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Appointments

Appointments for May 16, 2022

Appointed as Presiding Judge of the Second Administrative Judicial Region, effective May 21, 2022, for a term to expire four years from the date of qualification, Robert H. Trapp of Coldspring, Texas (replacing Judge Olen U. Underwood of Willis, whose term expired).

Appointments for May 17, 2022

Appointed to the Texas Municipal Retirement System Board of Trustees for a term to expire February 1, 2027, David A. Landis of Perryton, Texas (Mr. Landis is being reappointed).

Appointments for May 18, 2022

Appointed to the Texas Low-Level Radioactive Waste Disposal Compact Commission for a term to expire September 1, 2027, Linda L. Morris of Waco, Texas (Ms. Morris is being reappointed).


Greg Abbott, Governor

TRD-202201930

♦ ♦ ♦ ♦
Ethics Advisory Opinion

EAO 574: Whether a corporation may coordinate with candidates or political committees on the content, timing, and distribution of advertisements that criticize or praise candidates—including those with whom the corporation coordinates and their opponents—for opposing or supporting certain legislative policies. (AOR-659)

SUMMARY

No. Texas law prohibits corporations from making campaign contributions, which includes making an expenditure for advertisements coordinated with a candidate or political committee that criticize or praise a candidate or the candidate’s opponent. Such advertisements are campaign contributions because they constitute things of value given with the intent that they be used in connection with a campaign for elected office and with the prior consent or approval of the candidate or committee on whose behalf the expenditure is made.


Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

Issued in Austin, Texas, on May 12, 2022.

TRD-202201875
J.R. Johnson
General Counsel
Texas Ethics Commission
Filed: May 16, 2022

Ethics Advisory Opinion

EAO 575: Whether a specific-purpose committee’s contributions and expenditures trigger section 253.007’s restrictions on the lobbying activity of candidates and officeholders. (AOR-662.)

Summary

Yes, if the candidate or officeholder has the authority to control the contributions accepted and expenditures made by the specific-purpose committee. Contributions accepted by a political committee controlled by a candidate or officeholder are accepted “as a candidate or officeholder,” Tex. Elec. Code § 253.007(b). Furthermore, expenditures made by a political committee controlled by a candidate or officeholder are knowingly made or authorized by the candidate or officeholder. Id.


Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

Issued in Austin, Texas, on May 12, 2022.

TRD-202201876
J.R. Johnson
General Counsel
Texas Ethics Commission
Filed: May 16, 2022
Emergency Rules

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034).

Title 1. Administration

Part 4. Office of the Secretary of State

Chapter 94. Electric Cooperative Securitized Property Notice Filings

Subchapter A. General Provisions

1 TAC §§94.1 - 94.7

The Office of the Secretary of State is renewing the effectiveness of emergency new §§94.1 - 94.7 for a 60-day period. The text of the emergency rule was originally published in the January 28, 2022, issue of the Texas Register (47 TexReg 203).

Filed with the Office of the Secretary of State on May 12, 2022.

TRD-202201855

Adam Bitter

General Counsel

Office of the Secretary of State

Original effective date: January 14, 2022

Expiration date: July 12, 2022

For further information, please call: (512) 463-5770

Subchapter B. Duties of Filing Officer

1 TAC §§94.20 - 94.22

The Office of the Secretary of State is renewing the effectiveness of emergency new §§94.20 - 94.22 for a 60-day period. The text of the emergency rule was originally published in the January 28, 2022, issue of the Texas Register (47 TexReg 205).

Filed with the Office of the Secretary of State on May 12, 2022.

TRD-202201856

Adam Bitter

General Counsel

Office of the Secretary of State

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Subchapter C. Standards of Review and Indexing

1 TAC §§94.40 - 94.44

The Office of the Secretary of State is renewing the effectiveness of emergency new §§94.40 - 94.44 for a 60-day period. The text of the emergency rule was originally published in the January 28, 2022, issue of the Texas Register (47 TexReg 206).

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Adam Bitter

General Counsel

Office of the Secretary of State

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For further information, please call: (512) 463-5770

Subchapter D. Filings

1 TAC §§94.60 - 94.66

The Office of the Secretary of State is renewing the effectiveness of emergency new §§94.60 - 94.66 for a 60-day period. The text of the emergency rule was originally published in the January 28, 2022, issue of the Texas Register (47 TexReg 208).

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Adam Bitter

General Counsel

Office of the Secretary of State

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For further information, please call: (512) 463-5770

Subchapter E. Search and Information Requests

1 TAC §§94.80 - 94.82

The Office of the Secretary of State is renewing the effectiveness of emergency new §§94.80 - 94.82 for a 60-day period. The text of the emergency rule was originally published in the January 28, 2022, issue of the Texas Register (47 TexReg 210).

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Adam Bitter
General Counsel
Office of the Secretary of State
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For further information, please call: (512) 463-5770

47 TexReg 3102  May 27, 2022  Texas Register
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 22. EXAMINING BOARDS
PART 14. TEXAS OPTOMETRY BOARD
CHAPTER 273. GENERAL RULES
22 TAC §273.17

The Texas Optometry Board (TOB) proposes new §273.17 Emergency Management. This proposed new rule requires all initial applicants for licensure provide proof of successful completion of a cardiopulmonary resuscitation (CPR) or basic life support (BLS) course prior to receiving a license beginning in January 1, 2023. This proposed new rule also requires all active licensees to provide proof of successful completion of a CPR or BLS course prior to the renewal of license each cycle beginning in January 1, 2023. This new rule will ensure that active licensees are prepared to manage an emergency situation. Optometry students are already required to be certified in either CPR or BLS and approximately half of the current active licensee population is already CPR or BLS certified.

Kelly Parker, Executive Director, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for the state and local governments as a result of proposing this new rule.

Kelly Parker, Executive Director, has determined that for each of the first five years the proposed rule is in effect, the public benefit anticipated is enhanced patient safety during optometric appointments and assurance that a patient is properly taken care of in an emergency situation.

Legal counsel for the Board has reviewed the new rule and has found it to be within the Board's authority to propose.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS ON SMALL BUSINESSES AND RURAL COMMUNITIES

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities because of the proposed rule. Since the agency has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory and Flexibility Analysis, as detailed under Texas Government Code §2006.002, are not required.

ENVIRONMENT AND TAKINGS IMPACT ASSESSMENT

The agency has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The agency has determined that the proposed rule 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.

GOVERNMENT GROWTH IMPACT STATEMENT

During the first five years that the proposed rule will be in effect, it is anticipated that the proposed rule will not create or eliminate a government program as no program changes are proposed. Further, implementation of the proposed rule will not require the creation of a new employee position or the elimination of an existing employee position.

PUBLIC COMMENTS

Comments on the proposed rule may be submitted electronically to: kelly.parker@tob.texas.gov, Kelly Parker, Executive Director, Texas Optometry Board, 333 Guadalupe Street, Suite 2-420, Austin, Texas 78701-3942. The deadline for furnishing comments is thirty days after publication in the Texas Register.

Proposed §273.17 is proposed under the Texas Optometry Act, Texas Occupations Code, §351.151.

