (NAR), and the Search Engine for Multi-Agency Reportable Conduct (SEMARC) established by Texas Health and Safety Code Chapter 810 to determine if the person is listed as unemployable;

~~[(3)] before offering employment to any individual, search on the HHSC internet website, employee misconduct registry (EMR) established under Texas Health and Safety Code §253.007, and HHSC nurse aide registry (NAR) to determine if an individual is designated in either registry as unemployable;]~~

(A) not employ a person who is listed as unemployable in either registry;

(B) provide information about the SEMARC [EMR] to an employee in accordance with §561.3 of this title (relating to Employment and Registry Information);

(C) ~~[conduct a]~~ search the [of the EMR and] NAR and the SEMARC at least once every 12 months to determine if the employee is listed [designated in either registry] as unemployable;

(D) keep a copy of the results of the initial and annual searches of the NAR, and the SEMARC [EMR] in the employee's personnel file; and

(E) suspend the employment of an employee who HHSC finds has engaged in reportable conduct, as defined in subsection (a) of this section, while the employee exhausts any applicable appeals process, including informal and formal appeals and any hearing or judicial review, pending a final decision by an administrative law judge, and not reinstate the employee's employment or contract during any applicable appeals process;

(4) develop policies to comply with standards for universal precautions for HIV/AIDS and related conditions in the workplace;

(5) develop written policies for control of communicable diseases in employees and clients, which include tuberculosis screening and provision of a safe and sanitary environment for clients and their families;

(6) comply with all relevant federal and state standards; and

(7) comply with all applicable provisions of Texas Human Resource Code[.] Chapter 102.

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

Filed with the Office of the Secretary of State on March 18, 2026.

TRD-202601318



SUBCHAPTER H. INDIVIDUALIZED
SKILLS AND SOCIALIZATION PROVIDER
REQUIREMENTS
DIVISION 3. PROVIDER REQUIREMENTS

26 TAC §559.225

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system and Texas Health and Safety Code Chapter 810, which requires HHSC and LTCR providers to use a new interagency search engine to verify employability; and Texas Human Resources Code Sec. 103.004, which authorizes the executive commissioner of HHSC to adopt rules for day activity and health services.

The amendment implements Texas Government Code §524.0151 and Texas Health and Safety Code Chapter 810.

§559.225. General Requirements.

(a) An individualized skills and socialization provider must:

(1) comply with the provisions of Texas Health and Safety Code (HSC)[~~;~~] Chapter 250 (relating to Nurse Aide Registry and Criminal History Checks of Employees and Applicants for Employment in Certain Facilities Serving the Elderly, Persons with Disabilities, or Persons with Terminal Illnesses);

(2) before offering employment to any person, search the following registries to determine if the person is eligible for employment:

(A) the Search Engine for Multi-Agency Reportable Conduct (SEMARC) established under Texas Health and Safety Code Chapter 810 [~~employee misconduct registry (EMR) established under HSC §253.007~~];

(B) the [~~Texas Health and Human Services Commission (HHSC)~~] nurse aide registry (NAR) and medication aide registry (MAR);

(C) the List of Excluded Individuals and Entities (USLEIE) maintained by the United States Department of Health and Human Services; and

(D) the List of Excluded Individuals and Entities (LEIE) maintained by HHSC Office of Inspector General;

(3) not employ a person who is listed on the:

(A) SEMARC [~~HHSC employee misconduct registry~~] as unemployable; or

(B) HHSC nurse or medication aide registries as revoked or suspended; and

(4) provide information about the SEMARC [EMR] to an employee in accordance with §561.3 of this title (relating to Employment and Registry Information).

(b) In addition to the initial search of the [EMR,] LEIE, NAR, MAR, [~~and~~] USLEIE, and the SEMARC an individualized skills and socialization provider must:

(1) conduct a search of the NAR, MAR, and SEMARC at least once every 12 months to determine if the employee is listed as unemployable [EMR to determine if the employee is designated in those registries as unemployable at least every 12 months];

(2) keep a copy of the results of the initial and annual searches of the NAR, MAR, and the SEMARC [EMR] in the employee's personnel file and make it available to HHSC upon request; and

(3) comply with all relevant federal and state standards.

(c) An individualized skills and socialization provider must:

(1) report abuse, neglect, and exploitation in accordance with §559.241 of this subchapter (relating to Reporting Abuse, Neglect, or Exploitation to HHSC);

(2) suspend a service provider who HHSC finds has engaged in reportable conduct while the service provider exhausts any applicable appeals process, including informal and formal appeals and any hearing or judicial review, pending a final decision by an administrative law judge, and may not reinstate the service provider during any applicable appeals process;

(3) develop and enforce policies and procedures for creating and maintaining incident reports; and

(4) ensure the confidentiality of individual records and other information related to individuals.

(d) An individualized skills and socialization provider must prominently and conspicuously post for display in a public area of the on-site individualized skills and socialization location, or designated place of business for off-site only individualized skills and socialization, that is readily available to individuals, employees, and visitors:

(1) the license issued under this chapter;

(2) a sign prescribed by HHSC that describes complaint procedures and specifies how complaints may be filed with HHSC;

(3) a notice in the form prescribed by HHSC stating that survey and related reports are available at the on-site individualized skills and socialization location for public survey and providing the HHSC toll-free telephone number that may be used to obtain information concerning the individualized skills and socialization provider;

(4) a copy of the most recent survey report relating to the individualized skills and socialization provider;

(5) a brochure, letter, or website that outlines the individualized skills and socialization provider's hours of operation, holidays, and a description of activities offered; and

(6) emergency telephone numbers, including the abuse hot-line telephone number.

(e) In addition to the list of individuals served as described in §559.231(f)(3) of this subchapter (relating to Surveys and Visits), an individualized skills and socialization provider must also maintain an individual information document that includes:

(1) information on the individualized skills and socialization provider's service delivery method for each individual, such as on-site and off-site, or off-site only;

(2) the individual's name, identification, or clinical record number; and

(3) the date the individual began receiving on-site and off-site, or off-site only individualized skills and socialization services from the provider.

(f) An individualized skills and socialization provider may combine the list of individuals served and the information required for the individual information document into a single document. However, the provider must ensure the combined document meets all requirements of §559.231(f)(3) of this subchapter and subsection (e) of this section.

(g) An individualized skills and socialization provider may maintain records or forms either on the HHSC-prescribed form or on a provider-developed form or template maintained through the provider's own documentation system, whether digital or paper, including electronic health records or other documents maintained for the purpose of compliance with the licensure requirements of this subchapter, unless otherwise specified. Records maintained through the provider's own documentation system must:

- (1) contain the same information as the HHSC-prescribed document or form as outlined in this subchapter;
- (2) meet the confidentiality and recordkeeping requirements outlined in this subchapter; and
- (3) be readily accessible and available for review by HHSC upon request, as required under §559.231(f) of this subchapter.

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

Filed with the Office of the Secretary of State on March 18, 2026.

TRD-202601319

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: May 3, 2026

For further information, please call: (512) 438-3161



CHAPTER 560. DENIAL OR REFUSAL OF LICENSE

26 TAC §560.4

The executive commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §560.4, concerning Registry Listings Barring Licensure.

BACKGROUND AND PURPOSE

The purpose of the proposal is to implement Senate Bill (SB) 1849, 88th Legislature, Regular Session, 2023, which created Texas Health and Safety Code Chapter 810, Interagency Reportable Conduct Search Engine. While the Texas Department of Information Resources (DIR) is responsible for creating the search engine, the chapter also requires HHSC to amend rules relating to the Employee Misconduct Registry search engine and required background check searches for providers regulated by HHSC Long-Term Care Regulation (LTCR).

SECTION-BY-SECTION SUMMARY

The proposed amendment to §560.4 implements SB 1849 relating to an interagency reportable conduct search engine, known

as the Search Engine for Multi-Agency Reportable Conduct (SEMARC), and updates language that allows HHSC to deny an application for an initial facility license, or refuse to renew a facility license, if the applicant for the facility license, the facility license holder, or a controlling person of the applicant of the facility license holder is listed in the SEMARC as unemployable.

FISCAL NOTE

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

There is no expected fiscal impact to state government to implement the proposed rule for this proposal. However, additional HHSC rule proposals will address the costs to state government for implementing SB 1849.

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Trey Wood has also determined that there will not be an adverse economic effect on small businesses, micro-businesses, or rural communities because HHSC Licensing and Credentialing staff will perform the required background checks.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to the rule because the rule is necessary to protect the health, safety, and welfare of the residents of Texas and is necessary to implement legislation that does not specifically state that §2001.0045 applies to the rule.

PUBLIC BENEFIT AND COSTS

Michelle Dionne-Vahalik, Associate Commissioner for Long-Term Care Regulation, has determined that for each year of the first five years the rule is in effect, the public benefit will be HHSC's ability to access a new search engine database that will protect clients being served by LTCR providers, from individuals with a history of reportable conduct, including the abuse, neglect, and exploitation of vulnerable populations.

