

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 10. DEPARTMENT OF INFORMATION RESOURCES

CHAPTER 209. MINIMUM STANDARDS FOR MEETINGS HELD BY VIDEOCONFERENCE

The Texas Department of Information Resources (department) proposes amendments to 1 Texas Administrative Code Chapter 209, §§209.1 - 209.3, concerning Minimum Standards for Meetings Held by Videoconference. The department proposes the repeal of existing sections of 1 Texas Administrative Code Chapter 209, §§209.10, 209.11, 209.30, and 209.31, and replacement of those sections with newly proposed text. In addition, the department proposes new §§209.4, 209.5, 209.12, and 209.32, to clarify administrative necessities.

The proposed rules are the result of the department's statutory quadrennial rule review of 1 Texas Administrative Code Chapter 209.

In addition, the department proposes correcting references to the Texas Government Code to be in compliance with legal citation standards in §§209.1 - 209.3.

In §209.1, the department proposes removing the definition for "compressed video" as this term is no longer used within the rule chapter. The department further proposes adding definitions for "computer-based videoconferencing application" and "dedicated video room environment" because of new or revised content in Chapter 209.

The department proposes the creation of §209.4. This section clarifies that Chapter 209 shall not be interpreted to overrule the Open Meetings Act or any Office of the Attorney General opinions interpreting the Open Meetings Act.

The department proposes the creation of §209.5. This section authorizes the department at its discretion to create guidelines establishing technical standards in response to rapidly evolving technologies and requires governmental bodies and institutions of higher education subject to Chapter 209 to review and consider any guidelines promulgated in this way.

The department proposes to repeal the current text of §209.10, for state agencies, and §209.30, for institutions of higher education, as these technical standards no longer apply. The department proposes replacing the repealed §209.10 with updated text. The new text establishes minimum technical standards for open meetings held by computer-based videoconferencing application.

The department proposes to repeal the current text of §209.11, for state agencies, and §209.31, for institutions of higher edu-

cation, as it is duplicative of the newly created §209.5. The department proposes replacing the repealed §209.11 and §209.31 with updated text. The new text establishes minimum technical standards for open meetings held by dedicated video room environment.

The department proposes the creation of §209.12, for state agencies, and §209.32, for institutions of higher education. The new sections require an entity to comply with any internally mandated security requirements and any applicable 1 Texas Administrative Code Chapter 202 security requirements.

There is no economic impact on rural communities or small businesses as a result of enforcing or administering the amended rule as proposed.

The changes to the chapter apply to state agencies and institutions of higher education.

The assessment of the impact of the proposed changes on institutions of higher education was prepared in consultation with the Information Technology Council for Higher Education (ITCHE) in compliance with Texas Government Code §2054.121(c). DIR submitted the proposed amendments to ITCHE for their review and impact assessment. ITCHE determined that there was no direct impact on institutions of higher education as a result of the proposed rule.

Dale Richardson, Chief Operations Officer, has determined that there will be no fiscal impact on state agencies, institutions of higher education, and local governments during the first five-year period following the adoption of the amended 1 TAC Chapter 209. The new definitions, addition of technical standards for newly developed technologies used for videoconferencing purposes, and the clarification of administrative responsibilities and requirements increase the overall effectiveness of the chapter and do not result in a fiscal impact. Mr. Richardson has further determined that for each year of the first five years following the adoption of new 1 TAC Chapter 209, there are no anticipated additional economic costs to persons or small businesses required to comply with the amendments and proposed new rules.

Pursuant to Texas Government Code §2001.0221, the agency provides the following Governmental Growth Impact Statement for the proposed amendment. The agency has determined the following:

1. The proposed rules neither create nor eliminate a government program.
2. Implementation of the proposed rules does not require the creation or elimination of employee positions. There are no additional employees required nor employees eliminated to implement the rule as amended.

3. Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency. There is no fiscal impact as implementing the rule does not require an increase or decrease in future legislative appropriations.

4. The proposed rules do not require an increase or decrease in fees paid to the agency.

5. The proposed rules create new rules. Four of the new rule sections replace rules that the department proposes to repeal. These new rules establish the priority of the Open Meetings Act and Office of the Attorney General in questions of interpretation; permit the department to create guidelines in response to rapidly developing technologies; establish minimum standards for new technologies that can be used to host open meetings; and require entity compliance with security requirements.

6. The proposed rules repeal four existing rule sections and replace them with four new sections. Two of the repealed sections reference videoconferencing technology that is no longer relevant due to recent technological development. Two of the repealed sections are duplicative of a newly created section that authorizes the department to create guidelines to establish technical standards for rapidly developing technologies.

7. The proposed rules do not increase or decrease the number of individuals subject to the rule's applicability. The department has neither expanded nor reduced the overall applicability of these rules and, as such, the number of individuals subject to the rule has not changed.

8. The proposed rules do not positively or adversely affect the state's economy. The effect of establishing minimum standards for expanded technologies to host open meetings may have an added benefit of increasing citizen access to governmental body and institution of higher education governing body meetings.

Written comments on the proposed rules may be submitted to Christi Koenig Brisky, Assistant General Counsel, 300 West 15th Street, Suite 1300, Austin, Texas 78701, or to rules.review@dir.texas.gov. Comments will be accepted for 30 days after publication in the *Texas Register*.

SUBCHAPTER A. DEFINITIONS

1 TAC §§209.1 - 209.5

The amendments and new rules are proposed pursuant to Texas Government Code §551.127(i), which orders the department to adopt rules specifying minimum standards for audio and video signals at a meeting held by videoconference call.

No other code, article, or statute is affected by this proposal.

§209.1. Applicable Terms and Technologies for Meetings Held by Videoconference.

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

(1) Computer-Based Videoconferencing Application--a commercially-available application designed to facilitate videoconferencing between a Personal Computer to another Personal Computer or mobile device either one-to-one or in a group environment. [Compressed video--Video data that has been digitized and in the process, condensed by the use of one or more of the common video compression processes (lossy, lossless, interframe compression, etc.). A codec produces compressed video and uncompresses the video at the remote end.]

(2) Dedicated Video Room Environment--a room that is specifically and exclusively built for the purpose of videoconferencing with specific acoustics, permanent microphone and camera placement, dedicated camera and system equipment, and other equipment that is permanently fixed in the room for videoconferencing. A dedicated video room environment generally uses specific, proprietary software to connect participants at remote locations through a private data network or through a proprietary software connection with the primary dedicated video room environment; this software is typically only compatible with the video room equipment that is used in the primary dedicated video room environment. This definition does not include a room that has nonpermanent connections set up to permit an institution of higher education or governmental body to bring their own electronics into the room and connect them therein.

(3) [(2)] ITU--International Telecommunication Union.

(4) [(3)] Meeting--shall have the same meaning as set forth in Texas Government Code Chapter 551[; Texas Government Code].

(5) [(4)] Videoconference--A communication conducted between two or more persons in which one or more of the participants communicate with the other participants through [duplex] audio and video signals transmitted over a telephone network, a data network, or the Internet.

§209.2. Institution of Higher Education.

A university system or institution of higher education as defined by Texas Education Code §61.003[; Education Code].

§209.3. Governmental Body.

A governmental body as defined by Texas Government Code §551.001(3)[; Texas Government Code].

§209.4. Open Meetings Act Requirements for Meetings Held by Videoconference.

No requirements found in subchapters B or C of this chapter shall be interpreted to overrule any section of Texas Government Code Chapter 551 or any rules adopted or opinions issued by the Office of the Attorney General interpreting Texas Government Code Chapter 551.

§209.5. Guidelines.

(a) At its discretion, the department may promulgate guidelines establishing technical standards pertaining to rapidly emerging technologies or technological issues or advancement. The department will publish any such guidelines to the department's website.

(b) Governmental bodies and institutions of higher education conducting open or closed meetings by videoconference call shall review and consider any applicable guidelines promulgated by the department.

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 April 29, 2022.

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Joshua Godbey

General Counsel

Department of Information Resources

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For further information, please call: (512) 475-4552



SUBCHAPTER B. VIDEOCONFERENCES HELD BY GOVERNMENTAL BODIES,

EXCLUDING INSTITUTIONS OF HIGHER EDUCATION

1 TAC §209.10, §209.11

The repeals are proposed pursuant to Texas Government Code §551.127(i), which orders the department to adopt rules specifying minimum standards for audio and video signals at a meeting held by videoconference call.

No other code, article, or statute is affected by this proposal.

§209.10. Compressed Video.

§209.11. Other Guidelines.

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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1 TAC §§209.10 - 209.12

The new rules are proposed pursuant to Texas Government Code §551.127(i), which orders the department to adopt rules specifying minimum standards for audio and video signals at a meeting held by videoconference call.

No other code, article, or statute is affected by this proposal.

§209.10. Minimum Standards for Meetings Held by Computer-Based Videoconferencing Applications by a Governmental Body.

(a) All computer-based videoconferencing applications shall employ a minimum bandwidth transmission speed and/or adequate data compression algorithm to produce a sufficient quality for audio and video such that audio volume and clarity and video clarity are sufficient to hear and view all speaking participants on the videoconference clearly.

(b) Computer-based videoconferencing applications may specify unique minimum requirements for computer central processing units, memory, and video capability to run the computer-based videoconferencing application. A governmental body shall comply with these minimum requirements.

(c) If the videoconference call hosts a public audience at a location or locations specified by the official notice of the open meeting posted by the governmental body in compliance with Open Meetings Act requirements, then the governmental body shall establish a minimum of one host computer at the location(s) that will run the computer-based videoconferencing application. This host computer shall then be connected to:

(1) either a separate video monitor of size proportional to the room and clearly visible to all in the room or multiple video monitors so that all attendees may clearly view the videostream; and

(2) external speakers of suitable volume and sound quality such that all meeting attendees at the host location may clearly hear the meeting.

(d) Any personal computer used by a governmental body member for the purpose of videoconferencing for an open meeting subject to the Open Meetings Act shall contain a camera and speakers of sufficient quality to permit all meeting attendees to see the individual who is using the personal computer and for the individual to hear all speaking attendees.

§209.11. Minimum Standards for Meetings Hosted from Dedicated Video Room Environment to Dedicated Video Room Environment by a Governmental Body.

(a) Videoconferencing equipment used in a dedicated video room environment shall meet the below ITU standards for the respective medium of transmission:

(1) ITU H.320 or H.324 for videoconferencing over a public switched telephone network (PSTN), private line facility, or integrated switched digital network (ISDN);

(2) ITU H.323/SIP (Session Initiation Protocol) for videoconferencing over the Internet; or

(3) Proprietary vendor protocols as long as the governmental body has received certification from the vendor stating that the vendor's equipment and proprietary software protocol release version meet or exceed the required ITU standards.

(b) When using a computer web conferencing system at the primary dedicated video room environment site, a large monitor and adequate speakers shall be used.

(c) Audio signals from a remote dedicated video room environment(s) shall be of similar quality and volume as the local audio at the primary dedicated video room environment.

(d) At least one monitor shall be available at the primary dedicated video room environment site for the audience to easily see remote meeting participants. When using a computer web conferencing system at the primary site, a large monitor and adequate speakers shall be used. The audience and members of the governmental body shall have full view of at least one monitor at each meeting location. Additional monitors shall be placed, as necessary, to ensure a clear view by all in attendance.

(e) If a governmental body uses a dedicated video room environment for the dedicated camera and speaker equipment but is using a computer-based videoconferencing application that is not part of the proprietary dedicated video room equipment setup, then the entity must comply with all minimum standards for computer-based application software and is not subject to the requirements of a dedicated video room environment.

§209.12. Security Requirements for Open Meetings Held by Videoconference.

(a) Each governmental body subject to the Open Meetings Act shall review and comply with any additional internal security requirements of their governmental body that may apply to a meeting held by videoconference.

(b) If 1 Texas Administrative Code Chapter 202 applies to the governmental body, then the governmental body shall ensure compliance with any information security standards promulgated regarding the transmission of data through a public or data/IP network.

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

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SUBCHAPTER C. VIDEOCONFERENCES HELD BY INSTITUTIONS OF HIGHER EDUCATION

1 TAC §209.30, §209.31

The repeals are proposed pursuant to Texas Government Code §551.127(i), which orders the department to adopt rules specifying minimum standards for audio and video signals at a meeting held by videoconference call.

No other code, article, or statute is affected by this proposal.

§209.30. *Compressed Video.*

§209.31. *Other Guidelines.*

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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1 TAC §§209.30 - 209.32

The new rules are proposed pursuant to Texas Government Code §551.127(i), which orders the department to adopt rules specifying minimum standards for audio and video signals at a meeting held by videoconference call.

No other code, article, or statute is affected by this proposal.

§209.30. *Minimum Standards for Meetings Held by Computer-Based Videoconferencing Applications by an Institution of Higher Education.*

(a) All computer-based videoconferencing applications shall employ a minimum bandwidth transmission speed and/or adequate data compression algorithm to produce a sufficient quality such that audio volume and clarity and video clarity are sufficient to hear and view all speaking participants on the videoconference clearly.

(b) Computer-based videoconferencing applications may specify unique minimum requirements for computer central processing unit, memory, and video capability to run the computer-based videoconferencing application. An institution of higher education shall comply with these minimum requirements.

(c) If the videoconference call hosts a public audience at a location or locations specified by the official notice of the open meeting posted by the institution of higher education in compliance with Open Meetings Act requirements, then the institution of higher education shall establish a minimum of one host computer at such location(s) that will run the computer-based videoconferencing application. This host computer shall then be connected to:

(1) either a separate video monitor of size proportional to the room and clearly visible to all in the room or multiple video monitors so that all attendees may clearly view the videostream; and

(2) external speakers of suitable volume and sound quality such that all meeting attendees at the host location may clearly hear the meeting.

(d) Any personal computer used by a governing body member of an institution of higher education for the purpose of videoconferencing for an open meeting subject to the Open Meetings Act shall contain a camera and speakers of sufficient quality to permit all meeting attendees to see the individual who is using the personal computer and for the individual to hear all speaking attendees.

§209.31. *Minimum Standards for Meetings Hosted from Dedicated Video Room Environment to Dedicated Video Room Environment by Institutions of Higher Education.*

(a) Videoconferencing equipment used in a dedicated video room environment shall meet the below ITU standards for the respective medium of transmission:

(1) ITU H.320 or H.324 for videoconferencing over a public switched telephone network (PSTN), private line facility, or integrated switched digital network (ISDN);

(2) ITU H.323/SIP (Session Initiation Protocol) for videoconferencing over the Internet; or

(3) Proprietary vendor protocols as long as the institution of higher education has received certification from the vendor stating that the vendor's equipment and proprietary software protocol release version meet or exceed the required ITU standards.

(b) When using a computer web conferencing system at the primary dedicated video room environment site, a large monitor and adequate speakers shall be used.