No other sections are affected by this proposal.

(a) Definitions.
(1) Cardiopulmonary resuscitation (CPR) is an emergency lifesaving procedure performed when the heart stops beating. A certification in CPR includes training and successful course completion in cardiopulmonary resuscitation, AED and obstructed airway procedures for all age groups according to recognized national standards.
(2) Basic Life Services (BLS) is a basic level of pre-hospital and inter-hospital emergency care and non-emergency medical services care. A certification in BLS includes training and successful course completion in airway management, cardiopulmonary resuscitation (CPR), control of shock and bleeding and splinting of fractures, according to recognized national standards.

(b) Requirement for Initial License. Commencing effective January 1, 2023, all applicants for initial licensure shall provide proof of successful completion of a CPR or BLS certification prior to receiving a license.

(c) Requirement for Renewal of License. Effective January 1, 2023, all active licensees shall provide proof of successful completion of a CPR or BLS certification for renewal of a license each renewal cycle. Licensees may be credited two general hours of continuing education for CPR certification and four general hours of continuing education for BLS certification.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.
TITLE 28. INSURANCE
PART 4. STATE OFFICE OF RISK MANAGEMENT
CHAPTER 251. STATE EMPLOYEES--WORKERS' COMPENSATION
SUBCHAPTER E. RISK ALLOCATION PROGRAM

28 TAC §251.503

The State Office of Risk Management (Office) proposes an amendment to 28 TAC §251.503. The change concerns updating the reference to the Office’s risk management guidelines, published by the Office for implementation and use by covered state agencies. The name referenced currently is the Risk Management for Texas State Agencies (RMTSA). The Office has renamed the guidelines to the Texas Enterprise Risk Management (TERM) Guidelines.

The Office proposes this name change to ensure consistency with current policy and the published rules.

FISCAL NOTE. Deea Western, Chief of Legal Services and General Counsel, has determined that for each of the first five years the proposed rule is in effect, there will not be a fiscal impact on state or local government as a result of the amendment, as proposed.

PUBLIC BENEFIT/COST NOTE. General Counsel has also determined that for the first five-year period the amendment is in effect, the public benefit will be more user-friendly and thus more readily accessible Office rules.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT. There are no anticipated economic costs to persons who are required to comply with the amendment, as proposed. There is no effect on local economy for the first five years that the proposed rule amendment is in effect; therefore, no local employment impact statement is required under Government Code, §§2001.022 and 2001.024(a)(6).

ENVIRONMENTAL IMPACT STATEMENT. The Office has determined that the proposed amendment does not require an environmental impact analysis because the proposed rule amendment is not a major environmental rule under the Government Code, §2001.0225.

COSTS TO REGULATED PERSONS. The proposed amendment does not impose a cost on regulated persons, including another state agency, a special district, or a local government and, therefore, is not subject to Government Code, §2001.0045.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSI-
NESS, AND RURAL COMMUNITIES. General Counsel has also determined that there will be no impact on rural communities, small businesses, or microbusinesses as a result of implementing the amendment and, therefore, no regulatory flexibility analysis, as specified in Government Code, §2006.002, is required.

GOVERNMENT GROWTH IMPACT STATEMENT. Office staff prepared a Government Growth Impact Statement for this proposed rulemaking, as specified in Texas Government Code §2001.0221. During the first five years that the amendment would be in effect, the proposed amendment: will not eliminate or create a government program, the proposed amendment will not result in the addition or reduction of employees; will not require an increase or decrease in future legislative appropriations; will not lead to an increase or decrease in fees paid to a state agency; will not repeal existing regulations; and will not result in an increase or decrease in the number of individuals subject to the rule. During the first five years that the amended rule would be in effect, the proposed amendment will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. The Office has determined that no private real property interests are affected by this proposal and 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.

REQUEST FOR PUBLIC COMMENT. Written comments on the proposed rule amendment may be directed to Deea Western, General Counsel, via email at Deea.Western@sorm.texas.gov, or mail, P.O. Box 13777, Austin, Texas 78711-3777. Comments will be accepted for 30 days after publication in the Texas Register.

STATUTORY AUTHORITY. The amendment is proposed under: Texas Labor Code §412.031 which requires the Office board to "adopt rules as necessary to implement this chapter and Chapter 501, including rules relating to reporting requirements for a state agency;" §412.041(c)(3) requiring the SORM director to prepare and recommend to the board plans and procedures necessary to implement the purposes and objectives of this chapter and Chapter 501, including rules and proposals for administrative procedures consistent with this chapter and Chapter 501; and under Texas Labor Code §412.0125(b)(3) which requires the Office to adopt, as part of return-to-work coordination services, rules that set standards and provide guidance to a state agency interacting with an injured employee.

CROSS REFERENCE TO STATUTES AFFECTED. Texas Labor Code §§412.031 and 412.0125(b)(3).

§251.503. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings:

(1) [43] Claims Cost--The net amount of payments made on claims, minus subrogation and restitution costs, as reported by the Office.

(2) [44] Covered Agency--A department, board, commission, or institution of this state with workers' compensation coverage under Chapter 501 of the Texas Labor Code (Labor Code).

(4) [42] Injury Frequency Rate (IFR)--The number of accepted claims, as reported by the State Office of Risk Management (the Office), per 100 covered FTEs. For purposes of this calculation all agencies are deemed to have no less than 100 employees.

(5) [44] Payroll--The total dollars paid for gross salary for all covered Full-Time Equivalents (FTEs), as reported by covered agencies.

(6) Plan Year--The state fiscal year beginning on September 1 and ending on August 31 the following year.

(7) Texas Enterprise Risk Management Guidelines [Risk Management for Texas State Agencies]--Risk management guidelines published by the Office for implementation and use by covered state agencies.

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 11, 2022.
TRD-202201844
Stephen Vollbrecht
Executive Director
State Office of Risk Management
Earliest possible date of adoption: June 26, 2022
For further information, please call: (512) 936-1540

CHAPTER 252. STATE RISK MANAGEMENT

SUBCHAPTER B. RISK MANAGEMENT

28 TAC §252.201

The State Office of Risk Management (Office) proposes an amendment to 28 TAC §252.201, regarding State Risk Management Guidelines. The first change concerns updating the reference to the Office's risk management guidelines, published by the Office for implementation and use by covered state agencies. The name referenced currently is the Risk Management for Texas State Agencies (RMTSA). The Office has renamed the guidelines to the Texas Enterprise Risk Management (TERM) Guidelines.

The Office proposes this name change to ensure consistency with current policy and the published rules.

In addition, the Office proposes other changes for the purpose of simplification and administrative convenience.

FISCAL NOTE. Deea Western, Chief of Legal Services and General Counsel, has determined that for each of the first five years the proposed rule is in effect, there will not be a fiscal impact on state or local government as a result of the amendment, as proposed.

PUBLIC BENEFIT/COST NOTE. General Counsel has also determined that for the first five-year period the amendment is in effect, the public benefit will be more user-friendly and thus more readily accessible Office rules.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT. There are no anticipated economic costs to persons who are required to comply with the amendment, as proposed. There is no effect on local economy for the first five years that the proposed rule amendment is in effect; therefore, no legal employment impact statement is required under Government Code, §§2001.022 and 2001.024(a)(6).