Trey Wood has also determined that for the first five years the rule is in effect, persons who are required to comply with the proposed rule will not incur additional administrative costs related to accessing and searching the new database because HHSC Licensing and Credentialing staff will perform the required background checks.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal, including information related to the cost, benefit, or effect of the proposed rule, as well as any applicable data, research, or analysis, may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4601 West Guadalupe Street, Austin, Texas 78751; or emailed to HHSRulesCoordinationOffice@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be post-marked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 25R003" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system and Texas Health and Safety Code Chapter 810, which requires HHSC and LTCR providers to use a new interagency search engine to verify employability; and Texas Health and Safety Code Chapters 142, 242, 247, 248A, and 252, which authorize HHSC to license and regulate home and community support services agencies, nursing facilities, assisted living facilities, prescribed pediatric extended care facilities, and intermediate care facilities for individuals with an intellectual disability; and Texas Human Resources Code, Chapter 103, which authorizes HHSC to license and regulate day activity and health services facilities.

The amendment implements Texas Government Code §524.0151 and Texas Health and Safety Code Chapter 810.

§560.4. Registry Listings Barring Licensure.

HHSC may deny an application for an initial facility license, or refuse to renew a facility license, if the applicant for the facility license, the facility license holder, or a controlling person of the applicant or facility license holder is listed:

(1) as unemployable on the Search Engine for Multi-Agency Reportable Conduct established under Texas Health and Safety Code Chapter 810 [Employee Misconduct Registry maintained by HHSC in accordance with Texas Health and Safety Code, Chapter 253]; or

(2) with a revoked or suspended status on the Nurse Aide Registry maintained by HHSC in accordance with Texas Health and Safety Code[.] Chapter 250.

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-3161



CHAPTER 565. HOME AND COMMUNITY-BASED (HCS) PROGRAM AND COMMUNITY-FIRST CHOICE (CFC) CERTIFICATION STANDARDS

SUBCHAPTER D. CERTIFICATION STANDARDS: STAFF MEMBER AND SERVICE PROVIDER REQUIREMENTS

26 TAC §565.9

The executive commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §565.9, concerning Program Provider Requirements.

BACKGROUND AND PURPOSE

The purpose of the proposal is to implement Senate Bill (SB) 1849, 88th Legislature, Regular Session, 2023, which created Texas Health and Safety Code Chapter 810, Interagency Reportable Conduct Search Engine. While the Texas Department of Information Resources (DIR) is responsible for creating the search engine, the chapter also requires HHSC to amend rules relating to the Employee Misconduct Registry search engine and required background check searches providers regulated by HHSC Long-Term Care Regulation (LTCR) must conduct before employing individuals.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §565.9 implements SB 1849 relating to an interagency reportable conduct search engine, known as the Search Engine for Multi-Agency Reportable Conduct (SE-MARC), and updates the requirements for providers to use the SEMARC when verifying employability of a new employee or current employee. The amendment also updates outdated references.

FISCAL NOTE

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

There is no expected fiscal impact to state government to implement the proposed rule for this proposal. However, additional

HHSC rule proposals will address the costs to state government for implementing SB 1849.

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Trey Wood has also determined that there may be an adverse economic effect on small businesses, micro-businesses, or rural communities.

LTCR providers that are required to comply with the rule may incur increased administrative costs and this may have an adverse economic effect on small businesses, microbusinesses, or rural communities.

HHSC is unable to estimate the number of small businesses, micro-businesses, or rural communities subject to the proposed rule. The projected economic impact for a small business, micro-business, or rural community is the cost to comply.

HHSC determined that alternative methods to achieve the purpose of the proposed rule for small businesses, micro-businesses, or rural communities would not be consistent with ensuring the health and safety of individuals served by home and community-based services providers.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to the rule because the rule is necessary to protect the health, safety, and welfare of the residents of Texas and is necessary to implement legislation that does not specifically state that §2001.0045 applies to the rule.

PUBLIC BENEFIT AND COSTS

Michelle Dionne-Vahalik, Associate Commissioner for Long-Term Care Regulation, has determined that for each year of the first five years the rule is in effect, the public benefit will be HHSC's ability to access a new search engine database that will protect clients being served by home and community-based services providers, from individuals with a history of reportable conduct, including the abuse, neglect, and exploitation of vulnerable populations.

Trey Wood has also determined that for the first five years the rule is in effect, persons who are required to comply with the proposed rule may incur economic costs due to additional administrative costs related to accessing and searching the new database.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal, including information related to the cost, benefit, or effect of the proposed rule, as well as any applicable data, research, or analysis, may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4601 West Guadalupe Street, Austin, Texas 78751; or emailed to HHSRulesCoordinationOffice@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 25R003" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system; Texas Health and Safety Code Chapter 810, which requires HHSC and LTCR providers to use a new interagency search engine to verify employability; Texas Government Code §524.002, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendment implements Texas Government Code §524.0151 and Texas Health and Safety Code Chapter 810.

§565.9. *Program Provider Requirements.*

(a) The program provider must ensure the continuous availability of trained and qualified service providers to deliver the required services, as determined by the individual's needs and characteristics.

(b) The program provider must:

(1) comply with §52.107 of this title [40 Texas Administrative Code (TAC) §49.304] (relating to Background Checks);

(2) comply with §52.123 of this title [40 TAC §49.342] (relating to Personal Attendants), including when the service provider of supported home living or CFC personal assistance services/habilitation (CFC PAS/HAB) is employed by or contracts with a contractor of a program provider;

(3) obtain the criminal history record of the potential staff member or potential contractor from the Texas Department of Public Safety directly or through a private agency before hiring or contracting with the potential staff member;

(4) not employ or contract with a potential staff member, service provider, or volunteer who:

(A) has been convicted of an offense listed, and for the time periods set forth, in Texas Health and Safety Code §250.006;

(B) is a registered sex offender; or

(C) has been convicted of an offense that the program provider determines is a contraindication;

(5) search the following registries before hire or execution of a contract and every 12 months thereafter to determine if a staff member or service provider is eligible for employment:

(A) the Search Engine for Multi-Agency Reportable Conduct (SEMARC) established under Texas Health and Safety Code Chapter 810 [Employee Misconduct Registry]; and

(B) the Nurse Aide Registry;

(6) search the following registries before hire or execution of a contract and every month thereafter to determine if an employee or contractor is eligible for employment:

(A) the List of Excluded Individuals and Entities maintained by the United States Department of Health and Human Services; and

(B) the List of Excluded Individuals and Entities maintained by the HHSC [Texas Health and Human Services Commission (HHSC)] Office of Inspector General; and

(7) not hire or continue employment for a staff member or service provider who is listed on:

(A) the SEMARC [Employee Misconduct Registry] as unemployable;

(B) the Nurse Aide Registry as revoked or suspended;

(C) the List of Excluded Individuals and Entities maintained by the United States Department of Health; or

(D) the List of Excluded Individuals and Entities maintained by Health and Human Services office of Inspector General or by HHSC Office of Inspector General.

(c) The program provider must develop and implement policy and procedures:

(1) that ensure only staff members and service providers with a valid driver's license and insurance transport individuals; and

(2) are revised if a shortcoming is identified.

(d) If the service provider of supported home living or CFC PAS/HAB is employed by or contracts with a contractor of a program provider, the program provider must ensure that the contractor complies with subsection (b)(2) of this section as if the contractor were the program provider.

(e) The program provider must:

(1) employ or contract with a person or entity of the individual's or legally authorized representative's (LAR's) choice to provide a Home and Community-based Services Program or CFC service to the individual if that person or entity:

(A) is qualified to provide the service; and

(B) is willing to contract with or be employed by the program provider to provide the service in accordance with this subchapter; or

(2) have and document good cause not to employ or contract with the person or entity of the individual's or LAR's choice.

(f) If a program provider contracts with a person or entity to provide transition assistance services (TAS), the person or entity must have a contract to provide TAS in accordance with Chapter 52 of this title [~~40 TAC Chapter 49~~] (relating to Contracting for Community Services).

(g) The program provider must create and implement a policy that prevents:

(1) conflicts of interest between the program provider, a staff member, or a service provider and an individual, such as the acceptance of payment for goods or services (except payment for room and board) from which the program provider, staff member, or service provider could financially benefit;

(2) financial impropriety toward an individual including:

(A) unauthorized disclosure of information related to an individual's finances; and

(B) any purchase of goods that are not requested for the individual, cannot be used by the individual, or are not intended for the individual's use;

(3) abuse, neglect, or exploitation of an individual;

(4) damage to, or prevention of an individual's access to, the individual's possessions; and

(5) threats of the actions described in paragraphs (2) - (4) of this subsection.

(h) A program provider must comply with 42 United States Code §1396a(w)[~~]~~ regarding requirements about advance directives.

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

Filed with the Office of the Secretary of State on March 18, 2026.

TRD-202601321

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: May 3, 2026

For further information, please call: (512) 438-3161



CHAPTER 566. TEXAS HOME LIVING (TXHML) PROGRAM AND COMMUNITY FIRST CHOICE (CFC) CERTIFICATION STANDARDS

26 TAC §566.9

The executive commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §566.9, concerning Certification Principles: Staff Member and Service Provider Requirements.