(c) Audio signals from the remote dedicated video room environment(s) shall be of similar quality and volume as the local audio at the primary dedicated video room environment.

(d) At least one monitor shall be available at the primary dedicated video room environment site for the audience to easily see remote meeting participants. When using a computer web conferencing system at the primary site, a large monitor and adequate speakers shall be used. The audience and members of the institution of higher education shall have full view of at least one monitor at each meeting location. Additional monitors shall be placed, as necessary, to ensure a clear view by all in attendance.

(e) If an institution of higher education uses a dedicated video room environment for the dedicated camera and speaker equipment but is using a computer-based videoconferencing application that is not part of the proprietary dedicated video room equipment setup, then the institution of higher education must comply with all minimum standards for computer-based application software and is not subject to the requirements of a dedicated video room environment.

§209.32. *Security Requirements for Open Meetings Held by Videoconference.*

(a) Each institution of higher education subject to the Open Meetings Act shall review any additional internal security requirements of their institution of higher education.

(b) If 1 Texas Administrative Code Chapter 202 applies to the institution of higher education, then the institution of higher education shall ensure compliance with any information security standards promulgated regarding the transmission of data through a public or data/IP network.

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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Joshua Godbey
General Counsel

Department of Information Resources

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 353. MEDICAID MANAGED CARE SUBCHAPTER A. GENERAL PROVISIONS

1 TAC §353.8

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes new §353.8, concerning Certification of Managed Care Organizations Prior to Contract Awards.

BACKGROUND AND PURPOSE

The proposal implements Texas Government Code, §533.0035, added by Senate Bill 1244, 87th Legislature, Regular Session, 2021.

The proposed new rule sets out the process HHSC will use to determine whether a managed care organization (MCO) satisfies the certification requirements under Texas Government Code, §533.0035. The proposed new rule sets forth that HHSC does not award a contract to an MCO that does not receive certification and sets forth an appeal process for an MCO to appeal a denial of certification by HHSC.

Proposed new §353.8(b) sets forth that HHSC will certify an MCO following the evaluation of proposals submitted in response to a solicitation. The certification does not impact the MCO's final score, but failure to obtain certification results in no further consideration of the MCO for the contract award.

Proposed new §353.8(c) sets forth that in its certification determination, HHSC may review the material submitted by the MCO in response to the solicitation; materials related to the MCO's past performance in any state, including materials required to be monitored by a state's managed care program under 42 Code of Federal Regulations §438.66(c); and any additional information and assurances requested by HHSC from the MCO for purposes of the certification determination.

The proposed new §353.8(d) sets forth that HHSC provides notice of approval or denial of certification by electronic mail to the MCO and that a notice of denial sets forth the reasons for the denial of certification. Proposed new §353.8(d) also provides that an MCO that is denied certification may appeal the denial by submitting an appeal to the solicitation's sole point of contact no later than 10 business days after the date HHSC transmits the notice of denial of certification.

Proposed new §353.8(e) sets forth that the MCO's appeal must specifically address the reasons for the denial of the certification

as stated in the denial notice and precisely state the argument, authorities, and evidence the MCO offers in support of its appeal.

Proposed new §353.8(f) sets forth how HHSC resolves an appeal by dismissing the appeal as untimely, upholding the denial of certification, or reversing the denial of certification and certifying the MCO.

Proposed new §353.8(g) sets forth that after the expiration of the appeal period and the resolution of any pending appeals, MCOs that obtained the required certification will proceed to the next phase of the contract award process.

Proposed new §353.8(h) sets forth that HHSC's determination not to certify an MCO is not a contested case proceeding under the Texas Administrative Procedure Act, Texas Government Code, Chapter 2001.

FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has also 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 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 create a new rule;
- (6) the proposed rule will expand an existing rule;
- (7) the proposed rule will not increase the number of individuals subject to the rule; and
- (8) the proposed rule will not affect the state's economy.

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The rule applies to health care MCOs, none of which are classified as small businesses, 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 is necessary to implement legislation that does not specifically state that §2001.0045 applies to the rule.

PUBLIC BENEFIT AND COSTS

Stephanie Stephens, State Medicaid Director, has determined that for each year of the first five years the rule is in effect, indi-

viduals receiving services under managed care will benefit from having a rule that ensures potential MCO contract awardees are able to fulfill the terms of the contract to successfully provide the managed care services for which the awardee is chosen.

Trey Wood has also determined that for the first five years the rule is in effect, persons who are required to comply with the proposed rule may incur economic costs because the rule may require a health care MCO to alter its business practices. The proposal allows an MCO to appeal the denial of certification and may require an MCO to provide additional information and assurances to HHSC for purposes of the certification determination. However, HHSC does not have sufficient information to determine the cost to comply.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 701 W. 51st Street, Austin, Texas 78751; or emailed to HHSRulesCoordinationOffice@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 22R049" in the subject line.

STATUTORY AUTHORITY

The new section is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority.

The new section implements Texas Government Code §533.0035.

§533.8. Certification of Managed Care Organizations Prior to Contract Awards.

(a) As provided by §533.0035 of the Texas Government Code, the Texas Health and Human Services Commission (HHSC) awards a contract under Chapter 533 of the Texas Government Code to a managed care organization (MCO) only if the MCO has been certified by HHSC as reasonably able to fulfill the terms of the contract, including all requirements of applicable federal and state law.

(b) HHSC determines whether to certify an MCO following the evaluation of the proposals submitted in response to a solicitation. Certification and the certification determination process described in this section do not impact an MCO's final score in the evaluation, but failure to obtain certification results in no further consideration of the MCO for the contract award.

(c) In its certification determination, HHSC may review:

(1) materials submitted by the MCO in response to the solicitation;

(2) materials related to the MCO's past performance in any state, including materials required to be monitored by a state's managed care program under 42 C.F.R. §438.66(c); and

(3) any additional information and assurances requested by HHSC from the MCO for purposes of the certification determination.

(d) HHSC provides notice of approval or denial of certification by electronic mail to an MCO. A notice of denial sets forth the reasons for the denial of certification. If an MCO is denied certification, the MCO may appeal the denial by submitting an appeal to the solicitation's sole point of contact no later than 10 business days after the date HHSC transmits the notice of denial of certification.

(e) An appeal must specifically address the reasons for the denial of the certification as stated in the notice of denial and precisely state the argument, authorities, and evidence the MCO offers in support of its appeal.

(f) To resolve an appeal, HHSC:

(1) dismisses the appeal as untimely;

(2) upholds the denial of certification; or

(3) reverses the denial of certification and certifies the MCO as reasonably able to fulfill the terms of the contract, including all requirements of applicable federal and state law.

(g) After the expiration of the appeal period and the resolution of any pending appeals, MCOs that obtained the required certification will proceed to the next phase of the contract award process.

(h) HHSC's determination whether to certify that an MCO is reasonably able to fulfill the terms of a contract is not a contested case proceeding under the Texas Administrative Procedure Act, Texas Government Code, Chapter 2001.

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 April 28, 2022.

TRD-202201679

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

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For further information, please call: (512) 487-3373



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 97. PLANNING AND ACCOUNTABILITY

SUBCHAPTER AA. ACCOUNTABILITY AND PERFORMANCE MONITORING

19 TAC §97.1001

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 19 TAC §97.1001(b) is not included in the print version of the Texas Register. The figure is available in the on-line version of the June 13, 2022, issue of the Texas Register.)

The Texas Education Agency (TEA) proposes an amendment to §97.1001, concerning the accountability rating system. The proposed amendment would adopt in rule applicable excerpts of the *2022 Accountability Manual*. Earlier versions of the manual will remain in effect with respect to the school years for which they were developed.

BACKGROUND INFORMATION AND JUSTIFICATION: TEA has adopted its academic accountability manual in rule since 2000. The accountability system evolves from year to year, so the criteria and standards for rating and acknowledging schools in the most current year differ to some degree from those applied in the prior year. The intention is to update 19 TAC §97.1001 annually to refer to the most recently published accountability manual.

The proposed amendment to 19 TAC §97.1001 would adopt excerpts of the *2022 Accountability Manual* into rule as a figure. The excerpts, Chapters 1-11 of the *2022 Accountability Manual*, specify the indicators, standards, and procedures used by the commissioner of education to determine accountability ratings for districts, campuses, and charter schools. These chapters also specify indicators, standards, and procedures used to determine distinction designations on additional indicators for Texas public school campuses and districts. Ratings may be revised as a result of investigative activities by the commissioner as authorized under Texas Education Code, §39.056 and §39.057.

Following is a chapter-by-chapter summary of the changes for this year's manual. In every chapter, dates and years for which data are considered would be updated to align with 2022 accountability. All references to English learners would be updated to emergent bilingual students/English learners to align with updated state statute and federal reporting requirements.

Chapter 1 gives an overview of the entire accountability system. Language referring to the Not Rated: Declared State of Disaster label that was applied in 2021 would be removed as well as language about Academic Growth not being calculated. Language indicating that single-campus districts must meet performance targets required for the campus to demonstrate acceptable performance would be removed. Rating labels D and F would be removed and replaced with Not Rated: Senate Bill 1365. Clarifying language about membership being the basis for accountability calculations would be added. Language would be added regarding the inclusion of students receiving instruction virtually. The summer 2021 State of Texas Assessments of Academic Readiness (STAAR®) administration would be added to the chart depicting the accountability subset rule as well as in the descriptive bullets below the chart. Language about Not Rated: Data Integrity Issues potentially being assigned temporarily would be removed as this would be a permanent label and Not Rated: Data Under Review would be added as a potential temporary label. The provision allowing a district to retest students who achieve Approaches Grade Level on an English I or Algebra I end-of-course would be removed.

Chapter 2 describes the "Student Achievement" domain. Language indicating scaled scores would not be calculated would be removed. References to the Every Student Succeeds Act

(ESSA) addendum would be removed. The new version of the Texas Success Initiative assessment (TSIA2) would be added as a means to meet TSI criteria. The writing column would be removed from the STAAR® component example chart. The Student Achievement Domain Rating Calculation section would be added.

Chapter 3 describes the "School Progress" domain. Language indicating raw scores and scaled scores would not be calculated would be removed. All language about the Academic Growth calculation would be added and would be unchanged from the *2020 Accountability Manual* besides the small numbers analysis language which would indicate that it would not be used. Language about the ESSA waiver request would be removed. Small numbers analysis language would be updated to note that it would not be applied to the Relative Performance domain.

Chapter 4 describes the "Closing the Gaps" domain. Language indicating raw scores and scaled scores would not be calculated would be removed. All language about the Academic Growth calculation would be added and would be unchanged from the *2020 Accountability Manual* besides the small numbers analysis language, which would indicate that it would not be used. Language about the use of the 2020 optional Texas English Language Proficiency Assessment System would be moved to the "English Language Proficiency-Methodology" section. Language noting that TEA requested an extension for the participation rate requirements under ESSA would be added. The "Limits on Use of Alternative Assessments" section would be removed. The weights applied to each component, calculation examples, and additional calculation details would be added.

Chapter 5 describes how the overall ratings are calculated. Language about how ratings are calculated would be added and would be unchanged from the *2020 Accountability Manual* other than references to D/F ratings. Any previous reference to D/F ratings would be replaced with a Not Rated: Senate Bill 1365 label or a scaled score.

Chapter 6 describes distinction designations. Language about the appeals process would be added and would be unchanged from the *2020 Accountability Manual* with the following exceptions: eligibility requirements would be updated to align with current statute; all references to the writing STAAR® would be removed; an SAT/ACT Results for Accelerated Testers indicator would be added; and clarifying language would be added to the Postsecondary Readiness distinction designation description. Language describing the Career and Technical Education indicator would be removed, and language about the inclusion of the TSIA2 would be added.

Chapter 7 describes the pairing process and the alternative education accountability provisions. Language describing Alternative Education Campuses of Choice would be removed, and a description of the Dropout Recovery School (DRS) discretionary designation application process would be added. Language about the DRS identification process would be updated to align with statutory changes.

Chapter 8 describes the process for appealing ratings. Language about the appeals process would be added and would be unchanged from the *2020 Accountability Manual* with the following exceptions: language about the option to appeal consecutive years of unacceptable performance would be added; and references to the Covid-19 pandemic and its impact on accountability ratings would be removed, as well as language about the

Student Success Initiative STAAR® administration and the writing STAAR® administration. Language describing the order in which appeals would be processed would be removed.

Chapter 9 describes the responsibilities of TEA, the responsibilities of school districts and open-enrollment charter schools, and the consequences to school districts and open-enrollment charter schools related to accountability and interventions. The "Determination of Multiple Year Unacceptable Status" section would be replaced with "Determination of Count of Consecutive School Years of Unacceptable Performance Ratings," and the description below the section title would be updated to align with current statute. Language would be added about the impact of overall D ratings to align with statutory requirements. The Acceptable and Not Rated: Declared State of Disaster rating labels would be added as well as the Not Rated: Senate Bill 1365 label to be applied to districts and campuses that would have received a D/F rating in 2022. Language would be added indicating that PEG campuses would be identified based on an overall scaled score less than 60. The Campus Identification Numbers would be updated to align with current procedures.

Chapter 10 provides information on the federally required identification of schools for improvement. Language about the 2021 ESSA waiver would be moved to the end of the chapter. The identification and exit criteria for comprehensive support and improvement, targeted support and improvement, and additional targeted support would be added.

Chapter 11 describes the local accountability system (LAS). References to the application of a Not Rated: Declared State of Disaster rating label would be removed. Language would be added noting that LAS ratings would only be applied if the state rating is a C or better. A section describing the appeals process would be added.

FISCAL IMPACT: Jeffrey Cottrill, deputy commissioner for governance and accountability, 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 limit an existing regulation due to its effect on school accountability for 2022.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new em-

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

PUBLIC BENEFIT AND COST TO PERSONS: Dr. Cottrill 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 continue to inform the public of the existence of annual manuals specifying rating procedures for public schools by including this rule in the *Texas Administrative Code*. There is no anticipated economic cost to persons who are required to comply with the proposal.

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

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

PUBLIC COMMENTS: The public comment period on the proposal begins May 13, 2022, and ends June 13, 2022. A public hearing to solicit testimony and input on the proposed amendment is scheduled for 9:00 a.m. on May 18, 2022. The public may participate in the hearing virtually by linking to the meeting at <https://us02web.zoom.us/j/82959760745>. Parties interested in testifying must register online by 9:00 a.m. on the day of the hearing and are encouraged to also send written testimony to performance.reporting@tea.texas.gov. The hearing will conclude once all who have registered have been given the opportunity to comment. Questions about the hearing should be directed to the TEA Division of Performance Reporting at (512) 463-9704 or performance.reporting@tea.texas.gov.