ENVIRONMENTAL IMPACT STATEMENT. The Office has determined that the proposed amendment does not require an environmental impact analysis because the proposed rule amendment is not a major environmental rule under the Government Code, §2001.0225.

COSTS TO REGULATED PERSONS. The proposed amendment does not impose a cost on regulated persons, including another state agency, a special district, or a local government and, therefore, is not subject to Government Code, §2001.0045.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. General Counsel has also determined that there will be no impact on rural communities, small businesses, or micro-businesses as a result of implementing the amendment and therefore no regulatory flexibility analysis, as specified in Government Code, §2006.002, is required.

GOVERNMENT GROWTH IMPACT STATEMENT. Office staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking, as specific in Texas Government Code §2001.0221. During the first five years that the amendment would be in effect, the proposed amendment: will not eliminate or create a government program, the proposed amendment will not result in the addition or reduction of employees; will not require an increase or decrease in future legislative appropriations; will not lead to an increase or decrease in fees paid to a state agency; will not repeal existing regulations; and will not result in an increase or decrease in the number of individuals subject to the rule. During the first five years that the amendment would be in effect, the proposed amendment will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. The Office has determined that no private real property interests are affected by this proposal and 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.

REQUEST FOR PUBLIC COMMENT. Written comments on the proposed rule amendment may be directed to Deea Western, General Counsel, via email at Deea.Western@sorm.texas.gov, or mail, P.O. Box 13777, Austin, Texas 78711-3777. Comments will be accepted for 30 days after publication in the Texas Register.

STATUTORY AUTHORITY. The amendment is proposed under: Texas Labor Code §412.031 which requires the Office board to adopt rules as necessary to implement this chapter and Chapter 501; §412.041(c)(3) requiring the SORM director to prepare and recommend to the board plans and procedures necessary to implement the purposes and objectives of this chapter and Chapter 501, including rules and proposals for administrative procedures consistent with this chapter and Chapter 501; and under Texas Labor Code §412.0125(b)(3) which requires the Office to adopt, as part of return-to-work coordination services, rules that set standards and provide guidance to a state agency interacting with an injured employee.

CROSS REFERENCE TO STATUTES AFFECTED. Texas Labor Code §§412.031 and 412.0125(b)(3).

§252.201. State Risk Management Guidelines.
(a) Each state agency covered by Texas Labor Code, Chapter 412, shall[], by January 1, 1993, develop and implement an agency risk management program, which shall include a safety and health program and a return-to-work [return to work] program. State agency risk management programs shall either:

(1) comply with the risk management guidelines, including risk control and risk financing, contained in the Texas Enterprise Risk Management Guidelines [Risk Management for Texas State Agencies] published by the State Office of Risk Management (the Office) [the Office]; or

(2) utilize other appropriate nationally recognized standards, including Occupational Safety and Health Administration (OSHA) standards.

(b) When a risk exposure is not covered by the guidelines referenced in subsection (a) of this section, appropriate nationally recognized standards shall be followed, including the OSHA standards.

(c) A state agency that [which] cannot comply with any applicable guideline or nationally recognized standard shall, upon request of the Office at the time of a risk management program review, file a statement with the Office which:

(1) clearly identifies the factors preventing the agency's compliance with the appropriate guideline or nationally recognized standard; and

(2) states the action the agency will take in lieu of complying with the guideline or nationally recognized standard.

(d) The Office shall review, verify, monitor, and approve state agency risk management programs based on compliance with subsections (a), (b), and (c) of this section.

(e) State agencies covered by Chapter 412 of the Texas Labor Code that [which] do not comply with subsections (a), (b), and (c) of this section will be identified as not in compliance with this subchapter in the biennial report to the Legislature.

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 11, 2022.

TRD-202201843
Stephen Vollbrecht
Executive Director
State Office of Risk Management
Earliest possible date of adoption: June 26, 2022
For further information, please call: (512) 936-1540

TITLE 34. PUBLIC FINANCE
PART 1. COMPTROLLER OF PUBLIC ACCOUNTS
CHAPTER 3. TAX ADMINISTRATION
SUBCHAPTER A. GENERAL RULES
34 TAC §3.9

The Comptroller of Public Accounts proposes amendments to §3.9, concerning electronic filing of returns and reports; electronic transfer of certain payments by certain taxpayers. The comptroller amends the section to reflect the changes made in Tax Code, Chapter 151, Subchapter I-2 (Reports by Manufacturers and Distributors of Certain Off-Highway Vehicles Purchased Outside This State), made by Senate Bill 586, 87th Legislature, 2021, effective September 1, 2021.

The comptroller amends subsection (e)(5) to include "distributors" alongside the existing term "manufacturers" to implement the reporting requirements for both license types. Distributors of off-highway vehicles are subject to the same reporting requirements as manufacturers of off-highway vehicles. The comptroller adds the effective dates for the reporting requirements for both manufacturers and distributors.

The comptroller adds the definition of distributor, as defined by Tax Code, §151.481(1) (Definitions) in subparagraph (A)(ii). The comptroller re-numbers subsequent clauses.

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed amended rules are in effect, the rules: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy.

Mr. Reynolds also has determined that the proposed amendments would benefit the public by conforming the rule to current statute. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses or rural communities. The proposed amendments would have no significant fiscal impact on the state government, units of local government, or individuals. There would be no anticipated significant economic cost to the public.

You may submit comments on the proposal to Jenny Burleson, Director, Tax Policy Division, P.O. Box 13528 Austin, Texas 78711 or to the email address: tps.revenue.comments@cpa.texas.gov. The comptroller must receive your comments no later than 30 days from the date of publication of the proposal in the Texas Register.

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

This section implements Tax Code, §§151.481 (Definitions), 151.482 (Reports By Manufacturers and Distributors), 151.485 (Civil Penalty), 151.486 (Actions By Texas Department Of Motor Vehicles), and 151.487 (Audit; Inspection).

§3.9. Electronic Filing of Returns and Reports; Electronic Transfer of Certain Payments by Certain Taxpayers.

(a) Voluntary electronic filing of returns and reports. The comptroller may authorize a taxpayer to file any report or return required to be filed with the comptroller under Tax Code, Title 2 (State Taxation), by means of electronic transmission under the following circumstances:

(1) the taxpayer or its authorized agent has registered with the comptroller to use an approved reporting method, such as WebFile, or the taxpayer is filing a return or report other than a return showing a tax liability; and
(2) the method of electronic transmission of each return or report complies with any requirements established by the comptroller and is compatible with the comptroller's equipment and facilities.

(b) Required electronic transfer of certain payments by certain taxpayers pursuant to Tax Code, §111.0625 (Electronic Transfer of Certain Payments).