BACKGROUND AND PURPOSE

The purpose of the proposal is to implement Senate Bill (SB) 1849, 88th Legislature, Regular Session, 2023, which created Texas Health and Safety Code Chapter 810, Interagency Reportable Conduct Search Engine. While the Texas Department of Information Resources (DIR) is responsible for creating the search engine, the chapter also requires HHSC to amend rules relating to the Employee Misconduct Registry search engine and required background check searches providers regulated by HHSC Long-Term Care Regulation (LTCR) must conduct before employing individuals.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §566.9 implements SB 1849 relating to an interagency reportable conduct search engine, known as the Search Engine for Multi-Agency Reportable Conduct (SEMARC), and adds the requirements for providers to use the SEMARC when verifying employability of a new or current employee or new or current contractor and adds language to expand on existing background check requirements for Texas Home Living providers. The amendment also updates references, punctuation, and formatting in the rule.

FISCAL NOTE

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

There is no expected fiscal impact to state government to implement the proposed rule for this proposal. However, additional HHSC rule proposals will address the costs to state government for implementing SB 1849.

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Trey Wood has also determined that there may be an adverse economic effect on small businesses, micro-businesses, or rural communities.

LTCR providers that are required to comply with the rule may incur increased administrative costs and this may have an adverse economic effect on small businesses, microbusinesses, or rural communities.

HHSC is unable to estimate the number of small businesses, micro-businesses, or rural communities subject to the proposed rule. The projected economic impact for a small business, micro-business, or rural community is the cost to comply.

HHSC determined that alternative methods to achieve the purpose of the proposed rule for small businesses, micro-businesses, or rural communities would not be consistent with ensuring the health and safety of individuals served by Texas Home Living providers.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to the rule because the rule is necessary to protect the health, safety, and welfare of the residents of Texas and is necessary to implement legislation that does not specifically state that §2001.0045 applies to the rule.

PUBLIC BENEFIT AND COSTS

Michelle Dionne-Vahalik, Associate Commissioner for Long-Term Care Regulation, has determined that for each year of the first five years the rule is in effect, the public benefit will be HHSC's ability to access a new search engine database that will protect clients being served by Texas Home Living providers, from individuals with a history of reportable conduct, including the abuse, neglect, and exploitation of vulnerable populations.

Trey Wood has also determined that for the first five years the rule is in effect, persons who are required to comply with the proposed rule may incur economic costs due to additional administrative costs related to accessing and searching the new database.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal, including information related to the cost, benefit, or effect of the proposed rule, as well as any applicable data, research, or analysis, may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4601 West Guadalupe Street, Austin, Texas 78751; or emailed to HHSRulesCoordinationOffice@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be post-marked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 25R003" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §524.0151, which provides that the executive commissioner

of HHSC shall adopt rules for the operation and provision of services by the health and human services system; Texas Health and Safety Code Chapter 810, which requires HHSC and LTCR providers to use a new interagency search engine to verify employability; Texas Government Code §524.002, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendment implements Texas Government Code §524.0151 and Texas Health and Safety Code Chapter 810.

§566.9. Certification Principles: Staff Member and Service Provider Requirements.

(a) The program provider must ensure the continuous availability of trained and qualified employees and contractors to provide the services in an individual's IPC.

(b) The program provider must:

(1) comply with §52.107 of this title (relating to Background Checks);

(2) comply with §52.123 of this title (relating to Personal Attendants), including when the service provider of supported home living or CFC PAS/HAB is employed by or contracts with a contractor of a program provider;

(3) obtain the criminal history record of the potential staff member or potential contractor from the Texas Department of Public Safety directly or through a private agency before hiring or contracting with the potential staff member;

(4) not employ or contract with a potential staff member, service provider, or volunteer who:

(A) has been convicted of an offense listed, and for the time periods set forth, in Texas Health and Safety Code §250.006;

(B) is a registered sex offender; or

(C) has been convicted of an offense that the program provider determines is a contraindication;

(5) search the following registries before hire or execution of a contract and every year to determine if a staff member or service provider is eligible for employment:

(A) the Search Engine for Multi-Agency Reportable Conduct (SEMARC) established under Texas Health and Safety Code Chapter 810; and

(B) the nurse aide registry;

(6) search the following registries before hire or execution of a contract and at least once every 12 months thereafter to determine if an employee or contractor is eligible for employment:

(A) the List of Excluded Individuals and Entities maintained by the United States Department of Health and Human Services; and

(B) the List of Excluded Individuals and Entities maintained by the HHSC Office of Inspector General; and

(7) not hire or continue employment for a staff member or service provider who is listed on:

(A) the SEMARC as unemployable;

(B) the nurse aide registry as revoked or suspended;

(C) the List of Excluded Individuals and Entities maintained by the United States Department of Health and Human Services; or

(D) the List of Excluded Individuals and Entities maintained by the Texas Health and Human Services Office of Inspector General.

~~[(b) The program provider must comply with applicable laws and regulations to ensure that:]~~

~~[(1) its operations meet necessary requirements; and]~~

~~[(2) its employees or contractors possess legally necessary licenses, certifications, registrations, or other credentials and are in good standing with the appropriate professional agency before performing any function or delivering services.]~~

(c) The program provider must develop and implement policy and procedures that:

(1) ensure only staff members and service providers with a valid driver's license and insurance transport individuals; and

(2) are revised if a shortcoming is identified.

(d) If the service provider of supported home living or CFC PAS/HAB is employed by or contracts with a contractor of a program provider, the program provider must ensure that the contractor complies with subsection (b)(2) of this section as if the contractor were the program provider.

(e) [(e)] The program provider must employ or contract with a service provider of the individual's or LAR's choice to provide a TxHmL Program service or a CFC service if that service provider:

(1) is qualified to provide the service;

(2) unless the program provider agrees to pay a higher amount, provides the service at or below:

(A) for any service except CFC ERS, the direct services portion of the applicable TxHmL Program rate; and

(B) for CFC ERS, the reimbursement rate; and

(3) contracts with or is employed by the program provider.

(f) [(f)] The program provider must:

(1) conduct initial and periodic training that ensures staff members and service providers are trained and qualified to deliver services as required by the current needs and characteristics of the individual to whom they deliver services; and

(2) ensure that a staff member who participates in developing an implementation plan for CFC PAS/HAB completes person-centered service planning training approved by HHSC:

(A) by June 1, 2017, if the staff member was hired on or before June 1, 2015; or

(B) within two years after hire, if the staff member was hired after June 1, 2015.

(g) [(g)] The program provider must implement and maintain personnel practices that safeguard an individual against infectious and communicable diseases.

(h) [(h)] The program provider must prevent:

(1) conflicts of interest between program provider personnel and an individual;

(2) financial impropriety toward an individual;

- (3) abuse, neglect, or exploitation of an individual; and
- (4) threats of harm or danger toward an individual's possessions.

(i) ~~[(g)]~~ The program provider must employ or contract with a person who oversees the provision of TxHmL Program services and CFC services to an individual. The person must:

(1) have at least three years paid work experience in planning and providing TxHmL Program services or CFC services to an individual with an intellectual disability or related condition as verified by written statements from the person's employer; or

(2) have both of the following:

(A) at least three years of experience planning and providing services similar to TxHmL Program services or CFC services to a person with an intellectual disability or related condition as verified by written statements from organizations or agencies that provided services to the person; and

(B) participation as a member of a microboard, as verified in writing by:

(i) the certificate of formation of the non-profit corporation under which the microboard operates filed with the Texas Secretary of State;

(ii) the bylaws of the non-profit corporation; and

(iii) a statement by the board of directors of the non-profit corporation that the person is a member of the microboard.

(j) ~~[(h)]~~ The program provider must ensure that a service provider of community support, day habilitation, or respite is at least 18 years of age and:

(1) has a high school diploma or a certificate recognized by a state as the equivalent of a high school diploma; or

(2) has documentation of a proficiency evaluation of experience and competence to perform the job tasks that includes:

(A) written competency-based assessment of the ability to document service delivery and observations of an individual to be served; and

(B) at least three written personal references from persons not related by blood that indicate the ability to provide a safe, healthy environment for an individual being served.

(k) ~~[(i)]~~ The program provider must ensure that a service provider of employment assistance or a service provider of supported employment:

(1) is at least 18 years of age;

(2) is not:

(A) the spouse of the individual; or

(B) a parent of the individual if the individual is a minor; and

(3) has:

(A) a bachelor's degree in rehabilitation, business, marketing, or a related human services field, and at least six months of paid or unpaid experience providing services to people with disabilities;

(B) an associate's degree in rehabilitation, business, marketing, or a related human services field, and at least one year of paid or unpaid experience providing services to people with disabilities; or

(C) a high school diploma or a certificate recognized by a state as the equivalent of a high school diploma, and at least two years of paid or unpaid experience providing services to people with disabilities.