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §39.052(a) and (b)(1)(A), which require the commissioner of education to evaluate and consider the performance on achievement indicators described in TEC, §39.053(c), when determining the accreditation status of each school district and open-enrollment charter school; TEC, §39.053, which requires the commissioner to adopt a set of performance indicators related to the quality of learning and achievement in order to measure and evaluate school districts and campuses; TEC, §39.054, which requires the commissioner to adopt rules to evaluate school district and campus performance and to assign a performance rating; TEC, §39.0541, which allows the commissioner to adopt indicators and standards under TEC, Subchapter C, at any time during a school year before the evaluation of a school district or campus; TEC, §39.0543, which describes acceptable and unacceptable performance as referenced in law; TEC, §39.0546, which requires the commissioner to assign a Not Rated label to all districts and campuses for 2021-2022 unless the district or campus earns an overall performance rating of C or higher and which maintains student eligibility for the public education grant (PEG) despite an overall Not Rated label; TEC, §39.0548, which requires the commissioner to designate campuses that meet specific criteria as dropout recovery schools and to use specific indicators to evaluate them; TEC, §39.055, which prohibits the use of assessment results and other performance indicators of students in a residential facility in state accountability; TEC,

§39.151, which provides a process for a school district or an open-enrollment charter school to challenge an academic or financial accountability rating; TEC, §39.201, which requires the commissioner to award distinction designations to a campus or district for outstanding performance; TEC, §39.2011, which makes open-enrollment charter schools and campuses that earn an acceptable rating eligible for distinction designations; TEC, §39.202 and §39.203, which authorize the commissioner to establish criteria for distinction designations for campuses and districts; TEC, §29.081(e), (e-1), and (e-2), which define criteria for alternative education programs for students at risk of dropping out of school and subjects those campuses to the performance indicators and accountability standards adopted for alternative education programs; TEC, §29.201 and §29.202, which describe the PEG program and eligibility requirements; and TEC, §12.104(b)(3)(L), which subjects open-enrollment charter schools to the rules adopted under public school accountability in TEC, Chapter 39.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§39.052(a) and (b)(1)(A); 39.053; 39.054; 39.0541; 39.0543; 39.0546; 39.0548; 39.055; 39.151; 39.201; 39.2011; 39.202; 39.203; 29.081(e), (e-1), and (e-2); 29.201, 29.202; and 12.104(b)(3)(L).

§97.1001. Accountability Rating System.

(a) The rating standards established by the commissioner of education under Texas Education Code (TEC), §§39.052(a) and (b)(1)(A); 39.053, 39.054, 39.0541, 39.0548, 39.055, 39.151, 39.201, 39.2011, 39.202, 39.203, 29.081(e), (e-1), and (e-2), and 12.104(b)(2)(L), shall be used to evaluate the performance of districts, campuses, and charter schools. The indicators, standards, and procedures used to determine ratings will be annually published in official Texas Education Agency publications. These publications will be widely disseminated and cover the following:

- (1) indicators, standards, and procedures used to determine district ratings;
- (2) indicators, standards, and procedures used to determine campus ratings;
- (3) indicators, standards, and procedures used to determine distinction designations; and
- (4) procedures for submitting a rating appeal.

(b) The procedures by which districts, campuses, and charter schools are rated and acknowledged for 2022 [2021] are based upon specific criteria and calculations, which are described in excerpted sections of the 2022 [2021] *Accountability Manual* provided in this subsection.

Figure: 19 TAC §97.1001(b)
[Figure: 19 TAC §97.1001(b)]

(c) Ratings may be revised as a result of investigative activities by the commissioner as authorized under TEC, §39.057.

(d) The specific criteria and calculations used in the accountability manual are established annually by the commissioner and communicated to all school districts and charter schools.

(e) The specific criteria and calculations used in the annual accountability manual adopted for prior school years remain in effect for all purposes, including accountability, data standards, and audits, with respect to those school years.

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

Filed with the Office of the Secretary of State on May 2, 2022.

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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



CHAPTER 101. ASSESSMENT

The Texas Education Agency (TEA) proposes amendments to §§101.3022, 101.3024, and 101.4002, concerning implementation of the academic content areas testing program. The proposed amendments would align the rules with House Bill (HB) 1603, 87th Texas Legislature, Regular Session, 2021, which eliminated expiration dates for students to graduate through an Individual Graduation Committee (IGC) under Texas Education Code (TEC), §28.0258; for former students to graduate through a district decision under TEC, §28.02541; and for students to use the Texas Success Initiative Assessment (TSIA) as a substitute assessment to meet assessment graduation requirements under TEC, §39.025.

BACKGROUND INFORMATION AND JUSTIFICATION: With changes to the TEC introduced by HB 1603, 87th Texas Legislature, Regular Session, 2021, TEA determined that conforming amendments to its assessment rules needed to be made.

Section 101.3022, Assessment Requirements for Graduation, outlines the specific assessment graduation requirements for different groups of students. The proposed amendment would align the rule with HB 1603 by removing subsection (e)(4), which states an expiration date for students to receive a high school diploma if the student has qualified to graduate by means of an IGC under TEC, §28.0258. In addition, the term "English language learner" would be updated to "emergent bilingual student" to align with Senate Bill 2066, 87th Texas Legislature, Regular Session, 2021.

Section 101.3024, Assessment Requirements for Students First Enrolled in Grade 9 Prior to 2011-2012 School Year or First Enrolled in Grade 10 or Above in 2011-2012 School Year, outlines the specific assessment graduation requirements for former students. The proposed amendment would remove subsection (b), as it is no longer applicable since the modified assessments referenced are no longer administered. In addition, the proposed amendment would align the rule with HB 1603 by removing subsection (g)(2), which states an expiration date for former students to receive a high school diploma based on a district decision in accordance with TEC, §28.02541.

Section 101.4002, State of Texas Assessments of Academic Readiness End-of-Course Substitute Assessments, identifies the provisions for using a substitute assessment to meet graduation requirements. The proposed amendment would align the rule with HB 1603 by removing subsection (d)(2)(B), which states an expiration date for the use of the TSIA as a substitute assessment for certain students.

Finally, technical edits related to statutory references would be made to ensure consistency across administrative rules.

FISCAL IMPACT: Lily Laux, associate commissioner for school programs, has determined that for the first five-year period the proposal is in effect, there are no additional costs to state or

local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

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

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

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

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

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand existing regulations and increase the number of individuals subject to the rules' applicability by removing current expiration dates and allowing the regulations to continue indefinitely.

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

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Laux 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 alignment of the rules with recent legislation and the ability for more individuals to be awarded a Texas high school diploma. There is no anticipated economic cost to persons who are required to comply with the proposal.

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

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

PUBLIC COMMENTS: The public comment period on the proposal begins May 13, 2022, and ends June 13, 2022. 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 May 13, 2022. 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/).

SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING IMPLEMENTATION OF THE ACADEMIC CONTENT AREAS TESTING PROGRAM

DIVISION 2. PARTICIPATION AND ASSESSMENT REQUIREMENT FOR GRADUATION

19 TAC §101.3022, §101.3024

STATUTORY AUTHORITY. The amendments are proposed under Texas Education Code (TEC), §28.02541, as amended by House Bill (HB) 1603, 87th Texas Legislature, Regular Session, 2021, which allows certain students who entered ninth grade before the 2011-2012 school year to receive a high school diploma through a district decision. HB 1603 removed the expiration date for the provision; TEC, §28.0258, as amended by HB 1603, 87th Texas Legislature, Regular Session, 2021, which allows certain students to receive a high school diploma on the basis of an IGC. HB 1603 removed the expiration date for the provision; TEC, §39.023(c), which requires the agency to adopt end-of-course (EOC) assessment instruments for secondary-level courses in Algebra I, biology, English I, English II, and United States history; TEC, §39.025, as amended by HB 1603, 87th Texas Legislature, Regular Session, 2021, which establishes the secondary-level performance required to receive a Texas high school diploma. HB 1603 removed the expiration date for TEC, §39.025(a-3), which allows certain students to use the TSIA as a substitute assessment to meet assessment graduation requirements, and TEC, §39.025(a-5), which allows certain students to receive a high school diploma if the student qualified for graduation through an individual graduation committee; and the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act, §1111(b)(2)(B), which requires the same academic assessments used to measure the achievement of all public elementary and secondary school students in the state to be administered to all public elementary and secondary school students in the state.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code (TEC), §§28.02541, 28.0258, and 39.025, as amended by House Bill 1603, 87th Texas Legislature, Regular Session, 2021; TEC, §39.023; and the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act, §1111(b)(2)(B).

§101.3022. *Assessment Requirements for Graduation.*

(a) Beginning with students first enrolled in Grade 9 in the 2011-2012 school year, a student must meet satisfactory performance on each end-of-course (EOC) assessment listed in [the] Texas Education Code (TEC), §39.023(c), except in cases as provided by subsections (b), (c), and (f) of this section and §101.3021(e) of this title (relating to Required Participation in Academic Content Area Assessments), in order to be eligible to receive a Texas diploma. The standard in place when a student first takes an EOC assessment is the standard that will be maintained throughout the student's school career.

(b) A student who was administered separate reading and writing EOC assessments under [the] TEC, §39.023(c), for the English I or English II course has met that course's assessment graduation requirement if the student has met the following criteria:

(1) achieved satisfactory performance on either the reading or writing EOC assessment for that course;

(2) met at least the minimum score on the other EOC assessment for that course; and

(3) achieved an overall scale score of 3750 or greater when the scale scores for reading and writing are combined for that course.

(c) Exceptions to subsection (a) of this section related to English I shall apply to emergent bilingual students [English language learners] who meet the criteria specified in §101.1007 of this title (relating to Assessment Provisions for Graduation).

(d) If a student failed a course but achieved satisfactory performance on the applicable EOC assessment, that student is not required to retake the assessment if the student is required to retake the course.

(e) Effective beginning with the 2014-2015 school year, a student who has taken but failed to achieve the EOC assessment graduation requirements for no more than two courses may receive a Texas high school diploma if the student has qualified to graduate by means of an individual graduation committee under [the] TEC, §28.0258.

(1) A student may not graduate under an individual graduation committee if the student did not take each EOC assessment required by this subchapter or an approved substitute assessment in Subchapter DD of this chapter (relating to Commissioner's Rules Concerning Substitute Assessments for Graduation) for each course in which the student was enrolled in a Texas public school for which there is an EOC assessment. A school district or charter school shall determine whether the student took each required EOC assessment or an approved substitute assessment required by Subchapter DD of this chapter. For purposes of this section only, a student who does not make an attempt to take all required EOC assessments may not qualify to graduate by means of an individual graduation committee.

(2) ~~An emergent bilingual student who [A student who is an English language learner (ELL) and] qualifies for the English I special provision in §101.1007 of this title may graduate without an individual graduation committee if the student achieves satisfactory performance on the remaining EOC assessments that the student is required to take.~~

(A) ~~The qualifying emergent bilingual student [ELL] becomes eligible for individual graduation committee review by failing to achieve satisfactory performance on the English I EOC assessment and one other EOC assessment or by failing to achieve satisfactory performance on no more than two of the remaining EOC assessments if the student achieved satisfactory performance on the English I EOC assessment.~~

(B) ~~If a qualifying emergent bilingual student [ELL] does graduate by means of an individual graduation committee, the student is required to complete individual graduation committee requirements for each course in which the student did not achieve satisfactory performance on the EOC assessment for that course.~~

(3) Notwithstanding any action taken by a student's individual graduation committee, a school district or charter school must provide a student an opportunity to retake an EOC assessment under [the] TEC, §39.023(c), if the student has not previously achieved satisfactory performance on an assessment for that course. A student is not required to retake a course in order to be administered a retest of an EOC assessment.

~~[(4) Provisions of this subsection expire September 1, 2023. A student may graduate by means of an individual graduation committee if the student has qualified for an individual graduation committee under the TEC, §28.0258, and that individual graduation committee convened prior to September 1, 2023.]~~

(f) A student who is receiving special education services or has been dismissed from a special education program under [the] TEC, Chapter 29, Subchapter A, is subject to the provisions of this subsection.

(1) A student receiving special education services is not subject to the requirements in [the] TEC, §28.0258. As provided in §89.1070 of this title (relating to Graduation Requirements) and §101.3023 of this title (relating to Participation and Graduation Assessment Requirements for Students Receiving Special Education Services), a student's admission, review, and dismissal (ARD) committee determines whether a student is required to achieve satisfactory performance on an EOC assessment to graduate.

(2) A student dismissed from a special education program who achieved satisfactory performance on an alternate EOC assessment while enrolled in a special education program is not required to take and achieve satisfactory performance on the general EOC assessment to graduate. A student who took an EOC assessment while enrolled in a special education program is not required to retake and achieve satisfactory performance on the EOC assessment if the student's ARD committee determined that the student was not required to achieve satisfactory performance on the EOC assessment to graduate. A student dismissed from a special education program must achieve satisfactory performance on any remaining EOC assessments that the student is required to take. If the student fails to achieve satisfactory performance on no more than two of the remaining EOC assessments, the student is eligible for individual graduation committee review under [the] TEC, §28.0258, and is subject to the provisions of subsection (e) of this section.

§101.3024. Assessment Requirements for Students First Enrolled in Grade 9 Prior to 2011-2012 School Year or First Enrolled in Grade 10 or Above in 2011-2012 School Year.

(a) Students who were first enrolled in Grade 9 prior to the 2011-2012 school year or enrolled in Grade 10 or above in the 2011-2012 school year must fulfill testing requirements for graduation with the assessments required by [the] Texas Education Code (TEC), §39.023(c), as that section existed before amendment by Senate Bill (SB) 1031, 80th Texas Legislature, 2007. For purposes of this section, coursework necessary to graduate means all the coursework required under the student's graduation plan.

~~[(b) For a student who is receiving special education services under the TEC, Chapter 29, Subchapter A, who is enrolled above Grade 9 in the 2011-2012 school year and for whom an IEP specifies that the student shall take a modified version of an assessment, the modified assessments as required by the TEC, §39.023, as that section existed before amendment by SB 1031, 80th Texas Legislature, 2007, will continue to be the student's assessment requirement.]~~

(b) ~~[(e)]~~ With the exception of students who meet the criteria described in subsection (c) ~~[(d)]~~ of this section, students who were enrolled as follows shall fulfill testing requirements for graduation with the assessments as required by [the] TEC, §39.023(c), as that section existed before amendment by SB 1031, 80th Texas Legislature, 2007, with the applicable performance standards established by the commissioner of education and published on the Texas Education Agency (TEA) website:

(1) in Grade 9 or higher on January 1, 2001, regardless of when they are scheduled to graduate; or

(2) in Grade 8 or lower on January 1, 2001, if they were on an accelerated track and fulfilled all coursework necessary to graduate by September 1, 2004.