(1) This paragraph is effective with the state fiscal year beginning September 1, 2018, for payments due on or after January 1, 2019. This paragraph applies to a taxpayer who pays the comptroller a total of $500,000 or more in any single category of payments or taxes during the preceding state fiscal year, and whom the comptroller reasonably anticipates will pay at least that amount during the current state fiscal year. The comptroller shall notify the taxpayer of this electronic funds transfer requirement as provided in subsection (f) of this section. The taxpayer shall transfer all payments in any category of payments or taxes that totaled $500,000 or more to the comptroller using the State of Texas Financial Network (TexNet), pursuant to Chapter 15 of this title (relating to Electronic Transfer of Certain Payments to State Agencies). This requirement applies to payments due beginning January 1 of each state fiscal year in which a taxpayer is notified and continues for one calendar year. For example, a taxpayer remits $500,000 in any single category of taxes to the comptroller during the state fiscal year ending August 31, 2019. The comptroller reasonably anticipates that the taxpayer will pay at least $500,000 in the same category of payments or taxes for fiscal year ending August 31, 2020. The comptroller notifies the taxpayer of the electronic payment requirement by October 31, 2019. The taxpayer must begin transferring payments to the comptroller using TexNet beginning on January 1, 2020. The taxpayer's electronic payment requirement continues until December 31, 2020.

(2) Taxpayers who paid the comptroller a total of $100,000 or more in any single category of payments or taxes and were notified by the comptroller of a TexNet payment requirement must continue to make those payments using TexNet for original or amended reports filed for the calendar year for which the taxpayer was notified.

(3) Beginning January 1, 2019, taxpayers who paid $100,000 or more, but less than $500,000, in any single category of payments or taxes during the preceding state fiscal year, and whom the comptroller reasonably anticipates will pay at least that amount during the current state fiscal year, shall transfer all payments in that category of payments or taxes during the calendar year beginning January 1 of the current state fiscal year to the comptroller by means of electronic funds transfer as set out in paragraph (4)(C) of this subsection. The comptroller shall notify the taxpayer of this electronic funds transfer requirement as provided in subsection (f) of this section. This requirement applies to payments due beginning January 1 of each state fiscal year for which a taxpayer is notified and continues for one calendar year. For example, a taxpayer remits $100,000 in any single category of taxes to the comptroller during the state fiscal year ending August 31, 2019. The comptroller reasonably anticipates that the taxpayer will pay at least $100,000 in the same category of payments or taxes for fiscal year ending August 31, 2020. The comptroller notifies the taxpayer of the electronic payment requirement by October 31, 2019. The taxpayer must begin transferring payments to the comptroller using one of the methods described in paragraph (4)(C) of this subsection beginning on January 1, 2020. The taxpayer's electronic payment requirement continues until December 31, 2020.

(4) Taxpayers who paid at least $10,000, but less than $100,000, in a single category of payments or taxes as listed in subparagraph (A) of this paragraph during the preceding state fiscal year, and whom the comptroller reasonably anticipates will pay at least that amount during the current state fiscal year, shall transfer all payments in that category of payments or taxes during the calendar year beginning January 1 of the current state fiscal year to the comptroller by means of electronic funds transfer as set out in subparagraph (C) of this paragraph.

(A) This paragraph applies only to:

(i) state and local sales and use taxes;
(ii) direct payment sales tax;
(iii) gas severance tax;
(iv) oil severance tax;
(v) franchise tax;
(vi) gasoline tax;
(vii) diesel fuel tax;
(viii) hotel occupancy tax;
(ix) insurance premium taxes;
(x) mixed beverage gross receipts tax;
(xi) mixed beverage sales tax; and
(xii) motor vehicle rental tax.

(B) The comptroller may add or remove a category of payments or taxes to or from this paragraph if the comptroller determines that such action is necessary to protect the interests of the state or of taxpayers.

(C) Payments under this paragraph shall be made by those electronic funds transfer methods approved by the comptroller, which include, but are not limited to, TexNet, electronic check (WebEFT), and the electronic transmission of credit card information. The comptroller may require payments in specific categories to be made by specific methods of electronic funds transfer.

(D) A taxpayer required under this paragraph to use electronic funds transfer who cannot comply due to hardship, impracticality, or other valid reason may submit a written request to the comptroller for a waiver of the requirement.

(c) Payment date for electronic transfer of funds.

(1) Pursuant to §15.33 of this title (relating to Determination of Settlement Date), a person who enters payment information into TexNet may choose either to accept the settlement date that TexNet offers or enter a settlement date up to 30 days from the business day after payment is submitted. TexNet will offer the business day following the day on which payment information is entered into TexNet, provided that the information is entered by 6:00 p.m. central time on any business day.

(2) A taxpayer who files tax returns and makes payments through the electronic data interchange (EDI) system must submit the payment information to the comptroller by 2:30 p.m. central time.

(3) A taxpayer who makes payment by an electronic funds transfer method approved by the comptroller other than TexNet or the EDI system must transmit payment information by 11:59 p.m. central time on the date payment is due.

(d) The administrative rules found in Chapter 15 of this title on electronic funds transfer under Government Code, §404.095 (Electronic Transfer of Certain Payments) using TexNet apply to all such payments to the comptroller.

(e) Required electronic filing of certain reports by certain taxpayers.
(1) Reports required by Tax Code, §111.0626 (Electronic Filing of Certain Reports).

(A) Pursuant to Tax Code, §111.0626(a)(1), taxpayers who are required to use electronic funds transfer for payments of certain taxes must also file report data electronically, including reports required by the International Fuel Tax Agreement. This requirement applies to:

(i) state and local sales and use taxes;
(ii) direct payment sales tax;
(iii) gas severance tax;
(iv) oil severance tax; and
(v) motor fuel tax.

(B) Pursuant to Tax Code, §111.0626(a)(2), taxpayers who owe no tax and are required to file an information report under Tax Code, §171.204 (Information Report) must file the information report electronically.

(C) Pursuant to Tax Code, §111.0626(b-1), taxpayers who paid $50,000 or more during the preceding fiscal year must file report data electronically. A taxpayer filing a report electronically may use an application provided by the comptroller, software provided by the comptroller, or commercially available software that satisfies requirements prescribed by the comptroller. This subparagraph only applies after issuance to the taxpayer of the 60 days notice required by subsection (f) of this section.

(2) Reports by brewers, manufacturers, brewpubs, wholesalers, and distributors of alcoholic beverages required by Tax Code, Chapter 151, Subchapter I-1 (Reports by Persons Involved in the Manufacture and Distribution of Alcoholic Beverages).

(A) For purposes of this paragraph, a "seller" means a person who is a brewer with a brewer's self-distribution permit, manufacturer with a manufacturer's self-distribution license, brewpub, wholesaler, winery, distributor, or package store local distributor, as described in Tax Code, §§151.461(1) - (4) and (6) (Definitions), 151.465 (Applicability to Certain Brewers), and 151.466 (Applicability to Certain Manufacturers); and a "retailer" means a person who holds one or more of the permits listed in Tax Code, §151.461(5).