(l) ~~[(j)]~~ A program provider must ensure that the experience required by subsection (k) ~~[(i)]~~ of this section is evidenced by:

(1) for paid experience, a written statement from a person who paid for the service or supervised the provision of the service; and

(2) for unpaid experience, a written statement from a person who has personal knowledge of the experience.

(m) ~~[(k)]~~ The program provider must ensure that a service provider who provides transportation:

(1) has a valid driver's license; and

(2) transports individuals in a vehicle insured in accordance with state law.

(n) ~~[(h)]~~ The program provider must ensure that dental treatment is provided by a dentist licensed in accordance with Texas Occupations Code~~[],~~ Chapter 256.

(o) ~~[(m)]~~ The program provider must ensure that nursing is provided by an RN or an LVN.

(p) ~~[(n)]~~ The program provider must ensure that adaptive aids meet applicable standards of manufacture, design, and installation.

(q) ~~[(o)]~~ The program provider must ensure that a service provider of behavioral support:

(1) meets one of the following:

(A) is licensed as a psychologist in accordance with Texas Occupations Code~~[],~~ Chapter 501;

(B) is licensed as a psychological associate in accordance with Texas Occupations Code~~[],~~ Chapter 501;

(C) is certified by HHSC as described in §304.302 ~~[[§5.161]~~ of this title (relating to Certified Authorized Provider);

(D) is licensed as a licensed behavior analyst in accordance with Texas Occupations Code~~[],~~ Chapter 506;

(E) has been issued a provisional license to practice psychology in accordance with Texas Occupations Code~~[],~~ Chapter 501;

(F) is licensed as a licensed clinical social worker in accordance with Texas Occupations Code~~[],~~ Chapter 505; or

(G) is licensed as a licensed professional counselor in accordance with Texas Occupations Code~~[],~~ Chapter 503; and

(2) completes the web-based HHSC HCS and TxHmL Behavioral Support Services Provider Policy Training available on the HHSC website:

(A) before providing behavioral support services;

(B) within 90 calendar days after the date HHSC issues notice to program providers that HHSC revised the web-based training; and

(C) within three years after the most recent date of completion.

(r) ~~[(p)]~~ The program provider must ensure that minor home modifications are delivered by contractors who provide the service in accordance with state and local building codes and other applicable regulations.

(s) [(q)] The program provider must ensure that a service provider of professional therapies is licensed for the specific therapeutic service provided as follows:

(1) for audiology services, an audiologist licensed in accordance with Texas Occupations Code[.] Chapter 401;

(2) for speech and language pathology services, a speech-language pathologist or licensed assistant in speech-language pathology licensed in accordance with Texas Occupations Code[.] Chapter 401;

(3) for occupational therapy services, an occupational therapist or occupational therapy assistant licensed in accordance with Texas Occupations Code[.] Chapter 454;

(4) for physical therapy services, a physical therapist or physical therapist assistant licensed in accordance with Texas Occupations Code[.] Chapter 453; and

(5) for dietary services, a licensed dietitian licensed in accordance with Texas Occupations Code[.] Chapter 701.

(t) [(+)] The program provider must comply with §52.107 [§49.304] of this title (relating to Background Checks).

(u) [(*)] A program provider must comply with §52.123 [§49.312] of this title (relating to Personal Attendants).

(v) [(+)] If the service provider of community support or CFC PAS/HAB is employed by or contracts with a contractor of a program provider, the program provider must ensure that the contractor complies with subsection (u) [(*)] of this section as if the contractor were the program provider.

(w) [(+)] A program provider must:

(1) ensure that a service provider of CFC PAS/HAB:

(A) is at least 18 years of age;

(B) has:

(i) a high school diploma or a certificate recognized by a state as the equivalent of a high school diploma; or

(ii) documentation of a proficiency evaluation of experience and competence to perform the job tasks that includes:

(I) a written competency-based assessment of the ability to document service delivery and observations of the individuals to be served; and

(II) at least three written personal references from persons not related by blood that indicate the ability to provide a safe, healthy environment for the individuals being served;

(C) is not:

(i) the spouse of the individual; or

(ii) a parent of the individual if the individual is a minor; and

(D) meets any other qualifications requested by the individual or LAR based on the individual's needs and preferences; and

(2) if requested by an individual or LAR:

(A) allow the individual or LAR to train a CFC PAS/HAB service provider in the specific assistance needed by the individual and to have the service provider perform CFC PAS/HAB in a manner that comports with the individual's personal, cultural, or religious preferences; and

(B) ensure that a CFC PAS/HAB service provider attends training by HHSC so the service provider meets any additional qualifications desired by the individual or LAR.

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

Filed with the Office of the Secretary of State on March 18, 2026.

TRD-202601322

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: May 3, 2026

For further information, please call: (512) 438-3161

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER V. FRANCHISE TAX

34 TAC §3.588

The Comptroller of Public Accounts proposes amendments to §3.588, concerning margin: cost of goods sold. The comptroller amends the section to implement Senate Bill 263 and Senate Bill 1405, 89th Legislature, 2025; Senate Bill 1243, 88th Legislature, 2023; and House Bill 1195, 87th Legislature, 2021; to address the policy change to conform the franchise tax to the current-year federal income tax provisions; and to add definitions to the provision on costs allowed to movie theaters.

The comptroller also amends the section to add titles to statutory references and makes non-substantive changes to improve readability.

The comptroller amends subsection (b) to add new paragraph (5) and renumbers subsequent paragraphs accordingly. New paragraph (5) defines the term "Internal Revenue Code" based on the statutory definition in Tax Code, §171.0001(9) (General Definitions). Throughout the section, where the term "Internal Revenue Code" is used, the definition in new paragraph (5) applies.

The comptroller amends subsection (c) to add new paragraphs (2) and (4). Subsequent paragraphs, and any reference to the subsequent paragraphs, are renumbered.

The comptroller adds new paragraph (2) to implement Senate Bill 1243 and Senate Bill 1405 concerning expenses paid with qualifying grant proceeds received for broadband deployment in Texas. Senate Bill 1243 and Senate Bill 1405 enact Tax Code, §171.10132 (Provisions Related to Certain Grants Received for Broadband Deployment in Texas).

The comptroller adds new paragraph (4) to implement House Bill 1195 concerning expenses paid with qualifying loan or grant proceeds received for COVID-19 relief. House Bill 1195 enacts Tax Code, §171.10131 (Provisions Related to Certain Money Received for COVID-19 Relief).

The comptroller amends renumbered paragraph (5) to add the \$1 million deduction method of calculating margin that was effective January 1, 2014.

The comptroller amends renumbered paragraph (7) to implement Senate Bill 263, clarifying that the cost of goods sold allowed under this paragraph applies to television or radio broadcasting and providing a definition for television or radio broadcasting. Senate Bill 263 enacts Tax Code, §171.1012(o) (Determination of Cost of Goods Sold).

The comptroller amends renumbered paragraph (10) regarding the cost of goods sold allowed for movie theaters to add two definitions. New subparagraph (A) provides the definition for "movie theater," derived from the membership definition of the National Association of Theatre Owners. New subparagraph (B) provides the definition for "motion picture," taken directly from the Copyright Law of the United States, 17 U.S. Code §101 (Definitions).

The comptroller amends paragraph (d)(6), and adds subparagraphs (A), (B), (C), and (D) regarding the federal tax law used when determining allowable depreciation amounts taken from a federal tax return. The comptroller deletes the reference to Internal Revenue Code, §179 (Election to expense certain depreciable assets) as Chapter 171 does not specifically reference §179. The comptroller adds language to make clear that when a taxable entity elects to expense certain depreciable assets, the amount may be included in cost of goods sold if otherwise qualified under Tax Code, §171.1012(c)(6).

New subparagraph (A) addresses which year's federal tax law is used for 2026 and later franchise tax reports. Beginning with the 2026 franchise tax report, utilize the then-current federal tax law instead of the 2007 Internal Revenue Code, except where the statute and rule specifically reference the Internal Revenue Code. For example, beginning with the 2026 franchise tax report, a taxable entity may include in its cost of goods sold the bonus depreciation claimed on its federal return, to the extent associated with and necessary for the production of the goods. However, recovery claimed under Internal Revenue Code §197 must be determined under the 2007 Internal Revenue Code, as the statutory provision authorizing such recovery specifically references the Internal Revenue Code.

New subparagraph (B) allows a taxable entity, on the 2026 franchise tax report, to also include a one-time net depreciation adjustment for each qualifying asset in its cost of goods sold. Qualifying assets are those placed in service prior to the accounting year begin date on the 2026 report, provided that the assets have not been disposed of prior to this date and are associated with and necessary for the production of the goods.

New subparagraph (C) provides the proper order of application when a one-time net depreciation adjustment is taken with other allowable costs and procedures addressing when said adjustment results in a taxable entity's margin being reduced below zero.

New subparagraph (D) clarifies that for franchise tax reports prior to the 2026 report, the 2007 Internal Revenue Code is used when determining allowable depreciation amounts.

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed amendments are in effect, the amended rule: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an

increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rule's applicability; and will not positively or adversely affect this state's economy.