(c) [(d)] A student who entered Grade 11 in the 1989-1990 school year or an earlier school year shall fulfill testing requirements for graduation with assessments as required by [the] TEC, §39.023(c), as that section existed before amendment by SB 1031, 80th Texas Legislature, 2007, under an applicable performance standard established by the commissioner of education that corresponds to the performance standard in effect for the exit-level Texas Educational Assessment of Minimum Skills (TEAMS) when the student was first eligible to take the exit-level TEAMS. Performance standards that apply to TEAMS students will be published on the TEA website.

(d) [(e)] A student fulfilling testing requirements under subsection (b) [(e)] of this section will be required to take only those sections of the exit-level Texas Assessment of Knowledge and Skills (TAKS) that correspond to the subject areas formerly assessed by the exit-level Texas Assessment of Academic Skills (TAAS) (reading, writing, and mathematics) for which the student has not yet met the passing standard.

(1) If a student has not yet met the passing standard on TAAS reading, the student will be administered only the reading multiple-choice items from the TAKS English language arts (ELA) test.

(2) If a student has not yet met the passing standard on TAAS writing, the student will be administered only the writing prompt and the revising and editing multiple-choice items from the TAKS ELA test.

(e) [(f)] A student fulfilling testing requirements under subsection (c) [(d)] of this section will be required to take only those sections of the exit-level TAKS that correspond to the subject areas formerly assessed by the exit-level TEAMS (reading and mathematics) for which the student has not yet met the passing standard. If a student has not yet met the passing standard on TAAS reading, the student will be administered only the reading multiple-choice items from the TAKS ELA test.

(f) [(g)] Effective beginning with the 2017-2018 school year, a student who has taken but failed to meet assessment graduation requirements under this section may receive a Texas high school diploma if the student has qualified to graduate in accordance with [the] TEC, §28.02541.

[(+)] A student may not graduate under TEC, §28.02541, if the student did not take each assessment instrument or the part of the assessment instrument for which the student has not performed satisfactorily at least three times.

[(2) This subsection expires September 1, 2023.]

(g) [(h)] Notwithstanding any of the requirements in subsections (a)-(f) [(a)-(g)] of this section, students who pass all of the required exit-level TAKS tests or meet the alternate assessment requirements of Chapter 101, Subchapter DD, of this title (relating to Commissioner's Rules Concerning Substitute Assessments for Graduation) have fulfilled their testing requirements for graduation.

(h) [(i)] Beginning with the 2011-2012 school year, students first enrolled in Grade 9 or lower must fulfill testing requirements for graduation with the end-of-course assessment instruments, as specified in [the] TEC, §39.023(c), as amended by SB 1031, 80th Texas Legislature, 2007.

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 May 2, 2022.

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: June 12, 2022

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



SUBCHAPTER DD. COMMISSIONER'S RULES CONCERNING SUBSTITUTE ASSESSMENTS FOR GRADUATION

19 TAC §101.4002

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §28.02541, as amended by House Bill (HB) 1603, 87th Texas Legislature, Regular Session, 2021, which allows certain students who entered ninth grade before the 2011-2012 school year to receive a high school diploma through a district decision. HB 1603 removed the expiration date for the provision; TEC, §28.0258, as amended by HB 1603, 87th Texas Legislature, Regular Session, 2021, which allows certain students to receive a high school diploma on the basis of an IGC. HB 1603 removed the expiration date for the provision; TEC, §39.023(c), which requires the agency to adopt end-of-course (EOC) assessment instruments for secondary-level courses in Algebra I, biology, English I, English II, and United States history; TEC, §39.025, as amended by HB 1603, 87th Texas Legislature, Regular Session, 2021, which establishes the secondary-level performance required to receive a Texas high school diploma. HB 1603 removed the expiration date for TEC, §39.025(a-3), which allows certain students to use the TSIA as a substitute assessment to meet assessment graduation requirements, and TEC, §39.025(a-5), which allows certain students to receive a high school diploma if the student qualified for graduation through an individual graduation committee; and the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act, §1111(b)(2)(B), which requires the same academic assessments used to measure the achievement of all public elementary and secondary school students in the state to be administered to all public elementary and secondary school students in the state.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code (TEC), §28.02541, 28.0258, and 39.025, as amended by House Bill 1603, 87th Texas Legislature, Regular Session, 2021; TEC, §39.023; and the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act, §1111(b)(2)(B).

§101.4002. *State of Texas Assessments of Academic Readiness End-of-Course Substitute Assessments.*

(a) For purposes of this subchapter, "equivalent course" is defined as a course having sufficient content overlap with the essential knowledge and skills of a similar course in the same content area listed under §74.1(b)(1)-(4) of this title (relating to Essential Knowledge and Skills).

(b) Effective beginning with the 2011-2012 school year, in accordance with [the] Texas Education Code (TEC), §39.025(a-1), (a-2), and (a-3), the commissioner of education adopts certain assessments as provided in the chart in this subsection as substitute assessments that a student may use in place of a corresponding end-of-course (EOC) assessment under [the] TEC, §39.023(c), to meet the student's assessment graduation requirements. A satisfactory score on an approved substitute assessment may be used in place of only one specific EOC

assessment, except in those cases described by subsection (d)(1) of this section.

Figure: 19 TAC §101.4002(b) (No change.)

(c) A student at any grade level is eligible to use a substitute assessment as provided in the chart in subsection (b) of this section if:

(1) a student was administered an approved substitute assessment for an equivalent course in which the student was enrolled;

(2) a student received a satisfactory score on the substitute assessment as determined by the commissioner and provided in the chart in subsection (b) of this section; and

(3) a student using a Texas Success Initiative Assessment (TSIA) or a Texas Success Initiative Assessment, Version 2.0 (TSIA2) also meets the requirements of subsection (d) of this section.

(d) Effective beginning with the 2014-2015 school year, a student must meet criteria established in paragraph (1) or (2) of this subsection in order to qualify to use TSIA or TSIA2 as a substitute assessment.

(1) A student must have been enrolled in a college preparatory course for English language arts (PEIMS code CP110100) or mathematics (PEIMS code CP111200) and, in accordance with [the] TEC, §39.025(a-1), have been administered an appropriate TSIA or TSIA2 at the end of that course.

(A) A student under this paragraph who meets all three TSIA or both TSIA2 English language arts score requirements provided in the figure in subsection (b) of this section satisfies both the English I and English II EOC assessment graduation requirements.

(B) A student under this paragraph may satisfy an assessment graduation requirement in such a manner regardless of previous performance on an Algebra I, English I, or English II EOC assessment.

(2) In accordance with [the] TEC, §39.025(a-3), a student who has not been successful on the Algebra I or English II EOC assessment after taking the assessment at least two times may use the corresponding TSIA or TSIA2 in place of that EOC assessment.

~~[(A)] For a student under this paragraph who took separate reading and writing assessments for the English II EOC assessment and who did not meet the English II assessment graduation requirement using those tests as specified in §101.3022(b) of this title (relating to Assessment Requirements for Graduation), the separate reading or writing TSIA may not be used to substitute for the corresponding English II reading or writing EOC assessment.~~

~~[(B) The provisions of this paragraph expire September 1, 2023. A student may meet the assessment graduation requirements under this paragraph using TSIA or TSIA2 if the student has met the necessary score requirements as specified in subsection (b) of this section prior to September 1, 2023.]~~

(e) A student electing to substitute an assessment for graduation purposes must still take the corresponding EOC assessment required under [the] TEC, §39.023(c), at least once for federal accountability purposes. If a student sits for an EOC assessment, a school district may not void or invalidate the test in lieu of a substitute assessment.

(f) A student who fails to perform satisfactorily on a PSAT, PLAN, or Aspire test (or any versions of these tests) as indicated in the chart in subsection (b) of this section must take the appropriate EOC assessment required under [the] TEC, §39.023(c). However, a student who does not receive a passing score on the EOC assessment and retakes a PSAT, PLAN, or Aspire test (or any versions of these

tests) is eligible to meet the requirements specified in subsection (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 May 2, 2022.

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: June 12, 2022

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

TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 748. MINIMUM STANDARDS FOR GENERAL RESIDENTIAL OPERATIONS

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §§748.103, 748.1205, 748.1219, 748.1271, and 748.1337; new §§748.124 - 748.126; and the repeal of §748.125.

BACKGROUND AND PURPOSE

The purpose of the proposal is to implement the portion of Senate Bill 1896, 87th Legislature, Regular Session, 2021, that added §42.0433 to the Texas Human Resources Code (HRC). The new section requires HHSC Child Care Regulation (CCR) to adopt a model suicide prevention, intervention, and postvention policy for use by residential child-care facilities. The new section also requires each residential child-care facility to adopt either the CCR model policy or another suicide prevention, intervention, postvention policy that has been approved by the Executive Commissioner of HHSC. The proposed rules implement those changes for general residential operations (GROs).

SECTION-BY-SECTION SUMMARY

The proposed amendment to §748.103 requires a GRO, as part of the application process, to submit a suicide prevention, intervention, and postvention policy consistent with proposed new §748.124.

Proposed new §748.124 requires a GRO to adopt either the CCR model suicide prevention, intervention, and postvention policy provided in §748.125 or another suicide prevention, intervention, postvention policy that is approved by the Executive Commissioner of HHSC and meets the requirements of HRC §42.0433. The suicide prevention, intervention, and postvention policy adopted by a GRO may be part of a broader mental health crisis plan if the components of the plan include suicide prevention, intervention, and postvention.

Proposed new §748.125 is the model suicide prevention, intervention, and postvention policy and includes: (1) a purpose statement; (2) definitions for "postvention," "protective factors of suicide," "risk factors of suicide," "suicide contagion," "suicide risk assessment," "suicide risk screening," and "warning signs of

suicide"; (3) training requirements to include (A) at least one hour of annual suicide prevention training for all caregivers and employees regarding risk factors and warning signs for suicide, understanding safety planning, and understanding suicide screening; and (B) the promotion of suicide prevention, intervention, and postvention training for non-employees, as appropriate; (4) requiring trained persons to conduct suicide risk screenings for certain children at admission and at other noted intervals; (5) intervention requirements if the suicide risk screening finds a child to be a high or potential risk of suicide, to include as appropriate; (A) a referral to a mental health professional for a suicide risk assessment; (B) monitoring the child based on the level of risk; (C) removing harmful objects, chemicals, or substances; and (D) alerting caregivers and supervisors of the risk of suicide and any updated safety plans; (6) a requirement for protocols for a child that returns to the care of a GRO post hospitalization for a mental health crisis; (7) the establishment of a postvention team to develop a written action plan with protocols in the event of a death by suicide; and (8) requirements for responding in the event of a suicide attempt.

The proposed repeal of §748.125 deletes the rule because the content of the rules has been moved to proposed new §748.126 with no modifications.

Proposed new §748.126 are the general requirements for an operation's policies and procedures and came from the proposed repeal of §748.125 with no modifications.

The proposed amendment to §748.1205 requires documentation of the following information in the child's record at the time of admission: (1) if a suicide risk screening is required at admission and the child is screened as having a high or potential risk of suicide, the identification of any risk factors or warning signs of suicide and the safety plan staff and caregivers will implement; and (2) the results of a suicide screening at admission, if required.

The proposed amendment to §748.1219 (1) updates a citation; (2) updates the wording to improve the readability and understanding of the rule; and (3) clarifies that the additional admission assessment requirements will apply when an operation intends to provide services to a child that is determined to be an immediate danger to others based on the child's behavior and history within the last two months, or a child is screened as a high or potential risk of suicide based on the results of a suicide risk screening at admission.

The proposed amendment to §748.1271 requires the documentation of the following information in the child's record at the time of an emergency admission: (1) if a suicide risk screening is required at admission and the child is screened as having a high or potential risk of suicide, the identification of any risk factors or warning signs of suicide and the safety plan staff and caregivers will implement; and (2) the results of a suicide screening at admission, if required.

The proposed amendment to §748.1337 (1) updates a citation; and (2) broadens the requirement for plans to minimize risk of harm and a safety contract between the child and staff for children that have a suicide risk screening that indicates a high or potential risk of suicide.

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, enforce-

ing 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 rules;
- (6) the proposed rules will expand existing rules;
- (7) the proposed rules will not change the number of individuals subject to the rules; and
- (8) the proposed rules will not affect the state's economy.

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

Trey Wood has also determined that there will be an adverse economic effect on small businesses and micro-businesses, but there is inadequate information to provide an estimate of the amounts. A GRO may adopt the model policy provided in rule or, with the approval of the Executive Commissioner or designee, its own policy that meets certain criteria provided in rule. It is not possible at this point to determine if any GROs will seek to develop their own policy and whether such a policy would reduce any adverse economic impact that CCR's model policy could create, or what the GRO might spend developing the policy or contracting with another party to develop the policy.

CCR expects some of the tasks related to the new policy will not have an adverse economic impact. For example, annual training requirements for suicide prevention can be incorporated into the current annual training requirements, and there are several free suicide risk screening tools that a GRO may use without incurring any costs. Moreover, CCR assumes that some GROs already meet intervention requirements for referrals to mental health professionals and safety planning requirements.

Conversely, CCR assumes there will be up-front, one-time costs to develop and implement a suicide prevention, intervention, and postvention policy, including determining which suicide risk screening tool a GRO will use, determining which persons will conduct the screenings, and establishing a postvention team to develop a written action plan with protocols in the event of a death by suicide. Finally, CCR also assumes that there will be ongoing costs to train the persons who will conduct the screenings and additional staff time to conduct the screenings. However, these one-time and ongoing costs will vary from GRO to GRO depending upon issues such as the suicide risk tool each GRO chooses to use, the capacity of each GRO, and how many of these tasks can be incorporated into the roles of current staff.

The Fiscal Year 2020 Residential Child Care Data Book indicates there are 306 GROs. Of those 306 GROs, 109 are residential treatment centers (RTCs). Based on two surveys conducted in 2010 and 2021, CCR estimates that approximately 65 percent of those GROs and RTCs do not meet the definition of a small

or micro-business because they are either not for-profit or have 100 or more employees. Of the approximately 107 GROs and 38 RTCs that meet the definition of a small or micro-business, CCR estimates that approximately 50 percent are small businesses and 50 percent are micro-businesses (or approximately 54 GROs and 18 RTCs each). No rural communities have a license as a GRO.

HHSC determined that alternative methods to achieve the purpose of the proposed rules for small businesses and micro-businesses would not be consistent with ensuring the health and safety of children in the care of GROs. The rules do not impact 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 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

Rachel Ashworth-Mazerolle, Associate Commissioner for Child Care Regulation, has determined that for each year of the first five years the rules are in effect, the public benefit will be that the safety of the children in the care of GROs will be improved because of new policy requirements for GROs related to suicide prevention, intervention, and postvention and broadened requirements for safety plans.