(B) On or before the 25th day of each month, each seller holding a comptroller-issued tax identification number must file a report of alcoholic beverage sales to retailers in this state. The report must be filed by a means of electronic transmission approved by the comptroller. The report must contain the following information:

(i) each Texas Alcoholic Beverage Commission (TABC) permit or license associated with the seller's comptroller-issued tax identification number;
(ii) the TABC permit or license number for each seller location from which a sale was made to a retailer during the preceding calendar month;
(iii) the TABC permit or license number, comptroller-issued tax identification number, and TABC trade name and physical address (street name and number, city, state, and zip code) of each retail location to which the seller sold alcoholic beverages during the preceding calendar month;
(iv) the information required by Tax Code, §151.462(b) (Reports by Brewers, Manufacturers, Brewpubs, Wholesalers and Distributors) regarding the seller's monthly sales to each retailer holding a separate TABC permit or license, including:

(I) the individual container size of each product, such as the individual bottle or container size, sold to retailers;
(II) the brand name of the alcoholic beverage sold;
(III) the beverage class code for distilled spirits, wine, beer, or malt beverage;
(IV) the Universal Product Code (UPC) of the alcoholic beverage sold;
(V) the number of individual containers of alcoholic beverages sold for each brand, UPC, and container size. Multi-unit packages, such as cases, must be broken down into the number of individual bottles or cans;
(VI) the total selling price of the containers sold; and
(v) any other information deemed necessary by the comptroller for the efficient administration of this subsection.

(C) A brewpub license holder not performing activities described under Alcoholic Beverage Code, §74.08 (Sales by Brewpub License Holders to Retailers) is not required to file the report described by subparagraph (B) of this paragraph.

(D) If a person fails to file a report required by subparagraph (B) of this paragraph, or fails to file a complete report, the comptroller may:

(i) suspend or cancel one or more permits issued to the person under Tax Code, §151.203 (Suspension and Revocation of Permit);
(ii) impose a civil penalty under Tax Code, §151.703(d) (Failure to Report or Pay Tax);
(iii) impose a criminal penalty under Tax Code, §151.709 (Failure to Furnish Report; Criminal Penalty); and/or
(iv) notify the TABC of the failure and the TABC may take administrative action against the person for the failure under the Alcoholic Beverage Code.

(E) In addition to the penalties imposed under subparagraph (C) of this paragraph, if a person violates Tax Code, Chapter 151, Subchapter I-1, or this paragraph, the comptroller shall collect from the seller an additional civil penalty of not less than $25 or more than $2,000 for each day the violation continues.

(F) The requirements of this paragraph related to brewpubs apply to sales occurring on or after September 1, 2019. The requirements of this paragraph related to permittees other than brewpubs, apply to sales occurring on or after September 1, 2011.

(3) Reports by wholesalers and distributors of cigarettes. Pursuant to Tax Code, §154.212 (Reports by Wholesalers and Distributors of Cigarettes), on or before the 25th day of each month each wholesaler or distributor of cigarettes shall file a report of sales to retailers in this state. The report must be filed by a means of electronic transmission approved by the comptroller and must contain the following information for the preceding calendar month's sales made to each retailer:

(A) the name of the retailer and the address, including city and zip code, of the retailer's outlet location to which the wholesaler or distributor delivered cigarettes;
(B) the comptroller-assigned taxpayer number of the retailer, if the wholesaler or distributor is in possession of the number;
(C) the cigarette permit number of the outlet location to which the wholesaler or distributor delivered cigarettes;

(D) the monthly net sales made to the retailer, including the quantity and units of cigarettes in stamped packages sold to the retailer and the price charged to the retailer; and

(E) any other information deemed necessary by the comptroller for the efficient administration of this subsection.

(4) Reports by wholesalers and distributors of cigars and tobacco products. Pursuant to Tax Code, §155.105 (Reports by Wholesalers and Distributors of Cigars and Tobacco Products), on or before the 25th day of each month each wholesaler or distributor of cigars or tobacco products shall file a report of sales to retailers in this state. The report must be filed by a means of electronic transmission approved by the comptroller and must contain the following information for the preceding calendar month's sales made to each retailer:

(A) the name of the retailer and the address, including the city and zip code, of the retailer's outlet location to which the wholesaler or distributor delivered cigars or tobacco products;

(B) the comptroller-assigned taxpayer number of the retailer, if the wholesaler or distributor is in possession of the number;

(C) the tobacco permit number of the outlet location to which the wholesaler or distributor delivered cigars or tobacco products;

(D) the monthly net sales made to the retailer, including the quantity and units of cigars and tobacco products sold to the retailer and the price charged to the retailer;

(E) the net weight as listed by the manufacturer for each unit of tobacco products other than cigars; and

(F) any other information deemed necessary by the comptroller for the efficient administration of this subsection.

(5) Reports by manufacturers and distributors of certain off-highway vehicles purchased outside this state. Pursuant to Tax Code, Chapter 151, Subchapter I-2 (Reports by Manufacturers and Distributors of Certain Off-highway Vehicles Purchased Outside This State) manufacturers and distributors must file a report on or before March 1 of each year, listing each warranty issued by the manufacturer for each new off-highway vehicle that was, during the preceding calendar year, sold to a resident of this state by a retailer located outside this state. This paragraph is effective September 1, 2019 for manufacturers and September 1, 2021 for distributors.

(A) For the purposes of this paragraph:

(i) Manufacturer means a person that manufactures off-highway vehicles and is required to hold a manufacturer's license under Occupations Code, Chapter 2301.

(ii) Distributor means a person that distributes off-highway vehicles and is required to hold a distributor's license under Occupations Code, Chapter 2301.

(iii) New off-highway vehicle means an off-highway vehicle that has not been the subject of a retail sale.

(iv) Off-highway vehicle includes:

(I) All-terrain vehicle--A vehicle that is equipped with a seat or seats for the use of the rider and one or more passengers, designed to propel itself with three or more tires in contact with the ground, designed by the manufacturer for off-highway use, not designed by the manufacturer primarily for farming or lawn care, and not more than 50 inches in width;

(II) Off-highway motorcycle--A vehicle, other than a tractor or moped, that is equipped with a rider's saddle, designed to propel itself with not more than three tires on the ground, and designed by the manufacturer for off-highway use only;

(III) Recreational off-highway vehicle--A vehicle that is equipped with a seat or seats for the use of the rider and one or more passengers, designed to propel itself with four or more tires in contact with the ground, designed by the manufacturer for off-highway use, and not designed by the manufacturer primarily for farming or lawn care;

(IV) Sand rail--A vehicle that is designed or built primarily for off-highway use in sandy terrains, including for use on sand dunes; has a tubular frame, an integrated roll cage, and an engine that is rear-mounted or placed midway between the front and rear axles of the vehicle; and has a gross vehicle weight of not less than 700 pounds and not more than 2,000 pounds; or

(V) Utility vehicle--A vehicle that is equipped side-by-side seating for the use of the operator and one or more passengers, designed to propel itself with at least four tires in contact with the ground, designed by the manufacturer for off-highway use, and designed by the manufacturer primarily for utility work and not for recreational purposes.

(B) The report must be filed by a means of electronic transmission approved by the comptroller and contain the following information for each new off-highway vehicle:

(i) the vehicle identification number;

(ii) the make, model, and model year of the vehicle;

(iii) the total sales price, or, if the total sales price is not available, the manufacturer suggested retail price; and

(iv) the name and address, including street name and number, city, and zip code, of the purchaser of the vehicle.