Mr. Reynolds also has determined that the proposed amendments would benefit the public by conforming the rule to current statute. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses or rural communities. The proposed amended rule would have no significant net long term fiscal impact on the state government, units of local government, or individuals. The amendments regarding the inclusion of bonus depreciation in cost of goods sold, and the one-time net depreciation adjustment allowable for report year 2026, may affect the state's cash flow, reducing net franchise tax revenue for years when bonus depreciation amounts are significant and in 2026 when one-time depreciation adjustments are made, with offsetting increases in net franchise tax revenue in subsequent years; the amount of such cash flow effects cannot be estimated. There would be no anticipated significant economic cost to the public.

You may submit comments on the proposal or information related to the cost, benefit, or effect of the proposal, including any applicable data, research or analysis, to Jenny Burleson, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528 or to the email address: tp.rule.comments@cpa.texas.gov. The comptroller must receive your comments or other information no later than 30 days from the date of publication of the proposal in the *Texas Register*.

These amendments are proposed under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendments implement Tax Code, §§171.1012 (Determination of Cost of Goods Sold), 171.10131 (Provisions Related to Certain Money Received for COVID-19 Relief), and 171.10132 (Provisions Related to Certain Grants Received for Broadband Deployment in Texas).

§3.588. *Margin: Cost of Goods Sold.*

(a) *Effective Date.* The provisions of this section apply to franchise tax reports originally due on or after January 1, 2008, except as otherwise noted.

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

(1) *Arm's length*--The standard of conduct under which entities that are not related parties and that have substantially equal bargaining power, each acting in its own interest, would negotiate or carry out a particular transaction.

(2) *Computer program*--A series of instructions that are coded for acceptance or use by a computer system and that are designed to permit the computer system to process data and provide results and information. The series of instructions may be contained in or on magnetic tapes, printed instructions, or other tangible or electronic media.

(3) *Goods*--Real or tangible personal property sold in the ordinary course of business of a taxable entity.

(4) *Heavy construction equipment*--Self-propelled, self-powered, or pull-type equipment that weighs at least 3,000 pounds

and is intended to be used for construction. The term does not include a motor vehicle required to be titled and registered.

(5) Internal Revenue Code--The Internal Revenue Code of 1986 in effect for the federal tax year beginning on January 1, 2007, not including any changes made by federal law after that date, and any regulations adopted under that code applicable to that period.

(6) [(5)] Lending institution--An entity that makes loans and:

(A) is regulated by the Federal Reserve Board, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Commodity Futures Trading Commission, the Office of Thrift Supervision, the Texas Department of Banking, the Office of Consumer Credit Commissioner, the Credit Union Department, or any comparable regulatory body;

(B) is licensed by, registered with, or otherwise regulated by the Department of Savings and Mortgage Lending;

(C) is a "broker" or "dealer" as defined by the Securities Exchange Act of 1934 at 15 U.S.C. §78c (Definitions and application); or

(D) provides financing to unrelated parties solely for agricultural production.

(7) [(6)] Principal business activity--The activity in which a taxable entity derives the largest percentage of its "total revenue".

(8) [(7)] Production--Construction, manufacture, installation occurring during the manufacturing or construction process, development, mining, extraction, improvement, creation, raising, or growth.

(9) [(8)] Related party--A person, corporation, or other entity, including an entity that is treated as a pass-through or disregarded entity for purposes of federal taxation, whether the person, corporation, or entity is subject to the tax under this chapter or not, in which one person, corporation, or entity, or set of related persons, corporations, or entities, directly or indirectly owns or controls a controlling interest in another entity.

(10) [(9)] Service costs--Indirect costs and administrative overhead costs that can be identified specifically with a service department or function, or that directly benefit or are incurred by reason of a service department or function. For purposes of this section, a service department includes personnel (including costs of recruiting, hiring, relocating, assigning, and maintaining personnel records or employees); accounting (including accounts payable, disbursements, and payroll functions); data processing; security; legal; general financial planning and management; and other similar departments or functions.

(11) [(10)] Tangible personal property--

(A) includes:

(i) personal property that can be seen, weighed, measured, felt, or touched or that is perceptible to the senses in any other manner;

(ii) films, sound recordings, videotapes, live and prerecorded television and radio programs, books, and other similar property embodying words, ideas, concepts, images, or sound, without regard to the means or methods of distribution or the medium in which the property is embodied, for which, as costs are incurred in producing the property, it is intended or is reasonably likely that any medium in which the property is embodied will be mass-distributed by the creator or any one or more third parties in a form that is not substantially altered; and

(iii) a computer program, as defined in paragraph (2) of this subsection.

(B) does not include:

(i) intangible property; or

(ii) services.

(c) General rules for determining cost of goods sold.

(1) Affiliated entities. Notwithstanding any other provision of this section, a payment made by one member of an affiliated group to another member of that affiliated group not included in the combined group may be subtracted as a cost of goods sold only if it is a transaction made at arm's length.

(2) Broadband grant proceeds. A taxable entity may include as a cost of goods sold any expense paid using qualifying grant proceeds, as defined under Tax Code, §171.10132 (Provisions Related to Certain Grants Received for Broadband Deployment in Texas), to the extent the expense is otherwise includable as a cost of goods sold under this section, even if the taxable entity has excluded the qualifying grant proceeds from its total revenue under §3.587 of this title (relating to Margin: Total Revenue).

(3) [(2)] Capitalization or expensing of certain costs. The election to capitalize or expense allowable costs is made by filing the franchise tax report using one method or the other. The election is for the entire period on which the report is based and may not be changed after the due date or the date the report is filed, whichever is later. A taxable entity that is allowed a subtraction by this section for a cost of goods sold and that is subject to Internal Revenue Code, §§263A (Capitalization and inclusion in inventory costs of certain expenses), 460 (Special rules for long-term contracts), or 471 (General rule for inventories) (including a taxable entity subject to §471 that elects to use LIFO under §472 (Last-in, first-out inventories)), may elect to:

(A) Capitalize those costs in the same manner and to the same extent that the taxable entity capitalized those costs on its federal income tax return, except for those costs excluded under subsection (g) of this section, or in accordance with subsections (d), (e), and (f) of this section. A taxable entity that elects to capitalize costs on its first report due on or after January 1, 2008, may include, in beginning inventory, costs allowable for franchise tax purposes that would be in beginning inventory for federal income tax purposes.

(i) If the taxable entity elects to capitalize those costs allowed under this section as a cost of goods sold, it must capitalize each cost allowed under this section that it capitalized on its federal income tax return.

(ii) If the taxable entity later elects to begin expensing those costs allowed under this section as a cost of goods sold, the entity may not deduct any cost incurred before the first day of the period on which the report is based, including any ending inventory from a previous report.

(B) Expense those costs, except for those costs excluded under subsection (g) of this section, or in accordance with subsections (d), (e), and (f) of this section.

(i) If the taxable entity elects to expense those costs allowed under this section as a cost of goods sold, costs incurred before the first day of the period on which the report is based may not be subtracted as a cost of goods sold.

(ii) If the taxable entity later elects to begin capitalizing those costs allowed under this section as a cost of goods sold, costs incurred prior to the accounting period on which the report is based may not be capitalized.

(4) COVID-19 relief proceeds. A taxable entity may include as a cost of goods sold any expense paid using qualifying loan or grant proceeds, as defined under Tax Code, §171.10131 (Provisions Related to Certain Money Received for COVID-19 Relief), to the extent the expense is otherwise includable as a cost of goods sold under this section, even if the taxable entity has excluded the qualifying loan or grant proceeds from its total revenue under §3.587 of this title.

(5) [(3)] Election to subtract cost of goods sold. A taxable entity, if eligible, must make an annual election to subtract cost of goods sold in computing margin by the due date, or at the time the report is filed, whichever is later. The election to subtract cost of goods sold is made by filing the franchise tax report using the cost of goods sold method. An amended report may be filed within the time allowed by Tax Code, §111.107 (When Refund or Credit is Permitted) to change the method of computing margin to the cost of goods sold deduction method or from the cost of goods sold deduction method to the compensation deduction method, total revenue minus \$1 million (effective for reports originally due on or after January 1, 2014), 70% of total revenue, or, if otherwise qualified, the E-Z computation method. An election may also be changed as part of an audit. See §3.584 of this title (relating to Margin: Reports and Payments).

(6) [(4)] Exclusions from total revenue. Except as otherwise noted in this section, any ~~any~~ expense excluded from total revenue (see §3.587 of this title) may not be included in the determination of cost of goods sold.

(7) [(5)] Film and broadcasting. For purposes of this paragraph, "television or radio broadcasting" means television or radio broadcasting under a television or radio broadcast license issued by the Federal Communications Commission and regulated under 47 C.F.R. Part 73 or 74. A taxable entity whose principal business activity is film or television production, television or radio broadcasting, ~~or~~ the sale of broadcast rights, or the distribution of tangible personal property described by subsection (b)(11)(A)(ii) ~~[(b)(10)(A)(ii)]~~ of this section, or any combination of these activities, and who elects to use cost of goods sold to determine margin, may include as cost of goods sold:

- (A) the costs described in this section in relation to the property;
- (B) depreciation, amortization, and other expenses directly related to the acquisition, production, or use of the property, including
- (C) expenses for the right to broadcast or use the property.

