

REVIEW OF AGENCY RULES

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039.

Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Review

State Board of Dental Examiners

Title 22, Part 5

The Texas State Board of Dental Examiners (Board) files this Notice of Intent to Review to consider for re-adoption, revision, or repeal the chapters listed below, in their entirety, contained in Title 22, Part 5, of the Texas Administrative Code. This review is being conducted in accordance with Texas Government Code §2001.039.

Rule Chapters Under Review

Chapter 110, Sedation and Anesthesia

Chapter 113, Requirements for Dental Offices

During the review, the Board will assess whether the reasons for adopting or readopting the rules in these chapters continue to exist. The Board will review each rule to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current Board procedures. This review is required every four years.

Written comments regarding the review of these chapters may be submitted to Carol Pepper, Legal Assistant at 1801 Congress Avenue, Suite 8.600, Austin, Texas 78701; by facsimile to (512) 649-2482; or by email to official_rules_comments@tsbde.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

Any proposed changes to the rules in these chapters as a result of the rule review will be published in the Proposed Rules section of the *Texas Register*. The proposed rules will be open for public comment before final adoption by the Board in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

TRD-202501512

Lauren Studdard

General Counsel

State Board of Dental Examiners

Filed: May 2, 2025



Adopted Rule Reviews

Texas Department of Licensing and Regulation

Title 16, Part 4

The Texas Department of Licensing and Regulation (Department) filed a Notice of Intent to Review to consider for re-adoption, revision, or repeal the rule chapters listed below, in their entirety, under Title 16, Part

4, of the Texas Administrative Code (TAC). This review was conducted in accordance with Texas Government Code §2001.039.

Rule Chapters Under Review

The Department reviewed the following rule chapters:

Chapter 76, Water Well Drillers and Water Well Pump Installers

Chapter 84, Driver Education and Safety

Chapter 85, Vehicle Storage Facilities

Chapter 86, Vehicle Towing and Booting

Chapter 91, Dog or Cat Breeders Program

Chapter 100, General Provisions for Health-Related Programs

Chapter 110, Athletic Trainers

Chapter 111, Speech-Language Pathologists and Audiologists

Chapter 112, Hearing Instrument Fitters and Dispensers

Chapter 114, Orthotists and Prosthetists

Chapter 115, Midwives

Chapter 116, Dietitians

Public Comments

A combined Notice of Intent to Review for all of the chapters listed above was published in the November 22, 2024, issue of the *Texas Register* (49 TexReg 9571). The public comment period closed on December 23, 2024. The Department received public comments from 54 interested parties in response to the Notice of Intent to Review, including three who provided comments at the April 9, 2025, meeting of the Texas Commission of Licensing and Regulation, the Department's governing body. The public comments received for each chapter are explained below.

Chapter 76, Water Well Drillers and Water Well Pump Installers

The Department received written public comments from six interested parties in response to the Notice of Intent to Review for Chapter 76, Water Well Drillers and Water Well Pump Installers. The comments were submitted by the Texas Groundwater Association, the Texas Alliance of Groundwater Districts, and four individuals. Of the comments that were received, the Department received one comment in support of re-adoption of the rules. The commentor stated that the rules "Provide adequate oversight of the water well industry, ensuring professionalism, public health, and resource protection." The Department has taken this comment into consideration as part of this review. The Department received four comments requesting amendments to the rules. The suggested rule changes focused on updating or refining definitions,

exam requirements, continuing education requirements, and technical requirements. The Department will take these comments into consideration for a possible future rulemaking because any amendments must be made using the standard rulemaking process. The Department received two public comments that are unrelated to the rules under review. These comments will be directed to the appropriate divisions for consideration. The Department will not take any further rulemaking action as a result of these unrelated comments.

Chapter 84, Driver Education and Safety

The Department received a written public comment from one interested party in response to the Notice of Intent to Review for Chapter 84, Driver Education and Safety. The interested party requested an amendment to the rules under 16 TAC §84.82 to remove the class instruction duration term in the student enrollment contracts. The Department will take this comment into consideration for a possible future rulemaking because any amendments must be made using the standard rulemaking process.

Chapter 85, Vehicle Storage Facilities

The Department received written public comments from one interested party in response to the Notice of Intent to Review for Chapter 85, Vehicle Storage Facilities. The interested party suggested adding a rule that requires explicit authorization from a vehicle owner before a Vehicle Storage Facility (VSF) may release a vehicle to an insurance company. The Department will take this comment into consideration for a possible future rulemaking because any amendments must be made using the standard rulemaking process. The interested party also suggested modifications to TDLR-approved VSF forms and the adoption of an electronic verification system, neither of which are related to the rules. These comments will be directed to the appropriate divisions for consideration. The Department will not take any further rulemaking action as a result of these unrelated comments.