(C) A manufacturer or distributor must file a report, even if they have no warranty information to report.

(D) If a manufacturer or distributor fails to file a report or files an incomplete report, the comptroller:

(i) may impose a civil penalty of $50 under Tax Code, §151.703(d) for each report not filed or for each incomplete report;

(ii) shall impose a civil penalty of not less than $25 or more than $2,000 for each day the violation continues under Tax Code, §151.485 (Civil Penalty); and

(iii) may notify the Texas Department of Motor Vehicles (TxDMV) of the failure. The TxDMV may take administrative action against the manufacturer or distributor for the failure under Occupations Code, Chapter 2301.

(6) Except as provided by Tax Code, §111.006 (Confidentiality of Information), information contained in the reports required by paragraphs (2), (3), (4), and (5) of this subsection is confidential and not subject to disclosure under Government Code, Chapter 552 (Public Information).

(7) The reports required by paragraphs (2), (3), (4), and (5) of this subsection are required in addition to any other reports required by the comptroller.

(8) The reports required by paragraphs (2), (3), and (4) of this subsection must be filed each month even if no sales were made to retailers during the preceding month.
(f) Notification of affected persons. The comptroller shall notify taxpayers who are affected by subsection (b) or (e)(1) of this section no less than 60 days before the first required electronic transmittal of report data or payment.

(g) A taxpayer who is required to file report data electronically under subsection (e)(1) of this section may submit a written request to the comptroller for a waiver of the requirement. A taxpayer who is required to electronically file a report under subsection (e)(3) or (4) of this section may submit a written request to the comptroller for a waiver of the requirement and authorization of an alternative filing method.

(h) Pursuant to Tax Code, §111.063 (Penalty for Failure to Use Electronic Transfers and Filings), the comptroller may impose separate penalties of 5.0% of the tax due for failure to pay the tax due by electronic funds transfer, as required by this section, or for failure to file a report electronically, as required by Tax Code, §111.0626.

(i) Protest payments by electronic funds transfer. Protested tax payments made under Tax Code, §112.051 (Protest Payment Required), must be accompanied by a written statement that fully and in detail sets out each reason for recovery of the payment. Protested tax payments are not required to be submitted by electronic funds transfer.

1. A person who is otherwise required to pay taxes by means of electronic funds transfer may make protested payments by other means, including cash, check, or money order. A written statement of protest that fully and in detail sets out each reason for recovery of the payment must accompany the non-electronic payment.

2. A person may submit a protested tax payment by means of electronic funds transfer if the written statement is submitted in compliance with the requirements set out in subparagraph (A) of this paragraph.

(A) A person may submit a protest payment by means of electronic funds transfer only if:

(i) a written statement of protest is delivered by facsimile transmission or hand-delivery at one of the comptroller’s offices in Austin, Texas;

(ii) the written statement of protest is delivered to the comptroller within 24 hours before or after the electronic transfer of the payment;

(iii) the written statement of protest identifies the date of electronic payment, the taxpayer number under which the electronic payment was or will be submitted, and the amount paid under protest; and

(iv) the electronic payment is specifically identified as a protest payment by the method, if any (such as a special transaction code or accompanying electronic message), that the comptroller may designate as appropriate to the method by which the person transferred the funds electronically.

(B) The failure of a taxpayer to submit a written statement in compliance with subparagraph (A) of this paragraph means the tax payment that the taxpayer made is not considered to be a protest tax payment as provided by Tax Code, §112.051.

(C) If a person submits multiple written statements of protest that relate to the same electronic payment, then only the first statement that the comptroller actually receives is considered the written protest for purposes of Tax Code, §112.051.

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 13, 2022.
TRD-202201872
Jennifer Burleson
Director, Tax Policy Division
Comptroller of Public Accounts
Earliest possible date of adoption: June 26, 2022
For further information, please call: (512) 475-2220

✦ ✦ ✦
Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

**TITLE 26. HEALTH AND HUMAN SERVICES**

**PART 1. HEALTH AND HUMAN SERVICES COMMISSION**

**CHAPTER 570. LONG-TERM CARE PROVIDER RULES DURING A CONTAGIOUS DISEASE OUTBREAK, EPIDEMIC, OR PANDEMIC**

**SUBCHAPTER A. INTRODUCTION**

**26 TAC §570.1**

The Health and Human Services Commission withdraws proposed new §570.1, which appeared in the November 12, 2021, issue of the Texas Register (46 TexReg 7709).

Filed with the Office of the Secretary of State on May 12, 2022.

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Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: May 12, 2022
For further information, please call: (512) 438-3161

**SUBCHAPTER B. ASSISTED LIVING FACILITIES**

**26 TAC §§570.101, 570.103, 570.105, 570.107, 570.109**

The Health and Human Services Commission withdraws proposed new §§570.101, 570.103, 570.105, 570.107, and 570.109, which appeared in the November 12, 2021, issue of the Texas Register (46 TexReg 7709).

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**SUBCHAPTER C. DAY ACTIVITY AND HEALTH SERVICES**

**26 TAC §§570.201, 570.203, 570.205, 570.207, 570.209, 570.211**

The Health and Human Services Commission withdraws proposed new §§570.201, 570.203, 570.205, 570.207, 570.209 and 570.211, which appeared in the November 12, 2021, issue of the Texas Register (46 TexReg 7709).

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

**SUBCHAPTER D. HOME AND COMMUNITY SUPPORT SERVICES AGENCIES**

**DIVISION 1. ALL HCSSAS EXCEPT HOSPICE INPATIENT UNITS**

**26 TAC §§570.301 - 570.303, 570.305, 570.307, 570.309, 570.311, 570.313, 570.315**

The Health and Human Services Commission withdraws proposed new §§570.301 - 570.303, 570.305, 570.307, 570.309, 570.311, 570.313, and 570.315, which appeared in the November 12, 2021, issue of the Texas Register (46 TexReg 7709).

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Karen Ray
Chief Counsel
Health and Human Services Commission
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**DIVISION 2. HOSPICE AGENCIES OPERATING AN INPATIENT FACILITY**

**26 TAC §§570.317 - 570.319, 570.321, 570.323, 570.329**

The Health and Human Services Commission withdraws proposed new §§570.317 - 570.319, 570.321, 570.323, and 570.329, which appeared in the November 12, 2021, issue of the Texas Register (46 TexReg 7709).

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Chief Counsel
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**SUBCHAPTER E. PRESCRIBED PEDIATRIC EXTENDED CARE CENTERS**

26 TAC §§570.401, 570.403, 570.405, 570.407, 570.409, 570.411

The Health and Human Services Commission withdraws proposed new §§570.401, 570.403, 570.405, 570.407, 570.409, and 570.411, which appeared in the November 12, 2021, issue of the *Texas Register* (46 TexReg 7709).

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**SUBCHAPTER F. NURSING FACILITIES**

26 TAC §§570.501, 570.503, 570.505, 570.507, 570.509, 570.511, 570.515, 570.517

The Health and Human Services Commission withdraws proposed new §§570.501, 570.503, 570.505, 570.507, 570.509, 570.511, 570.515, and 570.517, which appeared in the November 12, 2021, issue of the *Texas Register* (46 TexReg 7709).