(8) [(6)] Lending institutions. Notwithstanding any other provision of this section, if the taxable entity is a lending institution that offers loans to the public and elects to subtract cost of goods sold, the entity may subtract as a cost of goods sold an amount equal to interest expense.

(A) This paragraph does not apply to entities primarily engaged in an activity described by category 5932 of the 1987 Standard Industrial Classification Manual published by the federal Office of Management and Budget.

(B) For purposes of this subsection, an entity engaged in lending to unrelated parties solely for agricultural production offers loans to the public.

(9) [(7)] Mixed transactions. If a transaction contains elements of both a sale of tangible personal property and a service, a taxable entity may only subtract as cost of goods sold the costs otherwise allowed by this section in relation to the tangible personal property sold.

(10) [(8)] Movie theaters. Effective for reports originally due on or after September 1, 2013, if a taxable entity that is a movie theater elects to subtract cost of goods sold, the cost of goods sold for the taxable entity are ~~shall be~~ the costs described by this section in relation to the acquisition, production, exhibition, or use of a film or motion picture, including expenses for the right to use the film or motion picture, and the costs otherwise allowed by this section in relation to concessions sold.

(A) "Movie theater" means a taxable entity that is directly engaged in the operation of one or more motion picture exhibition facilities. The taxable entity must exhibit digital cinema package-encrypted motion pictures authorized with a key delivery message and/or exhibit copyrighted motion pictures via film (35mm or 70mm), in one or more fixed locations built for the purpose of motion picture exhibition.

(B) A "motion picture" is an audiovisual work consisting of a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any.

(11) [(9)] Owner of goods. A taxable entity may make a subtraction under this section in relation to the cost of goods sold only if that entity owns the goods.

(A) A taxable entity that holds the legal title to the goods is presumed to be the owner of the goods for purposes of this section. A taxable entity may rebut this presumption by proving an ownership right superior to the legal title holder based on all of the facts and circumstances, including the various benefits and burdens of ownership vested with the taxable entity.

(B) A taxable entity furnishing labor or materials to a project for the construction, improvement, remodeling, repair, or industrial maintenance (as the term "maintenance" is defined in §3.357 of this title (relating to Nonresidential Real Property Repair, Remodeling, and Restoration; Real Property Maintenance)) of real property is considered to be an owner of the labor or materials and may include the costs, as allowed by this section, in the computation of the cost of goods sold. For purposes of determining whether a taxable entity is considered an owner of the labor or materials under this paragraph, and eligible to deduct costs as described in subsections (d), (e), and (f) of this section, the following terms mean:

(i) Labor--Labor used in the direct prosecution of the project.

(ii) Material--All or part of:

(I) the material, machinery, fixtures, or tools incorporated into the project, consumed in the direct prosecution of the project, or ordered and delivered for incorporation or consumption;

(II) rent at a reasonable rate and actual running repairs at a reasonable cost for construction equipment used or reasonably required and delivered for use in the direct prosecution of the project at the site of the project; or

(III) power, water, fuel, and lubricants consumed or ordered and delivered for consumption in the direct prosecution of the project.

(C) Solely for the purposes of this section, a taxable entity shall be treated as the owner of the goods being manufactured or produced by the entity under a contract with the federal government, including any subcontracts that support a contract with the federal government, notwithstanding that the Federal Acquisition Regulations may require that title or risk of loss with respect to those goods be

transferred to the federal government before the manufacture or production of those goods is complete.

(12) ~~[(10)]~~ Pipeline entities. Effective for reports originally due on or after January 1, 2014, and notwithstanding paragraph (11) ~~[(9)]~~ of this subsection and subsection (g)(3) of this section, a pipeline entity that provides services for others related to the product that the pipeline does not own and to which this paragraph applies may subtract as a cost of goods sold its depreciation, operations, and maintenance costs allowed by this section related to the services provided.

(A) For purposes of this paragraph, "pipeline entity" means an entity:

(i) that owns or leases and operates the pipeline by which the product is transported for others and only to that portion of the product to which the entity does not own title; and

(ii) that is primarily engaged in gathering, storing, transporting, or processing crude oil, including finished petroleum products, natural gas, condensate, and natural gas liquids, except for a refinery installation that manufactures finished petroleum products from crude oil.

(B) For purposes of this paragraph, "processing" means the physical or mechanical removal, separation, or treatment of crude oil, including finished petroleum products, natural gas, condensate, and natural gas liquids after those materials are produced from the earth. The term does not include the chemical or biological transformation of those materials.

(13) ~~[(11)]~~ Rental or leasing companies. Notwithstanding any other provision of this section:

(A) a motor vehicle rental company that remits a tax on gross receipts imposed under Tax Code, §152.026 (Tax on Gross Rental Receipts), or a motor vehicle leasing company, may subtract as costs of goods sold the costs otherwise allowed by this section in relation to motor vehicles that the company rents or leases in the ordinary course of its business;

(B) a heavy construction equipment rental or leasing company may subtract as costs of goods sold the costs otherwise allowed by this section in relation to heavy construction equipment that the company rents or leases in the ordinary course of its business; and

(C) a railcar rolling stock rental or leasing company may subtract as costs of goods sold the costs otherwise allowed by this section in relation to railcar rolling stock that the company rents or leases in the ordinary course of its business.

(14) ~~[(12)]~~ Reporting methods. A taxable entity shall determine its cost of goods sold, except as otherwise provided by this section, in accordance with the methods used on the federal income tax return on which the report under this chapter is based. This subsection does not affect the type or category of cost of goods sold that may be subtracted under this section.

(15) ~~[(13)]~~ Restaurants and bars. Entities engaged in activities described in Major Group 58 (Eating and Drinking Places) of the Standard Industrial Classification Manual may deduct for cost of goods sold only those expenses allowed under subsections (d), (e) and (f) of this section, that relate to the acquisition and production of food and beverages. Any costs related to both the production of food and beverages and to other activities must be allocated to production on a reasonable basis.

(d) Direct costs. The cost of goods sold includes all direct costs of acquiring or producing the goods. Direct costs include:

(1) Labor costs. A taxable entity may include in its cost of goods sold calculation labor costs, other than service costs, that are properly allocable to the acquisition or production of the goods and are of the type subject to capitalization or allocation under Treasury Regulation Sections 1.263A-1(e) or 1.460-5 as direct labor costs, indirect labor costs, employee benefit expenses, or pension and other related costs, without regard to whether the taxable entity is required to or actually capitalizes such costs for federal income tax purposes.

(A) For purposes of this section, labor costs include W-2 wages, IRS Form 1099 payments for labor, temporary labor expenses, payroll taxes, pension contributions, and employee benefits expenses, including, but not limited to, health insurance and per diem reimbursements for travel expenses, to the extent deductible for federal tax purposes.

(B) Labor costs under this paragraph do ~~[shall]~~ not include any type of costs includable in subsection (f) or excluded in subsection (g) of this section. Costs for labor that do not meet the requirements set forth in this paragraph may still be subtracted as a cost of goods sold if the cost is allowed under another provision of this section. For example, service costs may be included in a taxable entity's cost of goods sold calculation to the extent provided by subsection (f) of this section.

(2) Incorporated materials. A taxable entity may include in its cost of goods sold calculation the cost of materials that are an integral part of specific property produced.

(3) Consumable materials. A taxable entity may include in its cost of goods sold calculation the cost of materials that are consumed in the ordinary course of performing production activities.

(4) Handling costs. A taxable entity may include in its cost of goods sold calculation handling costs, including costs attributable to processing, assembling, repackaging, and inbound transportation.

(5) Storage costs. A taxable entity may include in its cost of goods sold calculation storage costs, including the costs of carrying, storing, or warehousing property, subject to subsection (g) of this section, concerning excluded costs.

(6) Depreciation, depletion, and amortization. A taxable entity may include in its cost of goods sold calculation depreciation, depletion, and amortization, reported on the federal income tax return on which the report under this chapter is based, to the extent associated with and necessary for the production of the goods. A taxable entity may also include [; including] recovery described by Internal Revenue Code, §197 (Amortization of goodwill and certain other intangibles), to the extent associated with and necessary for the production of the goods[; and property described in Internal Revenue Code, §179].

(A) Beginning with the 2026 franchise tax report, a taxable entity shall use the then-current federal tax law, instead of the 2007 Internal Revenue Code, when determining includible depreciation from the federal tax return on which the report is based, including amounts for which the taxable entity elected to expense certain depreciable business assets. The 2007 Internal Revenue Code only applies where the statute and rule specifically reference the Internal Revenue Code. For example, beginning with the 2026 franchise tax report, a taxable entity may include in its cost of goods sold the bonus depreciation claimed on its federal return, to the extent associated with and necessary for the production of the goods. However, recovery claimed under Internal Revenue Code, §197 must be determined under the 2007 Internal Revenue Code, as the statutory provision authorizing such recovery specifically references the Internal Revenue Code.