Chapter 86, Vehicle Towing and Booting

The Department received written public comments from two interested parties in response to the Notice of Intent to Review for Chapter 86, Vehicle Towing and Booting. The comments were submitted by the Fort Worth Police Department Auto Pound and an individual. The Department received comments suggesting amendments to 16 TAC §86.250, §86.701, and §86.709, as well as a request to keep the 16 TAC §86.201 requirements intact. The suggested amendments to these rules would: create more stringent testing and CE requirements for tow operators, particularly with regards to incident management tows; eliminate "ghost lettering" for required license numbers on tow vehicles; and add a requirement for tow tickets to contain the name and contact information of a person or entity requesting a tow. The Department will take these comments into consideration for a possible future rulemaking because any amendments must be made using the standard rulemaking process.

The Department also received one comment suggesting changes to the rules that first require statutory changes to be made. The comment suggested amending 16 TAC §86.650 to add a member of the public to the Towing and Storage Advisory Board. The Department cannot take any rulemaking action on this comment because it requires statutory changes to be made by the Texas Legislature.

Chapter 91, Dog or Cat Breeders Program

The Department received written public comments from four interested parties in response to the Notice of Intent to Review for Chapter 91, Dog or Cat Breeders Program. The Department received two comments requesting an amendment to 16 TAC §91.30(a) to specifically include cats in the exemption definition. The Department will take these comments into consideration for a possible future rulemaking because

any amendments must be made using the standard rulemaking process. The Department received one comment requesting changes related to the statute. The interested party expressed support for legislation concerning the program. The Department cannot take any action regarding this comment because changes to the statute must be made by the Texas Legislature. The Department also received one comment that is unrelated to the rule review. The interested party expressed general criticism of the Dog or Cat Breeders program and the breeder licensing numbers. The Department will not take any further rulemaking action as result of this unrelated comment.

Chapter 100, General Provisions for Health-Related Programs

The Department received written public comments from two interested parties, one of which submitted a late comment, in response to the Notice of Intent to Review for Chapter 100, General Provisions for Health-Related Programs. The Department received one comment that was primarily in support of re-adoption of the rules. The interested party answered "yes" in response to the questions of whether the rules reflect current legal and policy considerations and whether the rules are in alignment with the current procedures of the Department but also answered "yes" in response to the question of whether the rules are obsolete. The Department received one late comment in support of re-adoption of the rules. The interested party stated that no changes are required to the current programs, and that the current requirements have served the programs well in the past four years and should continue to serve. The Department has taken these comments into consideration as part of this review.

Chapter 110, Athletic Trainers

The Department received written public comments from one interested party in response to the Notice of Intent to Review for Chapter 110, Athletic Trainers. The comment was in support of re-adoption of the rules. The Department has taken this comment into consideration as part of this review.

Chapter 111, Speech-Language Pathologists and Audiologists

The Department received written public comments from one interested party regarding the rule review of Chapter 111, Speech-Language Pathologists and Audiologists. The comments were submitted by the Texas Academy of Audiology (TAA) in response to a Notice of Intent to Review that was published January 31, 2025. The comments, however, address Chapter 111, which is part of the current Notice of Intent to Review that was published November 22, 2024. The comments on Chapter 111 will be treated as late comments and will be addressed as part of the current rule review.

The Department received one comment requesting amendments to the rules. The comment requested changes to 16 TAC §112.140(c) to require informing consumers prior to purchase that they will receive "locked" prescription hearing aids or hearing aids that require the purchaser to seek care exclusively through the specific retailer who originally dispensed the prescription hearing aids. The Department will take this comment into consideration for a possible future rulemaking because any amendments must be made using the standard rulemaking process.

The Department also received comments requesting changes related to the statute and/or changes to the rules that first require statutory changes to be made. The comments: (1) requested changes to Texas Occupations Code §401.304 and rule 16 TAC §111.70 to allow applicants who graduated from Accreditation Commission for Audiology Education (ACAE) accredited programs to qualify for licensure as an audiologist; (2) recommended updating the statute to provide a pathway for master's level audiologists to seek licensure; (3) recommended adopting the Audiology and Speech-Language Pathology Interstate Li-

censure Compact (ASLP-IC), which allows for professional licensure reciprocity across state lines; and (4) supported the changes proposed by SB 905, 89th Legislature, Regular Session (2025) to remove the unnecessary provisional license language under Texas Occupations Code §401.308. The Department cannot take any action on these comments because changes to the statute must be made by the Texas Legislature, and statutory changes must be made before any rulemaking actions can be taken.