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Karen Ray
Chief Counsel
Health and Human Services Commission
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**SUBCHAPTER G. INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH AN INTELLECTUAL DISABILITY OR RELATED CONDITIONS**

26 TAC §§570.601, 570.603, 570.605, 570.607, 570.609

The Health and Human Services Commission withdraws proposed new §§570.601, 570.603, 570.605, 570.607, and 570.609, which appeared in the November 12, 2021, issue of the *Texas Register* (46 TexReg 7709).

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Chief Counsel
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**SUBCHAPTER H. HOME AND COMMUNITY-BASED SERVICES**

26 TAC §§570.701, 570.703, 570.705, 570.707, 570.709

The Health and Human Services Commission withdraws proposed new §§570.701, 570.703, 570.705, 570.707, and 570.709 which appeared in the November 12, 2021, issue of the *Texas Register* (46 TexReg 7709).

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Karen Ray
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**SUBCHAPTER I. TEXAS HOME LIVING**

26 TAC §§570.801 - 570.803, 570.805, 570.807

The Health and Human Services Commission withdraws proposed new §§570.801 - 570.803, 570.805, and 570.807 which appeared in the November 12, 2021, issue of the *Texas Register* (46 TexReg 7709).

Filed with the Office of the Secretary of State on May 12, 2022

TRD-202201858
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: May 12, 2022
For further information, please call: (512) 438-3161
Adopted rules  include new rules, amendments  to existing rules, and repeals of existing
rules. A rule adopted by a state agency takes  effect 20 days after the date on which it is
filed with the Secretary of  State unless a later date is required  by statute or specified in
the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the
Texas Register does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then
the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

**TITLE 1. ADMINISTRATION**

**PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION**

**CHAPTER 353. MEDICAID MANAGED CARE**

**SUBCHAPTER O. DELIVERY SYSTEM AND PROVIDER PAYMENT INITIATIVES**

1 TAC §§353.1302, 353.1304, 353.1306, 353.1307, 353.1309, 353.1311, 353.1315, 353.1317, 353.1320, 353.1322

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts amendments to
§353.1302, concerning Quality Incentive Payment Program for Nursing Facilities on or after September 1, 2019; §353.1304, concerning Quality Metrics for the Quality Incentive Payment Program for Nursing Facilities on or after September 1, 2019; §353.1306, concerning Comprehensive Hospital Increase Reimbursement Program for program periods on or after September 1, 2021; §353.1307, concerning Quality Metrics and Required Reporting Used to Evaluate the Success of the Comprehensive Hospital Increase Reimbursement Program; §353.1309, concerning Texas Incentives for Physicians and Professional Services; §353.1311, concerning Quality Metrics for the Texas Incentives for Physicians and Professional Services Program; §353.1315, concerning Rural Access to Primary and Preventive Services Program; §353.1317, concerning Quality Metrics for Rural Access to Primary and Preventive Services Program; §353.1320, concerning Directed Payment Program for Behavioral Health Services; and §353.1322, concerning Quality Metrics for the Directed Payment Program for Behavioral Health Services, in Texas Administration Code Title 1, Part 15, Chapter 353, Subchapter O.

Sections 353.1302, 353.1304, 353.1306, 353.1307, 353.1309, 353.1315, and 353.1320 are adopted without changes to the proposed text as published in the March 18, 2022, issue of the Texas Register (47 TexReg 1337). The rules will not be republished.

Sections 353.1311, 353.1317, and 353.1322 are adopted with changes. These rules will be republished.

**BACKGROUND AND JUSTIFICATION**

The amendments are necessary to comply with approval requirements imposed by the Centers for Medicare and Medicaid Services (CMS), which required HHSC to make modifications related to proposed state-directed payment programs (DPPs) for state fiscal year 2022 and after.

Texas has received approval of five DPPs: the Quality Incentive Payment Program (QIPP), Comprehensive Hospital Increased Reimbursement Program (CHIRP), the Texas Incentives for Physicians and Professional Services program (TIPPS), the Rural Access to Primary and Preventive Services program (RAPPS), and the Directed Payment Program for Behavioral Health Services (BPP BHS) for state fiscal year 2022. In March 2021, in accordance with 42 CFR 438.6(b) and the Special Terms and Conditions (STCs) of the January 15, 2021, 1115 Waiver, Texas submitted "pre-prints" for CMS review and approval. The STCs were drafted and agreed to by Texas and CMS to govern the framework for approval of DPPs, with the clear intention to have an approved program(s) as the ultimate result. Based upon these STCs, Texas expected that CMS would participate in a collaborative process designed to work through and approve each program individually.

On August 18, 2021, CMS and Texas met for the first time in compliance with STC 34. During the call, CMS stated that the DPPs were not approvable, specifically noting the aggregate size of the proposed programs and CMS's purported belief that the amounts proposed were not actuarially sound. Texas requested a specific list of modifications required for each proposed DPP that would result in an approval. On August 20, 2021, CMS sent Texas a list of 19 issues, which can be grouped into five topics, and requested modifications for each program. HHSC and CMS met every two business days between August 20, 2021, and March 24, 2022, to work towards a resolution. The two entities exchanged multiple rounds of written modifications, questions, and responses. The written exchanges can be found posted to the HHSC website at: https://pfd.hhs.texas.gov/provider-finance-communications.

CMS approval of DPP BHS and QIPP was received in November 2021, and approval of CHIRP, RAPPS, and TIPPS was received in March 2022. SFY 2023 preprints for all five programs, CHIRP, DPP BHS, QIPP, RAPPS, and TIPPS were submitted to CMS on March 1, 2022, and responses are in process.

**Reconciliation**

QIPP, TIPPS, RAPPS, and DPP BHS each included at least one component wherein the component payments would be allocated on an interim basis to providers based upon historical data, with a planned reconciliation performed to actual data to determine final payments at the end of the program year. In each case, the reconciliation was only triggered if a statistically significant percentage deviation between historical to actual data occurred. Otherwise, the interim payments would become final. CMS objected to this procedure and required the state to eliminate it. To advance the program approvals and work collaboratively with CMS, HHSC agreed to remove the triggering threshold and conduct the reconciliation at the end of the year.

**Program Size**

CHIRP payments were initially proposed to allow providers to receive average commercial incentive award (ACIA) rate increases up to their individual average commercial reimburse-
ment (ACR) gap amounts. CMS stated that they believed that the resulting proposed program size and payments to providers on a class basis were not reasonable and attainable. To advance the program approvals and work collaboratively with CMS, Texas agreed to cap ACIA increases so a class of providers could receive in aggregate only 90 percent of the classes’ ACR gap amount.

Quality Improvement Measures
CMS stated that they believed that some quality measures were not outcome measures. They did not think Texas should use these measures to determine pay-for-performance and that, in some cases, the achievement requirements did not require providers to demonstrate continual improvement. Texas agreed to modify all program proposals, except for QIPP, to advance the program approvals and work collaboratively with CMS. These modifications pay all components as a uniform rate or payment increase, rather than considering them pay-for-performance. Texas also agreed to make modifications to achievement requirements in QIPP. Therefore, quality measure data submission would be considered a condition of participation for several components in the various programs.