Trey Wood has also determined that for the first five years the rules are in effect, there are expected economic costs to persons required to comply with the rules as proposed related to a model suicide prevention, intervention, and postvention policy, including costs related to the development of the policy, conducting screenings, and training. However, these one-time and ongoing costs will vary from GRO to GRO depending upon issues such as the suicide risk tool that each GRO selects, the capacity of each GRO, and how many of these tasks can be incorporated into the roles of current staff. These uncertainties lead to HHSC's inability to provide an estimate of the costs the providers could incur.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of this proposal may be directed by email to Gerry.Williams@hhs.texas.gov.

Written comments on the proposal may be submitted to Gerry Williams, Rules Writer, Child Care Regulation, Texas Health and Human Services Commission, E-550, P.O. Box 149030, Austin, Texas 78714-9030; or by email to CCRRules@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 22R005" in the subject line.

SUBCHAPTER C. ORGANIZATION AND ADMINISTRATION

DIVISION 1. PLANS AND POLICIES REQUIRED FOR THE APPLICATION PROCESS

26 TAC §§748.103, 748.124 - 748.126

STATUTORY AUTHORITY

The amendments and new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of the HRC.

The amendment and new sections affect Texas Government Code §531.0055 and HRC §42.0433.

§748.103. What policies and procedures must I submit for Licensing's approval as part of the application process?

(a) You must develop the policies and procedures identified in subsection (b) of this section. Your policies and procedures must comply with or exceed the minimum standards specified in this chapter, Chapter 42 of the Human Resources Code, and Chapter 745 of this title (relating to Licensing), and any other applicable law.

(b) As part of the application process, you must submit the following policies and procedures to us for our approval:

(1) Policies and procedures related to record keeping, including where the records will be located. The policies must be consistent with Subchapter D of this chapter (relating to Reports and Records Keeping);

(2) Personnel policies and procedures consistent with §748.105 of this title (relating to What are the requirements for my personnel policies and procedures?);

(3) Conflict of interest policies consistent with §748.107 of this title (relating to What must my conflict of interest policies include?);

(4) Admission policies consistent with §748.109 of this title (relating to What must my admission policies include?);

(5) Child-care policies consistent with §748.111 of this title (relating to What child-care policies must I develop?);

(6) Emergency behavior intervention policies consistent with §748.113 of this title (relating to What emergency behavior intervention policies must I develop if my operation is permitted to use emergency behavior intervention?);

(7) Discipline policies consistent with §748.115 of this title (relating to What are the requirements for my discipline policies for children in care?);

(8) Policies for a transitional living program, if applicable, consistent with §748.117 of this title (relating to What policies for a transitional living program must I develop?);

(9) Volunteer policies consistent with §748.119 of this title (relating to What policies must I develop if I use volunteers?);

(10) Abuse and neglect policies consistent with §748.121 of this title (relating to What abuse and neglect policies must I develop?);

(11) Employee policies and procedures that protect children from vaccine-preventable diseases. The policies must be consistent with §748.123 of this title (relating to What must an employee policy for protecting children from vaccine-preventable diseases include?);

(12) A weapons, firearms, explosive materials, and projectiles policy consistent with Division 6 of Subchapter Q (relating to Weapons, Firearms, Explosive Materials, and Projectiles); [and]

(13) A tobacco and e-cigarette policy consistent with §748.1661 of this title (relating to What policies must I enforce regarding tobacco products and e-cigarettes?); and[-]

(14) A suicide prevention, intervention, and postvention policy consistent with §748.124 of this division (relating to What suicide prevention, intervention, and postvention policy must I have?).

§748.124. What suicide prevention, intervention, and postvention policy must I have?

(a) You must adopt either:

(1) The model suicide prevention, intervention, and postvention policy in §748.125 of this division (relating to What is the model suicide prevention, intervention, and postvention policy?); or

(2) Another suicide prevention, intervention, and postvention policy that is approved by the Executive Commissioner of the Texas Health and Human Services Commission or designee and:

(A) Addresses suicide prevention, intervention, and postvention;

(B) Is based on current and best evidence-based practices;

(C) Requires all caregivers and employees to receive annual suicide prevention training that includes understanding of safety planning and screening for risk;

(D) Promotes suicide prevention training for non-employees, as appropriate; and

(E) Includes plans and procedures to support children who return to the operation following hospitalization for a mental health condition.

(b) The suicide prevention, intervention, and postvention policy adopted under subsection (a) of this section may be part of a broader mental health crisis plan if the components of the plan include suicide prevention, intervention, and postvention.

§§748.125. What is the model suicide prevention, intervention, and postvention policy?

(a) Purpose. The purpose of the model suicide prevention, intervention, and postvention policy is to:

(1) Protect the health and well-being of children in the care of general residential operations by implementing procedures to prevent suicide, including screening and assessment procedures for risk of suicide;

(2) Require intervention when a child attempts or dies by suicide; and

(3) Address the needs of children in care and staff after a child attempts or dies by suicide.

(b) Definitions.

(1) Postvention--Activities that promote healing and reduce the risk of suicide by a person affected by the suicide of another.

(2) Protective factors of suicide--Characteristics that make it less likely that a child will consider, attempt, or die by suicide, including:

(A) Effective behavioral health care;

(B) Connectedness to individuals, family, community, and social institutions;

(C) Supportive relationships with caregivers;

(D) Problem-solving skills, coping skills, and ability to adapt to change;

(E) Self-esteem or sense of purpose; and

(F) Cultural or personal beliefs that discourage suicide.

(3) Risk factors of suicide--Characteristics or conditions that increase the chance that a child may consider, attempt, or die by suicide, including:

(A) A prior suicide attempt;

(B) Knowing someone who died by suicide, particularly a family member, friend, peer, or hero;

(C) Access to lethal means;

(D) History of childhood trauma, including neglect, physical abuse, or sexual abuse or assault;

(E) A history of being bullied;

(F) A mental health diagnosis, particularly depressive disorders and other mood disorders;

(G) Abuse of alcohol or drugs;

(H) Social isolation;

(I) Severe or prolonged stress;

(J) Chronic physical pain or illness;

(K) Loss of a family member; or

(L) The ending of a relationship.

(4) Suicide contagion--Exposure to suicide or suicidal behaviors within a family, or from friends or media reports, that can result in an increase in suicide or suicidal behaviors.

(5) Suicide risk assessment--A comprehensive evaluation of a child by a medical health professional to confirm suspected suicide risk, estimate the immediate danger to the child, and decide on a course of treatment and a plan for intervention to ensure the child's safety.

(6) Suicide risk screening--A procedure in which a standardized instrument is used to identify children who may be at risk of suicide. The screening may be done orally (with the screener asking questions), with pencil and paper, or using a computer.

(7) Warning signs of suicide--Indicators that a child may be in danger of suicide and need help, including:

(A) Talking about wanting to die or to hurt or kill oneself;

(B) Looking for a way to kill oneself;

(C) Being preoccupied with death in conversation, writing, or drawing;

(D) Talking about feeling hopeless or having no reason to live;

(E) A change in personality;

(F) Giving away belongings;

(G) Withdrawing from friends and family;

(H) Having aggressive or hostile behavior;

(I) Neglecting personal appearance;

(J) Running away from home or a residential placement; or

(K) Risk-taking behavior, such as reckless driving or being sexually promiscuous.

(c) Prevention--Training.

(1) All caregivers and employees must complete at least one hour of annual suicide prevention training that meets the instructor and documentation requirements of Subchapter F, Division 6 of this chapter (relating to Annual Training) with a curriculum that includes:

(A) The risk factors, protective factors, and warning signs of suicide;

(B) Understanding safety planning, including:

(i) How safety plans are created;

(ii) How safety plans are shared with employees and caregivers;

(iii) How safety plans are expected to be implemented by employees and caregivers; and

(iv) Each employee's or caregiver's role in the prevention of suicide, including never leaving a child alone if the suicide risk screening finds that the child is a high risk for suicide, until a mental health professional conducts a suicide risk assessment; and

(C) Understanding suicide screening, including clarifying:

(i) Each person's role in the screening process;

(ii) When an employee or caregiver should initiate a suicide risk screening for a child; and

(iii) What actions an employee or caregiver must take to initiate a suicide risk screening for a child.

(2) The operation must promote suicide prevention training for non-employees, as appropriate.

(d) Prevention--Suicide Risk Screening.

(1) The policy must describe the suicide risk screening tool that you will use and the process for implementing the screenings.

(2) The suicide risk screening tool must be supported by evidence-based research demonstrating the tool performs reliably regardless of who administers the tool or performs the scoring or rating.

(3) Any person who meets the conditions and training requirements of the screening tool manual or instructions may administer the suicide risk screening to a child. You must document that any person conducting a screening meets the conditions and training requirements.

(4) At a minimum, the screening tool must be administered:

(A) At admission for each child 10 years of age or older;

(B) At admission for each child younger than 10 years of age if:

(i) The child has a history of suicide attempts or suicidal thoughts; or

(ii) The parent who admits the child or operation requests a screening to be administered because of the child's risk factors or warning signs of suicide;

(C) Every 30 days after admission for each child 10 years of age or older in a residential treatment center;

(D) Every 90 days after admission for each child 10 years of age or older in a general residential operation that is not a residential treatment center; and

(E) Immediately for a child of any age whenever the child exhibits warning signs of suicide that necessitate a suicide screening be conducted.

(5) Any screening must be performed in a manner that protects the child's privacy.

(6) Each screening must be documented.

(e) Intervention--Based on the Results of a Suicide Risk Screening.

(1) If the suicide risk screening finds the child to be a high risk for suicide, the operation must:

(A) Immediately refer the child to a mental health professional for a suicide risk assessment;

(B) Not leave the child alone until a mental health professional assesses the child;

(C) Remove any harmful objects, chemicals, or substances that a child could use to carry out a suicide attempt;

(D) Alert each person responsible for the child's care or supervision of the high risk for suicide and any new or updated safety plan; and

(E) Upon conclusion of the risk assessment, follow through on recommendations by the mental health professional and update the child's safety plan and service plan accordingly.

(2) If the suicide risk screening finds the child to have a potential for risk of suicide, the operation must:

(A) Refer the child to a mental health professional for a suicide risk assessment within 24 hours;

(B) Closely monitor the child to ensure the child's safety until a mental health professional assesses the child;

(C) Remove any harmful objects, chemicals, or substances that a child could use to carry out a suicide attempt;

(D) Alert each person responsible for the child's care or supervision of the potential risk of suicide and any new or updated safety plan; and

(E) Upon conclusion of the risk assessment, follow through on recommendations by the mental health professional and update the child's safety plan and service plan accordingly.

(f) Intervention--Returning Post Hospitalization. To ensure a child's readiness to return to the care of your operation following a

mental health crisis (for example, from a suicide attempt or psychiatric hospitalization):

(1) Two members of the service planning team, including a professional level service provider, must meet with the child within 24 hours of the child's return to an operation to discuss protocols that would help to ease the child's transition back into the operation, ensure the child's safety, and reduce any risk of suicide.

(2) The protocols must include:

(A) Weekly suicide risk screenings for the first 30 days or until the child is no longer reporting suicidal thoughts, whichever is longer;

(B) Creating or reviewing and updating the child's safety plan; and

(C) Removal of any harmful objects, chemicals, or substances that a child could use to carry out a suicide attempt or self-harm for a period to be determined by the treatment team, but not less than 30 days.

(3) The operation must alert any persons responsible for the child's care or supervision of the new protocols and new or updated safety plan.

(g) Postvention.

(1) Addressing Suicide Deaths.

(A) Create a Postvention Team and Written Action Plan and Protocols. To prevent suicide contagion and support the children and staff at the operation, you must create a postvention team. This team is responsible for developing a written action plan with protocols in the event of a death by suicide. The postvention team should consider how a death would affect other children and staff at the operation and consider how to provide psychological first aid, crisis intervention, and other support to children and staff at your operation.

(B) While the action plan needs to be flexible for varying situations, the written action plan must include:

(i) A communication strategy that:

(I) Does not inadvertently glamorize or romanticize the child or the death;

(II) Occurs in small group settings, allowing the postvention team to monitor responses of individuals in the group;

(III) Strives to treat all deaths at the operation in the same way (for example, having one approach for honoring a child who dies from cancer, a car accident, or suicide);

(IV) Emphasizes the importance of seeking help for anyone with an underlying mental health diagnosis, such as a mood disorder;

(V) Emphasizes the importance of staff and other children recognizing the signs of suicide; and

(VI) Decreases the stigma associated with seeking help for mental health concerns;

(ii) Mental health resources for children and staff who have a difficult time coping, including:

(I) Opportunities to debrief to process thoughts and feelings related to the suicide death; and

(II) Referrals to grief counseling and suicide survivor support groups to the extent possible; and

(iii) A review of lessons learned from the child's death by suicide. All communications regarding lessons learned should be approached in a way that ensures a blame-free environment.

(2) Addressing Suicide Attempts. In the event of a suicide attempt according to §748.305 of this chapter (relating to What constitutes a suicide attempt by a child?), you must:

(A) As needed, immediately call emergency services and render first aid until professional medical treatment can be provided;

(B) Not leave the child alone until a mental health professional assesses the child;

(C) Move all other children out of the immediate area as soon as possible;

(D) Report and document the suicide attempt as a serious incident as required by:

(i) §748.303(a)(11) of this chapter (relating to When must I report and document a serious incident?);

(ii) §748.311 of this chapter (relating to How must I document a serious incident?); and

(iii) §748.313(1) of this chapter (relating to What additional documentation must I include with a written serious incident report?); and

(E) Offer mental health resources for children and staff who have a difficult time coping, including:

(i) Opportunities to debrief to process thoughts and feelings related to the suicide attempt; and

(ii) Referrals to grief counseling and suicide survivor support groups to the extent possible; and

(F) Conduct a review of lessons learned from the child's suicide attempt. All communications regarding lessons learned should be approached in a way that ensures a blame-free environment.

§748.126. What are the general requirements for an operation's policies and procedures?

(a) The requirements for policies only apply to your policies that are required or governed by this chapter.

(b) All employees and caregivers must be aware of and follow your policies and procedures.

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

Filed with the Office of the Secretary of State on May 2, 2022.

TRD-202201707

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: June 12, 2022

For further information, please call: (512) 438-3269



26 TAC §748.125

STATUTORY AUTHORITY

The repeal is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the

health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of the HRC.

The repeal affects Texas Government Code §531.0055 and HRC §42.0433.

§748.125. *What are the general requirements for my operation's policies and procedures?*

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

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Karen Ray

Chief Counsel

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For further information, please call: (512) 438-3269



SUBCHAPTER I. ADMISSION, SERVICE PLANNING, AND DISCHARGE DIVISION 1. ADMISSION

26 TAC §748.1205, §748.1219

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of the HRC.

The amendments affect Texas Government Code §531.0055 and HRC §42.0433.