Chapter 112, Hearing Instrument Fitters and Dispensers

The Department received written public comments from one interested party regarding the rule review of Chapter 112, Hearing Instrument Fitters and Dispensers. The comments were submitted by the Texas Academy of Audiology (TAA) in response to a Notice of Intent to Review that was published January 31, 2025. The comments, however, address Chapter 112, which is part of the current Notice of Intent to Review that was published November 22, 2024. The comments on Chapter 112 will be treated as late comments and will be addressed as part of the current rule review.

The Department received one comment requesting amendments to the rules. The comment requested changes to 16 TAC §112.140(c) to require informing consumers prior to purchase that they will receive "locked" prescription hearing aids or hearing aids that require the purchaser to seek care exclusively through the specific retailer who originally dispensed the prescription hearing aids. The Department will take this comment into consideration for a possible future rulemaking because any amendments must be made using the standard rulemaking process.

The Department also received one comment requesting changes related to the statute. The comment requested changes to the Texas Occupations Code, Chapter 402 to require hearing instrument fitters and dispensers to refer children under the age of five to a licensed audiologist for hearing aid fitting and aural rehabilitation. The Department cannot take any action regarding this comment because changes to the statute must be made by the Texas Legislature.

Chapter 114, Orthotists and Prosthetists

The Department did not receive any public comments in response to the Notice of Intent to Review for Chapter 114, Orthotists and Prosthetists.

Chapter 115, Midwives

The Department received written and oral public comments from seven interested parties in response to the Notice of Intent to Review for Chapter 115, Midwives. These comments were submitted by Moms Advocating for Moms Alliance and by individuals. All of the comments were submitted late. Four interested parties submitted written public comments in response to the Notice of Intent to Review; two interested parties submitted written public comments in response to the Notice of Intent to Review and presented oral and written public comments at the April 9, 2025, Commission meeting; and one interested party presented oral public comments at the April 9, 2025, Commission meeting.

The Department received comments from all seven interested parties requesting amendments or changes to the rules. The specific changes identified separately included: (1) amending Rule §115.114 (Prenatal Care) to require midwives to immediately transfer care when certain pregnancy conditions exist, rather than allowing for recommendation of referral; (2) amending Rule §115.115(e) (Labor and Delivery) to include the language "ruptured membranes for 24 hours"; (3) amending Rule §115.22(a) (Preceptor Supervisory Responsibilities) to require that "all clinical experience activities performed by a student must be under the direct supervision of a NARM registered preceptor"; (4) adding a new rule requiring midwives to report unlicensed practice;

(5) adding requirements for midwives to abide by a code of ethics and safe clinical guidelines; (6) adding more stringent requirements for this high-stakes profession; (7) requiring reporting to TDLR of negative birth outcomes and requiring mandatory case review in such instances; (8) imposing harsh penalties for alteration of client records; (9) creating ethics guidelines in relation to complaints; (10) increasing the independence of subject matter experts; (11) allowing for complaints to be filed against the TDLR Enforcement Division for not following procedures; (12) adding requirements relating to malpractice insurance; (13) considering doctor or other medical professional complaints; (14) allowing complaining clients to see all evidence relating to their cases; (15) considering the severity of midwife complaints and cases when processing cases so that severe cases are expedited; (16) ensuring regulations are modernized, including for the purpose of identifying high-risk pregnancies; and (17) ensuring families are given the opportunity for genuinely informed consent.

Six of the seven interested parties submitted similar charts showing detailed section-by-section suggested rule changes under Chapter 115. These charts identified changes for many of the existing rule sections. The Department will take these comments into consideration for a possible future rulemaking because any amendments must be made using the standard rulemaking process.

Chapter 116, Dietitians

The Department received written public comments from 28 interested parties, one of which submitted a late comment, in response to the Notice of Intent to Review for Chapter 116, Dietitians. These comments were submitted by individual Certified Nutrition Specialist (CNS) practitioners, the American Nutrition Association, and the Board for Certification of Nutrition Specialists.