(B) On the 2026 franchise tax report only, a taxable entity with qualifying assets may also include a one-time net depreciation

adjustment for each qualifying asset in its cost of goods sold calculation. Qualifying assets are those placed in service prior to the accounting year begin date on the 2026 report, if the assets have not been disposed of prior to this date and are associated with and necessary for the production of the goods.

(i) The depreciation adjustment for a qualifying asset for a given year is the difference in the depreciation claimed on the federal tax return and the depreciation claimed for Texas franchise tax cost of goods sold. A depreciation adjustment is not allowed for recovery claimed under Internal Revenue Code, §197 as those amounts are determined under the 2007 Internal Revenue Code.

(ii) For each tax year the qualifying asset was in service (through the accounting year end date on the 2025 report), the taxable entity may calculate the depreciation adjustment. This amount may be negative if depreciation claimed for Texas franchise tax purposes exceeded the depreciation claimed for federal tax purposes. If the taxable entity did not claim depreciation in cost of goods sold for Texas franchise tax purposes, the depreciation adjustment for that year for that qualifying asset is zero.

(iii) A taxable entity should add the depreciation adjustment for each year to arrive at the net depreciation adjustment for that qualifying asset and include this amount in the entity's cost of goods sold on its 2026 franchise tax report. The net depreciation adjustment cannot be less than zero. If the sum of the yearly depreciation adjustments is less than zero, the net depreciation adjustment is zero.

(C) After a taxable entity has included in its cost of goods sold qualifying costs under subsections (d) through (f) of this section, including the yearly depreciation determined under subparagraph (A) of this paragraph, the taxable entity may include in its cost of goods sold the net depreciation adjustment to the extent the adjustment does not take the taxable entity's margin below zero. Any unused net depreciation adjustment may be carried forward to consecutive reports until exhausted.

(D) For franchise tax reports prior to the 2026 report, a taxable entity shall utilize the 2007 Internal Revenue Code to determine the allowable depreciation, including amounts for which it elected to expense certain depreciable business assets under Internal Revenue Code, §179 (Election to expense certain depreciable business assets).

(7) Rentals and leases. A taxable entity may include in its cost of goods sold calculation the cost of renting or leasing equipment, facilities, or real property directly used for the production of the goods, including pollution control equipment and intangible drilling and dry hole costs.

(8) Repair and maintenance. A taxable entity may include in its cost of goods sold calculation the cost of repairing and maintaining equipment, facilities, or real property directly used for the production of the goods, including pollution control devices.

(9) Research and development. A taxable entity may include in its cost of goods sold calculation the costs attributable to research, experimental, engineering, and design activities directly related to the production of the goods, including all research or experimental expenditures described by Internal Revenue Code, §174 (Amortization of research and experimental expenditures), regardless of whether the taxable entity is the producer of the good it sells.

(10) Mineral production. A taxable entity may include in its cost of goods sold calculation geological and geophysical costs incurred to identify and locate property that has the potential to produce minerals.

(11) Taxes. A taxable entity may include in its cost of goods sold calculation taxes paid in relation to acquiring or producing any material, including property taxes paid on buildings and equipment, and taxes paid in relation to services that are a direct cost of production.

(12) Electricity. A taxable entity may include in its cost of goods sold calculation the cost of producing or acquiring electricity sold.

(13) A taxable entity may include in its cost of goods sold calculation a contribution to a partnership in which the taxable entity owns an interest that is used to fund activities, the costs of which would otherwise be treated as cost of goods sold of the partnership, but only to the extent that those costs are related to the goods distributed to the contributing taxable entity as goods-in-kind in the ordinary course of production activities rather than being sold by the partnership.

(e) Additional costs. In addition to the amounts includable under subsection (d) of this section, the cost of goods sold includes the following costs in relation to the taxable entity's goods:

- (1) deterioration of the goods;
- (2) obsolescence of the goods;
- (3) spoilage and abandonment, including the costs of rework, reclamation, and scrap;
- (4) if the property is held for future production, preproduction direct costs allocable to the property, including storage and handling costs, as provided by subsection (d)(4) and (5) of this section;
- (5) postproduction direct costs allocable to the property, including storage and handling costs, as provided by subsection (d)(4) and (5) of this section;
- (6) the cost of insurance on a plant or a facility, machinery, equipment, or materials directly used in the production of the goods;
- (7) the cost of insurance on the produced goods;
- (8) the cost of utilities, including electricity, gas, and water, directly used in the production of the goods;
- (9) the costs of quality control, including replacement of defective components pursuant to standard warranty policies, inspection directly allocable to the production of the goods, and repairs and maintenance of the goods; and
- (10) licensing or franchise costs, including fees incurred in securing the contractual right to use a trademark, corporate plan, manufacturing procedure, special recipe, or other similar right directly associated with the goods produced.

(f) Indirect or administrative overhead costs. A taxable entity may subtract as a cost of goods sold service costs, as defined in subsection (b)(10) [~~(b)(9)~~] of this section, that it can demonstrate are reasonably allocable to the acquisition or production of the goods. The amount subtracted may not exceed 4.0% of total indirect and administrative overhead costs.

(1) Any costs already subtracted under subsections (d) or (e) of this section may not be subtracted under this subsection.

(2) Any costs excluded under subsection (g) of this section may not be subtracted under this subsection.

(g) Costs not included. The cost of goods sold does not include the following costs in relation to the taxable entity's goods:

- (1) the cost of renting or leasing equipment, facilities, or real property that is not used for the production of the goods;

- (2) selling costs, including employee expenses related to sales;
- (3) distribution costs, including outbound transportation costs;
- (4) advertising costs;
- (5) idle facility expenses;
- (6) rehandling costs;
- (7) bidding costs, which are the costs incurred in the solicitation of contracts ultimately awarded to the taxable entity;
- (8) unsuccessful bidding costs, which are the costs incurred in the solicitation of contracts not awarded to the taxable entity;
- (9) interest, including interest on debt incurred or continued during the production period to finance the production of the goods;
- (10) income taxes, including local, state, federal, and foreign income taxes, and franchise taxes that are assessed on the taxable entity based on income;
- (11) strike expenses, including costs associated with hiring employees to replace striking personnel, but not including the wages of the replacement personnel, costs of security, and legal fees associated with settling strikes;
- (12) officers' compensation;
- (13) costs of operation of a facility that is:
 - (A) located on property owned or leased by the federal government; and
 - (B) managed or operated primarily to house members of the armed forces of the United States;
- (14) any compensation paid to an undocumented worker used for the production of the goods, provided that, as used in this paragraph only, the following terms [shaH] have the following meanings:
 - (A) "undocumented worker" means a person who is not lawfully entitled to be present and employed in the United States; and
 - (B) "goods" includes the husbandry of animals, the growing and harvesting of crops, and the severance of timber from realty; and
- (15) costs funded by a partnership contribution, to the extent that the contributing taxable entity made the cost of goods sold deduction under subsection (d)(13) of this section.

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

Filed with the Office of the Secretary of State on March 23, 2026.
 TRD-202601347
 Jenny Burleson
 Director, Tax Policy
 Comptroller of Public Accounts
 Earliest possible date of adoption: May 3, 2026
 For further information, please call: (512) 475-2220



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 16. TEXAS CIVIL COMMITMENT OFFICE

CHAPTER 810. CIVIL COMMITMENT SUBCHAPTER A. CIVIL COMMITMENT GENERAL PROVISIONS

37 TAC §810.122

The Texas Civil Commitment Office proposes amendments to the Texas Administrative Code, Title 37, Part 16, Chapter 810, Subchapter A, §810.122. A review of agency rules was conducted pursuant to Texas Government Code §2001.039 and notice of the rule review was posted in the October 10, 2025 issue of the *Texas Register* (50 TexReg 6691). No public comment was received. Following the rule review, the agency has determined that portions of §810.122 are not required by statute and are not necessary. Accordingly, the agency proposes to amend §810.122.

Fiscal Note

Jessica Marsh, Deputy Director, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

Public Benefit Cost Note

Jessica Marsh, Deputy Director, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be clarity related to the rules applying to those civilly committed pursuant to Texas Health and Safety Code Chapter 841. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Government Growth Impact Statement

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

Comments

Comments on the proposed amendments may be submitted to Jessica Marsh, Deputy Director for TCCO, 4616 West Howard Lane, Building 2, Suite 350, Austin, Texas 78728, or via email at

publiccomment@tcco.texas.gov. Comments will be accepted for 30 days following publication of this notice in the *Texas Register*.

Statutory Authority

The rule amendments are proposed under the general rulemaking authority provided in Texas Health and Safety Code Section 841.141.

Cross Reference to Statutes

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

§810.122. Definitions.

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

(1) Act--Health and Safety Code Chapter 841, Civil Commitment of Sexually Violent Predators.

(2) Case Management Team--All professionals involved in the assessment, treatment, supervision, monitoring, residential housing of the client, or other approved professionals. The case manager assigned by the office shall act as the chairperson of the team.