§748.1205. *What information must I document in the child's record at the time of admission?*

(a) You must include the following in the child's record at the time of admission:

- (1) The child's name, gender, race, religion, and date of birth;
- (2) The name, address, and telephone number of the managing conservator, the primary caregivers for the child, any person with whom the child is allowed to leave the operation, and any other individual who has the legal authority to consent to the child's medical care;
- (3) The names, addresses, and telephone numbers of biological or adoptive parents, unless parental rights have been terminated;
- (4) The names, addresses, and telephone numbers of siblings;
- (5) The date of admission;
- (6) Medication the child is taking;
- (7) The child's immunization record;

(8) Allergies, such as food, medication, sting, and skin allergies;

(9) Chronic health conditions, such as asthma or diabetes;

(10) Known contraindications to the use of restraint;

(11) Identification of the child's treatment needs, if applicable, and any additional treatment services or programmatic services the child is receiving;

(12) Identification of the child's high-risk behaviors [behavior(s)], if applicable, and the safety plan staff and caregivers will implement related to the behaviors [behavior(s)];

(13) If a suicide risk screening is required at admission and the child is screened as having a high or potential risk of suicide:

(A) The identification of any risk factors or warning signs of suicide, if applicable, and not already identified in paragraph (12) of this subsection; and

(B) The safety plan staff and caregivers will implement related to the risk factors and warning signs;

(14) The results of the suicide screening at admission, if required;

(15) [(13)] A copy of the placement agreement, if applicable; and

(16) [(14)] Documentation of the attempt to notify the parent of the child's location as required by §748.1211(c)(3) of this title (relating to What information must I share with the parent at the time of placement?), if applicable.

(b) If you admit a child for emergency care services, you must document the information:

(1) Regarding the reason for admission in the child's record upon admission; and

(2) In subsection (a) of this section within 72 hours after you admit the child. If any information is not available within that time frame, you must document in the child's record reasonable efforts made to obtain the information.

(c) For emergency admissions, as opposed to a child receiving emergency care services, you must meet the requirements in Division 2 of this subchapter (relating to Emergency Admission).

§748.1219. *What are the additional admission assessment requirements when I admit a child for treatment services?*

When you admit a child for treatment services, you must do the following, as applicable:

Figure: 26 TAC §748.1219

[Figure: 26 TAC §748.1219]

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 May 2, 2022.

TRD-202201709

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: June 12, 2022

For further information, please call: (512) 438-3269



DIVISION 2. EMERGENCY ADMISSION

26 TAC §748.1271

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of the HRC.

The amendment affects Texas Government Code §531.0055 and HRC §42.0433.

§748.1271. At the time of an emergency admission, what information must I document in the child's record?

At the time of the emergency admission you must document in the child's record:

- (1) A brief description of the circumstances necessitating the emergency admission;
- (2) The date of admission;
- (3) Allergies [~~Any allergies~~], such as food, medication, sting, and skin allergies;
- (4) Chronic [~~Any chronic~~] health conditions, such as asthma or diabetes;
- (5) Known contraindications to the use of restraint;
- (6) Identification of the child's high-risk behaviors [~~behavior(s)~~], if applicable, and the safety plan staff and caregivers will implement related to the behaviors [~~behavior(s)~~];
- (7) If a suicide risk screening is required at admission and the child is screened as having a high or potential risk of suicide:
 - (A) The identification of any risk factors or warning signs of suicide, if applicable, and not already identified in paragraph (6) of this section; and
 - (B) The safety plan staff and caregivers will implement related to the risk factors and warning signs;
- (8) The results of the suicide screening at admission, if required; and
- (9) [(7)] For the purpose of providing treatment services:
 - (A) A brief description of the child's history;
 - (B) The child's current behavior; and
 - (C) Your evaluation of how the placement will meet the child's needs and best interests.

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
Earliest possible date of adoption: June 12, 2022
For further information, please call: (512) 438-3269



DIVISION 4. SERVICE PLANS

26 TAC §748.1337

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of the HRC.

The amendment affects Texas Government Code §531.0055 and HRC §42.0433.

§748.1337. What must a child's initial service plan include?

(a) You must base the child's initial service plan on the child's needs identified in the child's admission assessment and integrate trauma informed care in the care, treatment, and management of each child. The service planning team may prioritize the child's service planning goals and objectives based on the child's admission assessment. However, any required service plan components not initially addressed must have a justification for the delay in addressing the needs.

(b) The child's initial service plan must be documented in the child's record and include those items that a preliminary plan must include (see §748.1331 of this title (relating to What are the requirements for a preliminary service plan?)), and the items noted below for each specific type of service that you provide the child:

Figure: 26 TAC §748.1337(b)
[Figure: 26 TAC §748.1337(b)]

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 May 2, 2022.

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Karen Ray
Chief Counsel
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CHAPTER 749. MINIMUM STANDARDS FOR CHILD-PLACING AGENCIES

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §§749.103, 749.1107, 749.1135, 749.1189, 749.1309, 749.3391, 749.3395, and 749.3423; new §§749.136 - 749.138; and the repeal of §749.137.

BACKGROUND AND PURPOSE

The purpose of the proposal is to implement the portion of Senate Bill 1896, 87th Legislature, Regular Session, 2021, that added §42.0433 to the Texas Human Resources Code (HRC). The new section requires HHSC Child Care Regulation (CCR) to adopt a model suicide prevention, intervention, and postvention policy for use by residential child-care facilities. The new section also requires each residential child-care facility to adopt either the CCR model policy or another suicide prevention, intervention, postvention policy that has been approved by the Executive Commissioner of HHSC. The proposed rules implement those changes for child-placing agencies (CPAs).

SECTION-BY-SECTION SUMMARY

The proposed amendment to §749.103 requires a CPA, as part of the application process, to submit a suicide prevention, intervention, and postvention policy consistent with proposed new §749.136.

Proposed new §749.136 requires a CPA that provides only foster care services or foster care services and adoption services to adopt either the CCR model suicide prevention, intervention, and postvention policy provided in §749.137 or another suicide prevention, intervention, postvention policy that is approved by the Executive Commissioner of HHSC and meets the requirements of HRC §42.0433. The suicide prevention, intervention, and postvention policy adopted by a CPA may be part of a broader mental health crisis plan if the components of the plan include suicide prevention, intervention, and postvention.

Proposed new §749.137 is the model suicide prevention, intervention, and postvention policy and includes: (1) a purpose statement; (2) definitions for "postvention," "protective factors of suicide," "risk factors of suicide," "suicide contagion," "suicide risk assessment," "suicide risk screening," and "warning signs of suicide"; (3) training requirements to include (A) at least one hour of annual suicide prevention training for all caregivers and employees regarding risk factors and warning signs for suicide, understanding safety planning, and understanding suicide screening; and (B) the promotion of suicide prevention, intervention, and postvention training for non-employees, as appropriate; (4) requiring trained persons to conduct and document suicide risk screenings for certain children at admission and at other noted intervals; (5) intervention requirements if the suicide risk screening finds a child to be a high or potential risk of suicide, to include as appropriate (A) a referral to a mental health professional for a suicide risk assessment; (B) monitoring the child based on the level of risk; (C) removing harmful objects, chemicals, or substances; and (D) alerting caregivers and supervisors of the risk of suicide and any updated safety plans; (6) a requirement for protocols for a child that returns to care under the same child-placing agency post hospitalization for a mental health crisis; (7) the establishment of a postvention team to develop a written action plan with protocols in the event of a death by suicide; and (8) requirements for responding in the event of a suicide attempt.

The proposed repeal of §749.137 deletes the rule because the content of the rules has been moved to proposed new §749.138 with no modifications.

Proposed new §749.138 are the general requirements for an agency's policies and procedures and came from the proposed repeal of §749.137 with no modifications.

The proposed amendment to §749.1107 requires documentation of the following information in the child's record at the time of ad-

mission: (1) if a suicide risk screening is required at admission and the child is screened as having a high or potential risk of suicide, the identification of any risk factors or warning signs of suicide and the safety plan staff and caregivers will implement; and (2) the results of a suicide screening at admission, if required.

The proposed amendment to §749.1135 (1) updates a citation; (2) updates the wording to improve the readability and understanding of the rule; and (3) clarifies that the additional admission assessment requirements will apply when an agency intends to provide services to a child that is determined to be an immediate danger to others based on the child's behavior and history within the last two months, or a child is screened as a high or potential risk of suicide based on the results of a suicide risk screening at admission.

The proposed amendment to §749.1189 (1) deletes the requirement to record the time of the emergency admission to be consistent with the corresponding rule in Chapter 748; (2) updates the wording to improve the readability and understanding of the rule; and (3) requires the documentation of the following information in the child's record at the time of an emergency admission: (A) if a suicide risk screening is required at admission and the child is screened as having a high or potential risk of suicide, the identification of any risk factors or warning signs of suicide and the safety plan staff and caregivers will implement; and (B) the results of a suicide screening at admission, if required.

The proposed amendment to §749.1309 (1) updates a citation; and (2) broadens the requirement for plans to minimize risk of harm and a safety contract between the child and staff for children that have a suicide risk screening that indicates a high or potential risk of suicide.

The proposed amendment to §749.3391 (1) clarifies that the health history of the child in a Health, Social, Educational, and Genetic History report must include any available results of a suicide risk assessment; and (2) updates the rule for better readability and understanding.

The proposed amendment to §749.3395 clarifies that the information about community services and other resources that must be made to support a parent who adopts a child must include community services and other resources for a child who has suicidal thoughts or attempts suicide.

The proposed amendment to §749.3423 (1) restructures the rule to improve readability and understanding; and (2) requires that the counseling services offered to an adoptive placement include mental health resources when a child has suicidal thoughts or has attempted suicide or there has been a suicide death.

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 rules;
- (6) the proposed rules will expand existing rules;
- (7) the proposed rules will not change the number of individuals subject to the rules; and
- (8) the proposed rules will not affect the state's economy.

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

Trey Wood has also determined that there will be an adverse economic effect on small businesses and micro-businesses, but there is inadequate information to provide an estimate of the amounts. A CPA may adopt the model policy provided in rule or, with the approval of the Executive Commissioner or designee, its own policy that meets certain criteria provided in rule. It is not possible at this point to determine if any CPAs will seek to develop their own policy and whether such a policy would reduce any adverse economic impact that CCR's model policy could create, or what the CPA might spend developing the policy or contracting with another party to develop the policy.

CCR expects some of the tasks related to the new policy will not have an adverse economic impact. For example, annual training requirements for suicide prevention can be incorporated into the current annual training requirements, and there are several free suicide risk screening tools that a CPA may use without incurring any costs. Moreover, CCR assumes that some CPAs already meet the intervention requirements for referrals to mental health professionals and the safety planning requirements.

Conversely, CCR assumes there will be up-front, one-time costs to develop and implement a suicide prevention, intervention, and postvention policy, including determining which suicide risk screening tool a CPA will use, determining which persons will conduct the screenings, and establishing a postvention team to develop a written action plan with protocols in the event of a death by suicide. Finally, CCR also assumes that there will be ongoing costs to train the persons who will conduct the screenings and additional staff time to conduct the screenings. However, these one-time and ongoing costs will vary from CPA to CPA depending upon issues such as the suicide risk tool each CPA chooses to use, the capacity of each CPA, and how many of these tasks can be incorporated into the roles of current staff.

The Fiscal Year 2020 Residential Child Care Data Book indicates there are 226 CPAs. Based on two surveys conducted in 2010 and 2021, CCR estimates that approximately 65 percent of those CPAs do not meet the definition of a small or micro-business because they are either not for-profit or have 100 or more employees. Of the approximately 147 CPAs that meet the definition of a small or micro-business, CCR estimates that approximately 50 percent are small businesses and 50 percent are micro-businesses. No rural communities have a license as a CPA.

HHSC determined that alternative methods to achieve the purpose of the proposed rules for small businesses and micro-businesses would not be consistent with ensuring the health and safety of children in the care of CPAs. The rules do not impact 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 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

Rachel Ashworth-Mazerolle, Associate Commissioner for Child Care Regulation, has determined that for each year of the first five years the rules are in effect, the public benefit will be that the safety of the children in the care of CPAs will be improved because of new policy requirements for CPAs related to suicide prevention, intervention, and postvention and broadened requirements for safety plans.

Trey Wood has also determined that for the first five years the rules are in effect, there are expected economic costs to persons required to comply with the rules as proposed related to a model suicide prevention, intervention, and postvention policy, including costs related to the development of the policy, conducting screenings, and training. However, these one-time and ongoing costs will vary from CPA to CPA depending upon issues such as the suicide risk tool that each CPA selects, the capacity of each CPA, and how many of these tasks can be incorporated into the roles of current staff. These uncertainties lead to HHSC's inability to provide an estimate of the costs the providers could incur.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of this proposal may be directed by email to Gerry.Williams@hhs.texas.gov.

Written comments on the proposal may be submitted to Gerry Williams, Rules Writer, Child Care Regulation, Texas Health and Human Services Commission, E-550, P.O. Box 149030, Austin, Texas 78714-9030; or by email to CCRRules@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 22R005" in the subject line.

SUBCHAPTER C. ORGANIZATION AND ADMINISTRATION

DIVISION 1. PLANS AND POLICIES REQUIRED DURING THE APPLICATION PROCESS

26 TAC §§749.103, 749.136 - 749.138

STATUTORY AUTHORITY

The amendment and new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of the HRC.

The amendment and new sections affect Texas Government Code §531.0055 and HRC §42.0433.

§749.103. What policies and procedures must I submit for Licensing's approval as part of the application process?

(a) You must develop the policies and procedures identified in subsection (b) of this section. Your policies and procedures must comply with or exceed the minimum standards specified in this chapter, Chapter 42 of the Human Resources Code, Chapter 745 of this title (relating to Licensing), and any other applicable law.