The Department received comments from the interested parties requesting changes to the statute. The comments stated that the statute, Occupations Code, Chapter 701, Dietitians, is outdated and needs to be updated to include other nutrition professionals and to recognize and include Certified Nutrition Specialists. A few interested parties also recommended that some of the suggested changes to the rules under Chapter 116 (see next paragraph) also be made to the Occupations Code, Chapter 701. The Department cannot take any action on these comments because changes to the statute must be made by the Texas Legislature.

The Department also received comments from the interested parties requesting changes to the rules that first require statutory changes to be made. In general, the comments requested amending Chapter 116 to create a pathway for Certified Nutrition Specialists (CNS) to be licensed in Texas. The comments requested revising or repealing the rules to: (1) explicitly recognize the CNS credential as meeting the requirements for licensure as a nutrition professional in Texas; (2) include the CNS credential as a form of licensure in the Texas regulations and in the current rule review; (3) include CNSs with PhD degrees in Nutrition in the state licensing process; (4) recognize CNSs as Licensed Dietitian-Nutritionists (LDN) or Licensed Nutritionists; (5) clarify the scope of practice to ensure that all qualified practitioners, including those with a CNS credential, can provide evidence-based nutrition care; (6) add the Board for Certification of Nutrition Specialists (BCNS) exam as an approved exam for licensure; (7) add title protection for "Certified Nutrition Specialist" and/or "Nutritionist"; (8) diversify the Dietitian Advisory Board to include representation from CNSs; (9) include a reciprocity license pathway for CNSs licensed in other states; and (10) streamline reciprocity by aligning with other states that recognize the CNS credential. The Department cannot take any rulemaking action on these comments because they first require statutory changes to be made by the Texas Legislature.

Department Review and Recommendation

The Department reviewed each of the rule chapters listed above and determined that the reasons for adopting or readopting the rules in these chapters continue to exist. The rules are still essential in implementing the enabling statute of the Commission and the Department, other statutes applicable to state agencies, and the statutes for each of the affected programs. The rules provide details that are not found in these statutes but are necessary for the operations and functions of the Commission and the Department and for implementation and operation of the programs. The Department recommended that the Commission readopt all of the rule chapters listed above, in their entirety and in their current form.

The Department may propose amendments in the future to update, clarify, or supplement the existing rules, as authorized, as applicable, and as necessary. Any proposed changes to the rules will be published in the Proposed Rules section of the *Texas Register* and will be open for public comment before final adoption by the Texas Commission of Licensing and Regulation, the Department's governing body, and in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

Commission Action

At its meeting on April 9, 2025, the Texas Commission of Licensing and Regulation readopted the following rule chapters, in their entirety and in their current form: 16 TAC, Chapter 76, Water Well Drillers and Water Well Pump Installers; Chapter 84, Driver Education and Safety; Chapter 85, Vehicle Storage Facilities; Chapter 86, Vehicle Towing and Booting; Chapter 91, Dog or Cat Breeders Program; Chapter 100, General Provisions for Health-Related Programs; Chapter 110, Athletic Trainers; Chapter 111, Speech-Language Pathologists and Audiologists; Chapter 112, Hearing Instrument Fitters and Dispensers; Chapter 114, Orthotists and Prosthetists; Chapter 115, Midwives; and Chapter 116, Dietitians. This concludes the review of these rule chapters in accordance with Texas Government Code §2001.039.

TRD-202501489

Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
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Health and Human Services Commission

Title 26, Part 1

The Texas Health and Human Services Commission (HHSC) adopts the review of the chapter below in Title 26, Part 1, of the Texas Administrative Code (TAC):

Chapter 570, Long-Term Care Provider Rules During a Public Health Emergency or Disaster

Notice of the review of this chapter was published in the March 28, 2025, issue of the *Texas Register* (50 TexReg 2239). HHSC received no comments concerning this chapter.

HHSC has reviewed Chapter 570 in accordance with Texas Government Code §2001.039, which requires state agencies to assess, every four years, whether the initial reasons for adopting a rule continue to exist.

The agency determined that the original reasons for adopting all rules in the chapter continue to exist and readopts Chapter 570. Any amendments, if applicable, to Chapter 570 identified by HHSC in the rule review will be proposed in a future issue of the *Texas Register*.

This concludes HHSC's review of 26 TAC Chapter 570 as required by Texas Government Code §2001.039.

TRD-202501529
Jessica Miller
Director, Rules Coordination Office
Health and Human Services Commission
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