~~[(3) Chemical Restraints--Chemical agents or inflammatory agents such as Oleoresin Capsicum (OC) or Orthoethchlorobenzal-malononitrile (CS) spray; that are designed to temporarily immobilize or incapacitate through temporary discomfort caused by the chemical action.]~~

~~[(4) Clinical Examiner--A person or persons employed by or under contract with the office to conduct a biennial examination to assess any change in the behavioral abnormality for a person committed under the Act, §841.081.]~~

~~[(5) Income--]~~

~~[(A) or the purpose of recovery of costs under §841.084 of the Act, income includes but is not limited to:]~~

~~[(i) money received from employment, to include wages, salaries, tips and other taxable employee pay;]~~

~~[(ii) disability benefits;]~~

~~[(iii) net earnings from self-employment;]~~

~~[(iv) net gain from the sale of property purchased while under civil commitment;]~~

~~[(v) net income from rental property or an ownership in an on-going business;]~~

~~[(vi) interest or dividend income; retirement income;]~~

~~[(vii) social security income;]~~

~~[(viii) unemployment benefits;]~~

~~[(ix) proceeds from lottery winnings; and]~~

~~[(x) gifts of cash.]~~

~~[(B) The following are excluded from Income:]~~

~~[(i) funds or property received from a judgment;]~~

~~[(ii) an inheritance;]~~

~~[(iii) funds or property received from a divorce decree;]~~

~~[(iv) insurance proceeds;]~~

~~[(v) transfers of funds from a spouse which shall not exceed \$100.00 monthly; or]~~

~~[(vi) proceeds from the sale of property acquired prior to being civilly committed.]~~

~~[(6) Indigent--For the purpose of recovery of costs under § 841.084 of the Act, a sexually violent predator is considered to be indigent if the sexually violent predator does not have any income.]~~

~~[(7) Mechanical Restraints--Items such as handcuffs, cuff protectors, plastic cuffs (disposable type), leg irons, belly chains etc. and are designed to immobilize or incapacitate a client.]~~

(3) [(8)] Multidisciplinary Team (MDT)--Members of the Texas Civil Commitment Office (two), a licensed sex offender treatment provider from the Council on Sex Offender Treatment (one), Texas Department of Criminal Justice Rehabilitation Programs Division - sex offender rehabilitation program (one), Texas Department of Criminal Justice - Victim Service Division (one), a licensed peace officer employed by the Texas Department of Public Safety with at least five years' experience working for that department or the officer's designee (one), and a mental health professional from the Texas Department of State Health Services (one). The team assesses whether a person is a repeat sexually violent offender and whether the person is likely to commit a sexually violent offense after release; gives notice of its findings to the Texas Department of Criminal Justice; and recommends that the person be assessed for a behavioral abnormality.

(4) [(9)] Office--The Texas Civil Commitment Office (TCCO) including the Governing Board (Government Code Chapter 420A).

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

Filed with the Office of the Secretary of State on March 18, 2026.

TRD-202601291

Jessica Marsh

Deputy Director

Texas Civil Commitment Office

Earliest possible date of adoption: May 3, 2026

For further information, please call: (512) 341-4421



SUBCHAPTER B. CIVIL COMMITMENT

37 TAC §810.153

The Texas Civil Commitment Office proposes amendments to the Texas Administrative Code, Title 37, Part 16, Chapter 810, Subchapter B, §810.153. A review of agency rules was conducted pursuant to Texas Government Code §2001.039 and notice of the rule review was posted in the October 10, 2025 issue of the *Texas Register* (50 TexReg 6691). No public comment was received. Following the rule review, the agency has determined that portions of §810.153 are not required by statute and are not necessary. Accordingly, the agency proposes to amend §810.153.

Fiscal Note

Jessica Marsh, Deputy Director, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a

result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

Public Benefit Cost Note

Jessica Marsh, Deputy Director, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be clarity related to the rules applying to those civilly committed pursuant to Texas Health and Safety Code Chapter 841. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Government Growth Impact Statement

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

Comments

Comments on the proposed amendments may be submitted to Jessica Marsh, Deputy Director for TCCO, 4616 West Howard Lane, Building 2, Suite 350, Austin, Texas 78728, or via email at publiccomment@tcco.texas.gov. Comments will be accepted for 30 days following publication of this notice in the *Texas Register*.

Statutory Authority

The rule amendments are proposed under the general rulemaking authority provided in Texas Health and Safety Code Section 841.141.

Cross Reference to Statutes

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

§810.153. Tiered Treatment and Supervision Program.

The office shall determine the conditions of supervision and treatment for persons committed under this chapter.

~~[(1) The office shall develop a tiered program policy for the supervision and treatment of a committed person. The tiered program shall provide for the seamless transition of a committed person from a total confinement facility to less restrictive housing and supervision and eventually release based on the person's behavior and progress in treatment.]~~

~~[(2) The policy regarding the movement of committed persons between programming tiers shall be in accordance with Chapter 841 of the Texas Health and Safety Code. The office shall take into account the committed person's individual treatment plan and behavior in movement through programming tiers. A committed person shall be required to meet the tasks and targets of the person's current program-~~

~~ming tier and demonstrate that the person has internalized the concepts of the current programming tier prior to movement to the next programming tier. A committed person who demonstrates a regression in treatment or behavior may be reduced in tier levels.]~~

~~[(3)] The office shall enter into appropriate contracts or memoranda of understanding for the provision of any necessary supervised housing and other related services and may enter into appropriate contracts for medical and mental health services and sex offender treatment.~~

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

Filed with the Office of the Secretary of State on March 18, 2026.

TRD-202601292

Jessica Marsh

Deputy Director

Texas Civil Commitment Office

Earliest possible date of adoption: May 3, 2026

For further information, please call: (512) 341-4421



37 TAC §§810.154 - 810.156

The Texas Civil Commitment Office proposes repeal of the Texas Administrative Code, Title 37, Part 16, Chapter 810, Subchapter B, §§810.154 - 810.156. A review of agency rules was conducted pursuant to Texas Government Code §2001.039 and notice of the rule review was posted in the October 10, 2025 issue of the *Texas Register* (50 TexReg 6691). No public comment was received. Following the rule review, the agency has determined these rules are not required by statute and are no longer necessary.

Fiscal Note

Jessica Marsh, Deputy Director, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

Public Benefit Cost Note

Jessica Marsh, Deputy Director, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be clarity related to the rules applying to those civilly committed pursuant to Texas Health and Safety Code Chapter 841. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Government Growth Impact Statement

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;

- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will not create a new rule;
- (6) the rules will not limit an existing rule;
- (7) the rules will not change the number of individuals subject to the rule; and
- (8) the rules will not affect this state's economy.

Comments

Comments on the proposed repeals may be submitted to Jessica Marsh, Deputy Director for TCCO, 4616 West Howard Lane, Building 2, Suite 350, Austin, Texas 78728, or via email at publiccomment@tcco.texas.gov. Comments will be accepted for 30 days following publication of this notice in the *Texas Register*.

Statutory Authority

The rule repeals are proposed under the general rulemaking authority provided in Texas Health and Safety Code Section 841.141.

Cross Reference to Statutes

No other statutes, articles, or codes are affected by these repeals.

§810.154. *Emergency Detention Orders.*

§810.155. *Mechanical and Chemical Restraints.*

§810.156. *Sexually Violent Predators Required to Submit to Global Positioning Satellite (GPS Tracking).*

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

Filed with the Office of the Secretary of State on March 18, 2026.

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Jessica Marsh

Deputy Director

Texas Civil Commitment Office

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SUBCHAPTER E. MISCELLANEOUS PROVISIONS

37 TAC §810.273

The Texas Civil Commitment Office proposes repeal of the Texas Administrative Code, Title 37, Part 16, Chapter 810, Subchapter E, §810.273. A review of agency rules was conducted pursuant to Texas Government Code §2001.039 and notice of the rule review was posted in the October 10, 2025 issue of the *Texas Register* (50 TexReg 6691). No public comment was received. Following the rule review, the agency has determined this rule is not required by statute and is no longer necessary.

Fiscal Note

Jessica Marsh, Deputy Director, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated

reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

Public Benefit Cost Note

Jessica Marsh, Deputy Director, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be clarity related to the rules applying to those civilly committed pursuant to Texas Health and Safety Code Chapter 841. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Government Growth Impact Statement

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

Comments

Comments on the proposed repeals may be submitted to Jessica Marsh, Deputy Director for TCCO, 4616 West Howard Lane, Building 2, Suite 350, Austin, Texas 78728, or via email at publiccomment@tcco.texas.gov. Comments will be accepted for 30 days following publication of this notice in the *Texas Register*.

Statutory Authority

The rule repeals are proposed under the general rulemaking authority provided in Texas Health and Safety Code Section 841.141.

Cross Reference to Statutes

No other statutes, articles, or codes are affected by these repeals.

§810.273. *Cost of Housing, Treatment, and Tracking Services.*

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

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Jessica Marsh

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