(b) As part of the application process, you must submit the following policies and procedures to us for our approval:

(1) Policies and procedures related to record keeping, including where the records will be located. The policies must be consistent with Subchapter D of this chapter (relating to Reports and Records Keeping);

(2) Personnel policies and procedures consistent with §749.105 of this title (relating to What are the requirements for my personnel policies and procedures?);

(3) Conflict of interest policies consistent with §749.107 of this title (relating to What must my conflict of interest policies include?);

(4) Admission policies consistent with §749.109 of this title (relating to What must my admission policies include?);

(5) Placement policies consistent with §749.111 of this title (relating to What must my placement policies include?);

(6) Child-care policies consistent with §749.113 of this title (relating to What child-care policies must I develop?);

(7) Emergency behavior intervention policies consistent with §749.115 of this title (relating to What emergency behavior intervention policies must I develop if my foster homes are permitted to use emergency behavior intervention?);

(8) Discipline policies consistent with §749.117 of this title (relating to What are the requirements for my discipline policies for children in care?);

(9) Foster care policies consistent with §749.119 of this title (relating to What foster care policies must I develop?);

(10) Rights and responsibilities of the child-placing agency and the foster parents consistent with §749.121 of this title (relating to What policies must I develop concerning the rights and responsibilities of the child-placing agency and foster parents?);

(11) Additional policies for foster parents that provide treatment services consistent with §749.123 of this title (relating to What policies must I develop regarding foster parents who provide treatment services to a child with primary medical needs?);

(12) Additional policies for foster parents who offer a transitional living program consistent with §749.125 of this title (relating to What policies must I develop for foster parents who offer a transitional living program?);

(13) Policies for babysitters, overnight care providers, and respite care providers consistent with §749.127 of this title (relating to What policies must I develop for babysitters, overnight care providers, and respite care providers?);

(14) Policies for a legal risk placement program consistent with §749.129 of this title (relating to What policies must I develop for a legal risk placement program for foster-adoptive families?);

(15) Adoption policies, if applicable, consistent with §749.131 of this title (relating to What policies must I develop if I offer adoption services?);

(16) Volunteer policies consistent with §749.133 of this title (relating to What policies must I develop if I use volunteers?);

(17) Abuse and neglect policies consistent with §749.135 of this title (relating to What abuse and neglect policies must I develop?);

(18) An appeal process for adult clients consistent with Division 8 of this subchapter [~~Subchapter C~~] (relating to Clients and Appeals);

(19) A weapons, firearms, explosive materials, and projectiles policy, for foster care services, consistent with Division 3 of Subchapter O (relating to Weapons, Firearms, Explosive Materials, and Projectiles); [~~and~~]

(20) A tobacco and e-cigarette policy consistent with §749.2931 of this title (relating to What policies must I enforce regarding tobacco products and e-cigarettes?); and [-]

(21) A suicide prevention, intervention, and postvention policy consistent with §749.136 of this division (relating to What suicide prevention, intervention, and postvention policy must I have?).

§749.136. What suicide prevention, intervention, and postvention policy must I have?

(a) A child-placing agency that is licensed or certified to provide only foster care services or to provide both foster care services and adoption services must adopt either:

(1) The model suicide prevention, intervention, and postvention policy in §749.137 of this division (relating to What is the model suicide prevention, intervention, and postvention policy?); or

(2) Another suicide prevention, intervention, and postvention policy that is approved by the Executive Commissioner of the Texas Health and Human Services Commission or designee and:

(A) Addresses suicide prevention, intervention, and prevention for children in the care of your agency;

(B) Is based on current and best evidence-based practices;

(C) Requires all caregivers and employees to receive annual suicide prevention training that includes understanding of safety planning and screening for risk;

(D) Promotes suicide prevention training for non-employees, as appropriate; and

(E) Includes plans and procedures to support children who return to your agency's care following hospitalization for a mental health condition.

(b) The suicide prevention, intervention, and postvention policy adopted under subsection (a) of this section may be part of a broader mental health crisis plan if the components of the plan include suicide prevention, intervention, and postvention.

§749.137. What is the model suicide prevention, intervention, and postvention policy?

(a) Purpose. The purpose of the model suicide prevention, intervention, and postvention policy is to:

(1) Protect the health and well-being of children in an agency's care by implementing procedures to prevent suicide, including screening and assessment procedures for risk of suicide;

(2) Require intervention when a child attempts or dies by suicide; and

(3) Address the needs of children in an agency's care, employees, caregivers, and adoptive parents after a child attempts or dies by suicide.

(b) Definitions.

(1) Postvention--Activities that promote healing and reduce the risk of suicide by a person affected by the suicide of another.

(2) Protective factors of suicide--Characteristics that make it less likely that a child will consider, attempt, or die by suicide, including:

(A) Effective behavioral health care;

(B) Connectedness to individuals, family, community, and social institutions;

(C) Supportive relationships with caregivers;

(D) Problem-solving skills, coping skills, and ability to adapt to change;

(E) Self-esteem or sense of purpose; and

(F) Cultural or personal beliefs that discourage suicide.

(3) Risk factors of suicide--Characteristics or conditions that increase the chance that a child may consider, attempt, or die by suicide, including:

(A) A prior suicide attempt;

(B) Knowing someone who died by suicide, particularly a family member, friend, peer, or hero;

(C) Access to lethal means;

(D) History of childhood trauma, including neglect, physical abuse, or sexual abuse or assault;

(E) A history of being bullied;

(F) A mental health diagnosis, particularly depressive disorders and other mood disorders;

(G) Abuse of alcohol or drugs;

(H) Social isolation;

(I) Severe or prolonged stress;

(J) Chronic physical pain or illness;

(K) Loss of a family member; or

(L) The ending of a relationship.

(4) Suicide contagion--Exposure to suicide or suicidal behaviors within a family, or from friends or media reports, that can result in an increase in suicide or suicidal behaviors.

(5) Suicide risk assessment--A comprehensive evaluation of a child by a medical health professional to confirm suspected suicide risk, estimate the immediate danger to the child, and decide on a course of treatment and a plan for intervention to ensure the child's safety.

(6) Suicide risk screening--A procedure in which a standardized instrument is used to identify children who may be at risk of suicide. The screening may be done orally (with the screener asking questions), with pencil and paper, or using a computer.

(7) Warning signs of suicide--Indicators that a child may be in danger of suicide and need help, including:

(A) Talking about wanting to die or to hurt or kill oneself;

(B) Looking for a way to kill oneself;

(C) Being preoccupied with death in conversation, writing, or drawing;

(D) Talking about feeling hopeless or having no reason to live;

(E) A change in personality;

(F) Giving away belongings;

(G) Withdrawing from friends and family;

(H) Having aggressive or hostile behavior;

(I) Neglecting personal appearance;

(J) Running away from home or a residential placement; or

(K) Risk-taking behavior, such as reckless driving or being sexually promiscuous.

(c) Prevention--Training.

(1) All caregivers and employees must complete at least one hour of annual suicide prevention training that meets the instructor and documentation requirements of Subchapter F, Division 7 of this chapter (relating to Annual Training) with a curriculum that includes:

(A) The risk factors, protective factors, and warning signs of suicide;

(B) Understanding safety planning, including:

(i) How safety plans are created;

(ii) How safety plans are shared with employees and caregivers;

(iii) How safety plans are expected to be implemented by employees and caregivers; and

(iv) Each employee's or caregiver's role in the prevention of suicide, including never leaving a child alone if the suicide risk screening finds that the child is a high risk for suicide, until a mental health professional conducts a suicide risk assessment; and

(C) Understanding suicide screening, including clarifying:

(i) Each person's role in the screening process;

(ii) When an employee or caregiver should initiate a suicide risk screening for a child; and

(iii) What actions an employee or caregiver must take to initiate a suicide risk screening for a child.

(2) The agency must promote suicide prevention training for non-employees, as appropriate.

(d) Prevention--Suicide Risk Screening.

(1) The policy must describe the suicide risk screening tool that you will use and the process for implementing the screenings.

(2) The suicide risk screening tool must be supported by evidence-based research demonstrating the tool performs reliably regardless of who administers the tool or performs the scoring or rating.

(3) Any person who meets the conditions and training requirements of the screening tool manual or instructions may administer the suicide risk screening to a child. You must document that any person conducting a screening meets the conditions and training requirements.

(4) For children receiving foster care services, the screening tool must be administered:

(A) At admission for each child 10 years of age or older;

(B) At admission for each child younger than 10 years of age if:

(i) The child has a history of suicide attempts or suicidal thoughts; or

(ii) The parent who admits the child, a foster parent, or child-placing agency requests a screening to be administered because of the child's risk factors or warning signs of suicide;

(C) Every 90 days after admission for all children 10 years of age or older; and

(D) Immediately for a child of any age whenever the child exhibits warning signs of suicide that necessitate a suicide screening be conducted, including when requested by a foster parent.

(5) For children receiving adoption services, the screening tool must be administered immediately for a child of any age whenever the child exhibits warning signs of suicide that necessitate a suicide screening be conducted, including when requested by an adoptive parent.

(6) Any screening must be performed in a manner that protects the child's privacy.

(7) Each screening must be documented in the child's record.

(e) Intervention--Based on the Results of a Suicide Risk Screening.

(1) If the suicide risk screening finds the child to be a high risk for suicide, the agency, caregiver, or adoptive parent must:

(A) Immediately refer the child to a mental health professional for a suicide risk assessment;

(B) Not leave the child alone until a mental health professional assesses the child;

(C) Remove any harmful objects, chemicals, or substances that a child could use to carry out a suicide attempt;

(D) Alert each person responsible for the child's care or supervision of the high risk for suicide and any new or updated safety plan; and

(E) Upon conclusion of the risk assessment, follow through on recommendations by the mental health professional and update the child's safety plan and service plan accordingly.

(2) If the suicide risk screening finds the child to have a potential for risk of suicide, the agency, caregiver, or adoptive parent must:

(A) Refer the child to a mental health professional for a suicide risk assessment within 24 hours;

(B) Closely monitor the child to ensure the child's safety until a mental health professional assesses the child;

(C) Remove any harmful objects, chemicals, or substances that a child could use to carry out a suicide attempt;

(D) Alert each person responsible for the child's care or supervision of the potential risk of suicide and any new or updated safety plan; and

(E) Upon conclusion of the risk assessment, follow through on recommendations by the mental health professional and update the child's safety plan and service plan accordingly.

(f) Intervention--Returning Post Hospitalization. To ensure a child's readiness to return to care under the same child-placing agency following a mental health crisis (for example, from a suicide attempt or psychiatric hospitalization):

(1) Two members of the service planning team, including a child placement management staff, must meet with the child within 24 hours of the child's arrival to a home to discuss protocols that would help to ease the child's transition into the home post hospitalization, ensure the child's safety, and reduce any risk of suicide.

(2) The protocols must include:

(A) Weekly suicide risk screenings for the first 30 days or until the child is no longer reporting suicidal thoughts, whichever is longer;

(B) Creating or reviewing and updating the child's safety plan; and

(C) Removal of any harmful objects, chemicals, or substances that a child could use to carry out a suicide attempt or self-harm for a period to be determined by the treatment team, but not less than 30 days.

(3) The agency must alert any persons responsible for the child's care or supervision of the new protocols and new or updated safety plan.

(g) Postvention.

(1) Addressing Suicide Deaths.

(A) Create a Postvention Team and Written Action Plan and Protocols. To prevent suicide contagion and support employees, children, caregivers, and adoptive parents, you must create a postvention team. This team is responsible for developing a written action plan with protocols in the event of a death by suicide. The postvention team should consider:

(i) How a death would affect employees, caregivers, adoptive parents, and other children receiving services in the home where the death occurred; and

(ii) How to provide psychological first-aid, crisis intervention, and other support to the employees, caregivers, adoptive parents, and other children receiving services in the home where the death occurred.

(B) While the action plan needs to be flexible for varying situations, the written action plan must include:

(i) A communication strategy that:

(I) Does not inadvertently glamorize or romanticize the child or the death;

(II) Occurs in settings that allow the postvention team to monitor responses of individuals in the home;

(III) Strives to treat all deaths in the same way (for example, having one approach for honoring a child who dies from cancer, a car accident, or suicide);

(IV) Emphasizes the importance of seeking help for anyone with an underlying mental health diagnosis, such as a mood disorder;

(V) Emphasizes the importance of employees, caregivers, adoptive parents, and children recognizing the signs of suicide; and

(VI) Decreases the stigma associated with seeking help for mental health concerns;

(ii) Mental health resources for employees, caregivers, adoptive parents, and children who have a difficult time coping, including:

(I) Opportunities to debrief to process thoughts and feelings related to the suicide death; and

(II) Referrals to grief counseling and suicide survivor support groups to the extent possible; and

(iii) A review of lessons learned from the child's death by suicide. All communications regarding lessons learned should be approached in a way that ensures a blame-free environment.

(2) Addressing Suicide Attempts. In the event of a suicide attempt according to §749.505 of this chapter (relating to What constitutes a suicide attempt by a child?):

(A) The caregiver must, as needed, immediately call emergency services and render first aid until professional medical treatment can be provided;

(B) The caregiver must not leave the child alone until a mental health professional assesses the child;

(C) The caregiver must move all other children out of the immediate area as soon as possible;

(D) The agency must report and document the suicide attempt as a serious incident as required by:

(i) §749.503(a)(11) of this chapter (relating to When must I report and document a serious incident?);

(ii) §749.511 of this chapter (relating to How must I document a serious incident?); and

(iii) §749.513(1) of this chapter (relating to What additional documentation must I include with a written serious incident report?);

(E) The agency must offer mental health resources for employees, caregivers, and children who have a difficult time coping, including:

(i) Opportunities to debrief to process thoughts and feelings related to the suicide attempt; and

(ii) Referrals to community services and other resources when a child has attempted suicide; and

(F) The agency must conduct a review of lessons learned from the child's suicide attempt. All communications regarding lessons learned should be approached in a way that ensures a blame-free environment.

§749.138. What are the general requirements for an agency's policies and procedures?

(a) The requirements for policies only apply to your policies that are required or governed by this chapter.

(b) All employees and caregivers must be aware of and follow your policies and procedures.

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

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TRD-202201728

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: June 12, 2022

For further information, please call: (512) 438-3269



26 TAC §749.137

STATUTORY AUTHORITY

The repeal is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of the HRC.

The repeal affects Texas Government Code §531.0055 and HRC §42.0433.

§749.137. What are the general requirements for my agency's policies and procedures?

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

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SUBCHAPTER H. FOSTER CARE SERVICES:

ADMISSION AND PLACEMENT

DIVISION 1. ADMISSIONS

26 TAC §749.1107

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC

to adopt rules to carry out the requirements of Chapter 42 of the HRC.

The amendment affects Texas Government Code §531.0055 and HRC §42.0433.

§749.1107. *What information must I document in the child's record at the time of admission?*

(a) You must include the following in the child's record at the time of admission:

(1) The child's name, gender, race, religion, and date of birth;

(2) The name, address, and telephone number of the managing conservator [conservator(s)], the primary caregivers for the child, any person with whom the child is allowed to leave the foster home, and any other individual who has the legal authority to consent to the child's medical care;

(3) The names, addresses, and telephone numbers of biological or adoptive parents, unless parental rights have been terminated;

(4) The names, addresses, and telephone numbers of siblings;

(5) The date of admission;

(6) Medication the child is taking;

(7) The child's immunization record;

(8) Allergies, such as food, medication, sting, and skin allergies;

(9) Chronic health conditions, such as asthma or diabetes;

(10) Known contraindications to [of] the use of restraint;

(11) Identification of the child's treatment needs, if applicable, and any additional treatment services or programmatic services the child is receiving;

(12) Identification of the child's high-risk behaviors [behavior(s)], if applicable, and the safety plan employees [staff] and caregivers will implement related to the behaviors [behavior(s)];

(13) If a suicide risk screening is required at admission and the child is screened as having a high or potential risk of suicide:

(A) The identification of any risk factors or warning signs of suicide, if applicable and not already identified in paragraph (12) of this section; and

(B) The safety plan employees and caregivers will implement related to the risk factors and warning signs;

(14) The results of the suicide screening at admission, if required;

(15) [(13)] A copy of the placement agreement, if applicable; and

(16) [(14)] Documentation of the attempt to notify the parent of the child's location as required by §749.1113(c)(3) of this title (relating to What information must I share with the parent at the time of placement?), if applicable.

(b) For emergency admissions, you must meet the requirements in Division 4 of this subchapter (relating to Emergency Admission).

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) 438-3269



DIVISION 2. ADMISSION ASSESSMENT

26 TAC §749.1135

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of the HRC.

The amendment affects Texas Government Code §531.0055 and HRC §42.0433.

§749.1135. *What are the additional admission assessment requirements when I admit a child for treatment services?*

When you admit a child for treatment services, you must do the following, as applicable:

Figure: 26 TAC §749.1135

~~[Figure: 26 TAC §749.1135]~~

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

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DIVISION 4. EMERGENCY ADMISSION

26 TAC §749.1189

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of the HRC.

The amendment affects Texas Government Code §531.0055 and HRC §42.0433.

§749.1189. *At the time of an emergency admission, what information must I document in the child's record?*

At the time of the emergency admission you must document in the child's record:

- (1) A brief description of the circumstances necessitating the emergency admission;
- (2) The date [and time] of admission;
- (3) Allergies, such as food, medication, sting, and skin allergies;
- (4) Chronic health conditions, such as asthma or diabetes;
- (5) Known contraindications [~~contra-indications~~] to the use of restraint;
- (6) Identification of the child's high-risk behaviors [~~behavior(s)~~], if applicable, and the safety plan employees [~~staff~~] and caregivers will implement related to the behaviors; [~~behavior(s)~~; and]
- (7) If a suicide risk screening is required at admission and the child is screened as having a high or potential risk of suicide:
 - (A) The identification of any risk factors or warning signs of suicide, if applicable and not already identified in paragraph (6) of this section; and
 - (B) The safety plan employees and caregivers will implement related to the risk factors and warning signs;
- (8) The results of the suicide screening at admission, if required; and
- (9) [(7)] For the purpose of providing treatment services:
 - (A) A brief description of the child's history;
 - (B) The child's current behavior; and
 - (C) Your evaluation of how the placement will meet the child's needs and best interests.

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

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For further information, please call: (512) 438-3269



SUBCHAPTER I. FOSTER CARE SERVICES: SERVICE PLANNING, DISCHARGE DIVISION 1. SERVICE PLANS

26 TAC §749.1309

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective

Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of the HRC.

The amendment affects Texas Government Code §531.0055 and HRC §42.0433.

§749.1309. *What must a child's initial service plan include?*

(a) You must base the child's initial service plan on the child's needs identified in the child's admission assessment and integrate trauma informed care in the care, treatment, and management of each child. The service planning team may prioritize the child's service planning goals and objectives based on the child's admission assessment. However, any required service plan components not initially addressed must have a justification for the delay in addressing the needs.

(b) The child's initial service plan must be documented in the child's record and include those items that a preliminary plan must include (see §749.1301 of this title (relating to What are the requirements for a preliminary service plan?)), and the items noted below for each specific type of service that you provide the child:

Figure: 26 TAC §749.1309(b)

[Figure: 26 TAC §749.1309(b)]

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) 438-3269



SUBCHAPTER Q. ADOPTION SERVICES: CHILDREN

DIVISION 5. REQUIRED INFORMATION

26 TAC §749.3391, §749.3395

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of the HRC.

The amendments affect Texas Government Code §531.0055 and HRC §42.0433.

§749.3391. *What information must I compile for a child I am considering for adoptive placement?*

(a) As part of the Health, Social, Educational, and Genetic History report, you must compile the following information for a child you are considering for adoption placement:

Figure: 26 TAC §749.3391(a)

[Figure: 26 TAC §749.3391(a)]

(b) In addition, you must document the following in the child's record:

Figure: 26 TAC §749.3391(b)
[Figure: 26 TAC §749.3391(b)]

(c) This section does not apply to an adoption by the child's:

- (1) Grandparent;
- (2) Aunt or uncle by birth, marriage, or prior adoption; or
- (3) Stepparent.

§749.3395. *What information must I provide the adoptive parents prior to or at the time of adoptive placement?*

(a) The agency must discuss information about the child and his birth parents with the prospective adoptive parents.

(b) According to the Texas Family Code §162.0062, you must inform the prospective adoptive parents of their right to examine the records and other information relating to the history of the child, including the Health, Social, Educational, and Genetic History (HSEGH) report and the child's health history within the HSEGH, if you are required to do a HSEGH for the adoption.

(c) Any records or other information examined by the prospective adoptive parents or any written information provided to the prospective adoptive parents must be edited to protect any confidential information.

(d) You must also provide the prospective adoptive parents with:

(1) Research, which may be suggested reading materials and/or websites, on how any known health issue that the child has and/or any trauma the child has experienced (i.e. abuse or neglect) may impact child development and the family's ability to maintain permanency;

(2) Information about the Department of Family and Protective Services (DFPS) adoption assistance programs, if the family may be eligible for such assistance;

(3) Information about community services and other resources available to support a parent who adopts a child, including community services and other resources for a child who has suicidal thoughts or attempts suicide; and

(4) The options available to the adoptive parent if the parent is unable to care for the adopted child, including working with the parent's post adopt provider about the possibility of post adoption substitute care services or working with the child placing agency that placed the child for adoption regarding any additional services. You should also inform the adoptive parents that the Texas Family Code, §162.026 makes it illegal to informally transfer the custody of an adopted child to a person, unless the person is a relative or stepparent of the child or an adult who has a significant long-standing relationship with the child, or the transfer of custody is a formal transfer of custody of the child through a court.

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

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Karen Ray
Chief Counsel
Health and Human Services Commission
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DIVISION 6. POST-PLACEMENT SUPERVISION

26 TAC §749.3423

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of the HRC.

The amendment affects Texas Government Code §531.0055 and HRC §42.0433.

§749.3423. *What responsibility do I have to offer counseling services to the adoptive family?*

(a) To reduce the risk of adoptive placement breakdown, you must offer counseling services to the adoptive family. [You must ensure that the adoptive family is aware that counseling is available.]

(b) Counseling services may be provided by your agency or by an outside counseling resource.

(c) The counseling services must provide mental health resources for the child, if applicable, the adoptive parents, and other children in the care of your agency that are placed in the adoptive home, including:

(1) Opportunities to debrief to process thoughts and feelings related to a suicide attempt or suicide death;

(2) Referrals to community services and other resources for a child who has suicidal thoughts or attempted suicide; and

(3) Referrals to grief counseling and suicide survivor support groups.

(d) You must ensure that the adoptive family is aware that counseling is available.

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

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Karen Ray
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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 700. CHILD PROTECTIVE SERVICES

SUBCHAPTER M. SUBSTITUTE-CARE SERVICES

DIVISION 1. GENERAL

40 TAC §700.1311

The Department of Family and Protective Services (DFPS), proposes amendments to §700.1311 in Title 40, Texas Administrative Code (TAC), Chapter 700, Subchapter M, Division 1 relating to Substitute Care Services.

BACKGROUND AND PURPOSE

The purpose of the rule revisions is to implement Texas Family Code §264.1214(g) enacted pursuant to House Bill (HB) 700 from the 87th Regular Session (2021). The statute requires DFPS to promulgate a rule for a protocol that may be implemented to help prevent youth from aging out of a residential treatment center.

SECTION-BY-SECTION SUMMARY

The proposed amendments to §700.1311 would require caseworkers to include in the Child's Plan of Service transition plan goals that assist in preventing the youth from aging out of foster care from a residential treatment center. The goals must be consistent with the youth's best interest and special needs; be in the transition plan in the Child's Plan of Service by the youth's 17th birthday, or at the time the youth is placed in the residential treatment center when the youth's placement occurs after their 17th birthday; and discussed and evaluated with the youth each month. To effectuate the bill's intent that the action is discretionary, that is, the protocol "may" be implemented but is not required to be, the rule includes the language "as appropriate". The rule does not prescribe what goals workers are to include, as each youth's situation is unique, and workers need the flexibility to design goals specific to the youth's needs. However, such goals could include improving social interaction skills, general life-skills goals, or achieving certain treatment milestones.

FISCAL NOTE

Tamela Griffin, acting Chief Financial Officer of DFPS, has determined that for each year of the first five years that the rule amendment will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed.

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

(3) implementation will not require an increase or decrease in future legislative appropriations to the agency;

(4) the proposed amendment will not affect fees paid to the agency;

(5) the proposed amendment will not create new regulations;

(6) the proposed amendment will not repeal existing regulations;

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

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

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

Tamela Griffin has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The rules do not apply to small or micro-businesses, or rural communities.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with these sections as proposed.

There is no anticipated negative impact on local employment.

COSTS TO REGULATED PERSONS

Pursuant to subsection (c)(7) of Texas Government Code §2001.0045, the statute does not apply to a rule that is adopted by the Department of Family and Protective Services.

PUBLIC BENEFIT

Vicki Kozikoujekian, General Counsel of DFPS, has determined that for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of enforcing the amendment is a reduction in youth aging out of foster care from residential treatment centers.

REGULATORY ANALYSIS

The department has determined that this amendment is not a "major environmental rule" as defined by Government Code §2001.0225.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments and questions on this proposal must be submitted within 30 days of publication of the proposal in the *Texas Register*. Electronic comments and questions may be submitted to Christy Ashworth-Mazerolle at Christy.Ashworthmazerolle@dfps.texas.gov. Hard copy comments may be submitted to the DFPS Rules Coordinator, Legal Services 22R05, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030.

STATUTORY AUTHORITY

The proposed amendment implements Texas Family Code §264.1214(g) enacted pursuant to House Bill 700 from the 87th Regular Session (2021).

The modification is proposed under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall oversee the development of rules relating to the matters within the department's jurisdiction and adopt rules for the operation and provision of services by the department.

§700.1311. What special considerations apply when selecting a placement other than a relative or other person with whom the child has a long-standing and significant relationship?

(a) - (c) (No change.)

(d) For youth who are placed in a residential treatment center the caseworker, as appropriate, includes in the Child's Plan of Service, transition plan goals that assist in preventing the youth from aging out of foster care from a residential treatment center. The goals must be:

(1) consistent with the youth's best interest and special needs;

(2) in the transition plan in the Child's Plan of Service by the youth's 17th birthday, or at the time the youth is placed in the residential treatment center when the youth's placement occurs after the youth's 17th birthday; and

(3) discussed and evaluated with the youth each month.

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 April 27, 2022.

TRD-202201659

Vicki Kozikoujekian

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: June 12, 2022

For further information, please call: (512) 929-6824



40 TAC §700.1335

The Department of Family and Protective Services (DFPS), proposes amendments to §700.1335 in Title 40, Texas Administrative Code (TAC), Chapter 700, Subchapter M, concerning Substitute-Care Services.

BACKGROUND AND PURPOSE

The purpose of this rule change is to allow single parents to participate in treatment foster care by lessening employment restrictions. The rule currently requires that a Treatment Foster Family Care home include, among other things, at least one foster parent who does not work outside the home. SB 1896, enacted in the 87th R.S., requires DFPS and Single Source Continuum Contractors to lessen employment restrictions so that single parents can participate, as long as quality care can be assured.

SECTION-BY-SECTION SUMMARY

The proposed amendments to §700.1335: (1) the requirement that a Treatment Foster Family Care home include at least one parent who does not work outside the home is deleted from the rule; (2) the rule is amended to state that a Treatment Foster Family Care home is one that includes one or two parents who are highly trained to meet the specific needs of this child population; and (3) the amended rule states that single parents can participate as long as quality care can be assured.

FISCAL NOTE

Tamela Griffin, Acting Chief Financial Officer of DFPS, has determined that for each year of the first five years that the amended section will be in effect, the change in law may result in more foster parents eligible for participation in the Treatment Foster Family Care program, which may in turn result in more children receiving these services. It is assumed any increased costs for additional utilization of Treatment Foster Family Care would be offset by an associated reduction in costs resulting from lower use of Specialized or Intensive Residential Treatment.

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

(3) implementation will not require an increase or decrease in future legislative appropriations to the agency;

(4) the proposed amended rule will not affect fees paid to the agency;

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

(6) the proposed amended rule will expand an existing regulation by allowing an additional population of foster parents, i.e. single foster parents, to participate in Treatment Foster Family Care.

(7) the proposed amended rule will change the number of individuals subject to the rule because more foster parents may be eligible to participate in the Treatment Foster Family Care, which would therefore increase the number of individuals subject to the rule; and

(8) the proposed amended rule will not affect the state's economy as the rules will be implemented with existing resources.

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

Tamela Griffin has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The rule does not apply to small or micro-businesses, or rural communities.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with this section as proposed.

There is no anticipated negative impact on local employment.

COSTS TO REGULATED PERSONS

Pursuant to subsection (c)(7) of Texas Government Code §2001.0045, the statute does not apply to a rule that is adopted by the Department of Family and Protective Services.

PUBLIC BENEFIT

Deneen Dryden, Associate Commissioner for Child Protective Services, has determined that for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of the of rule change is that more individuals will be able to participate in the Treatment Foster Family Care Program and

therefore more children in need of these services can receive help.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments and questions on this proposal must be submitted within 30 days of publication of the proposal in the *Texas Register*. Electronic comments and questions may be submitted to Kristen Attie, DFPS Policy Attorney at Kristen.Attie@dfps.texas.gov. Hard copy comments may be submitted to the DFPS Rules Coordinator, Legal Services 22R02, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030.

STATUTORY AUTHORITY

The proposed amended section implements Texas Family Code § 264.1073, which was recently added by SB 1896 (87th R.S.).

The modification is proposed under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall oversee the development of rules relating to matters within the department's juris-

diction and notwithstanding any other law, shall adopt rules for the operation and provision of services by the department.

§700.1335. *What is the Treatment Foster Family Care Program?*

(a) - (b) (No change.)

(c) A Treatment Foster Family Care home includes:

(1) one or two foster parents [at least one foster parent] who are [does not work outside of the home and is] highly-trained to meet the specific needs of this child population. Single parents can participate as long as quality care can be assured;

(2) a limitation of no more than two foster children at one time; and

(3) other characteristics and limitations specified in the contract.

(d) (No change.)

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

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

TRD-202201660

Vicki Kozikoujekian

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: June 12, 2022

For further information, please call: (512) 929-6824