Evaluation
CMS stated that they believed evaluations of the programs should isolate exclusively quality goal advancement for Medicaid managed care beneficiaries and not all Medicaid beneficiaries. CMS also required other modifications to the evaluations to ensure that the program evaluations were sufficiently detailed. Texas agreed to the required modifications to advance the program approvals and work collaboratively with CMS.

Non-Federal Share
CMS stated that they believed that some sources of local funds may not be permissible. This topic is unresolved, but the administrative rules that govern the DPPs are not impacted by this matter.

Additionally, the rules contain some modifications to appropriately align the rules with HHSC operational considerations. The rule amendments eliminate a potential mid-year enrollment process for RAPPS and DPP BHS. A program period is a 12-month rating period, and a mid-year enrollment is not feasible.

DPP BHS rules are also amended to clarify the eligible providers for the Program Period from September 1, 2021, through August 31, 2022, and eligible providers for Program Periods on or after September 1, 2022.

COMMENTS
The 21-day comment period ended April 8, 2022.

During this period, HHSC received comments regarding the proposed amendments from two commenters, including the University of Texas at Southwestern Medical Center (UTSW) and the Texas Medical Association. A summary of comments relating to the rules and HHSC’s responses follows.

Comment: One commenter provided recommendations in relation to §353.1309 and the change in the TIPPS structure from quality based to reporting as a condition of participation. The change results in recoupment of all payments received and removal from the program for failure to report. The commenter recommended revising §353.1309 so that (1) recoupments are not disproportionate to the underlying error, (2) physicians are notified of identified errors and given an opportunity to submit additional information, and (3) the rule includes due process rights to notice and appeal.

Response: To clarify, physicians will be notified by HHSC if they fail to report, or their reporting is incomplete, and will be given an opportunity to correct prior to recoupments being issued. The provider will need to respond within the timeline communicated by HHSC to meet condition of participation requirements. HHSC added clarification to the quality metric rules §§353.1311, 353.1317, and 353.1322 that specifies that providers will have 30 calendar days to respond after a request from HHSC for more information.

HHSC declines to make the other two recommended updates as changes recommended are not allowable under the program structure as approved by CMS. Per the approved program, reporting is a condition of participation, which is different than pay-for-reporting, and failure to report results in recoupment of all payments. Pay-for-reporting would allow for proportional recoupments, but CMS explicitly prohibits pay-for-reporting in the Special Terms and Conditions of the approved 1115 Waiver. The rules process does not include a right to notice and appeal as that is not contemplated in the approved structure for the program as approved by CMS. The change in the structure of the program to strictly require reporting as a condition of participation was required by CMS prior to approval so updates would require additional negotiations with CMS.

Comment: One commenter requested that the TIPPS recoupment language in §353.1309 be amended to add detail to allow for guidance on determining the amount of recoupment, notice requirements, and the conditions required for recoupment. The commenter also requested additional updates to address the process for removing a provider from the program, giving the provider an opportunity to correct identified noncompliance, and appealing an intended recoupment or removal from the program.

Response: To clarify, physicians will be notified by HHSC if they fail to report, or their reporting is incomplete, and will be given an opportunity to correct prior to recoupments being issued. The provider will need to respond within the timeline communicated by HHSC to meet condition of participation requirements. HHSC added clarification to the quality metric rules §§353.1311, 353.1317, and 353.1322 that specifies that providers will have 30 calendar days to respond after a request from HHSC for more information.

HHSC declines to make the other recommended updates as changes recommended are not allowable under the program structure as approved by CMS. Per the approved program, reporting is a condition of participation, which is different than pay-for-reporting, and failure to report results in recoupment of all payments without exception. Pay-for-reporting would allow for proportional recoupments, but CMS explicitly prohibits pay-for-reporting in the Special Terms and Conditions of the approved 1115 Waiver. The rules process does not include a right to notice and appeal as that is not contemplated in the approved structure for the program as approved by CMS. The change in the structure of the program to strictly require reporting as a condition of participation was required by CMS prior to approval so updates would require additional negotiations with CMS.

Comment: One commenter requested that §353.1309(g)(1)(C) which describes TIPPS Component 1 payments as a “uniform rate increase” should be amended as follows: “(C) Monthly pay-
ments to HRI and IME physician groups will be a uniform dollar increase multiplied by unique Medicaid clients served."

Response: HHSC declines to make the suggested update as Component 1 is a uniform rate in terms of an additional payment rate per Medicaid client served. A uniform dollar increase implies that the additional dollars are applied on a per claim basis, which is not the structure of this component.

HHSC revises §353.1311(d)(2), §353.1317(e), and §353.1322(d)(2) to include additional clarifying information regarding timelines for provider response to inquiries to reflect current practice. These revisions were made to clarify existing practices. No other edits were made.

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for Medicaid payments under Texas Human Resources Code, Chapter 32; and Texas Government Code §533.002, which authorizes HHSC to implement the Medicaid managed care program.

§353.1311. Quality Metrics for the Texas Incentives for Physicians and Professional Services Program.

(a) Introduction. This section establishes the quality metrics that may be used in the Texas Incentives for Physician and Professional Services (TIPPS) program.

(b) Definitions. Terms that are used in this section may be defined in §353.1301 of this subchapter (relating to General Provisions) or §353.1309 of this subchapter (relating to the Texas Incentives for Physicians and Professional Services).

(c) Quality metrics. For each program period, HHSC will designate one or more metrics for each TIPPS capitation rate component.

(1) Each quality metric will be identified as a structure measure, improvement over self (IOS) measure, or benchmark measure.

(2) Any metric developed for inclusion in TIPPS will be evidence-based.

(d) Quality metric requirements. For each program period, HHSC will specify the requirements that will be associated with the designated quality metric.

(1) A physician group must report all quality metrics in any Component in which it is participating as a condition of participation. Participating physician groups must stratify any reported data by payor type and must report data according to requirements published under subsection (f) of this section.

(2) Reporting frequency. Quality metrics will be reported semi-annually unless otherwise specified by the quality metric. Participating physician groups will also be required to furnish information and data related to quality measures and performance requirements established in accordance with subsection (e) of this section within 30 calendar days after a request from HHSC for more information.

(e) Notice and hearing.

(1) HHSC will publish notice of the proposed metrics and their associated requirements no later than January 31 preceding the first month of the program period. The notice must be published either by publication on HHSC’s website or in the Texas Register. The notice required under this section will include the following:

(A) instructions for interested parties to submit written comments to HHSC regarding the proposed metrics and requirements; and

(B) the date, time, and location of a public hearing.

(2) Written comments will be accepted for 15 business days following publication. There will also be a public hearing within 15-day period to allow interested persons to present comments on the proposed metrics and requirements.

(f) Publication of Final Metrics and Requirements. Final quality metrics and requirements will be published through HHSC’s website on or before February 28 of the calendar year that also contains the first month of the program period. If Centers for Medicare and Medicaid Services requires changes to quality metrics or requirements after February 28 of the calendar year, HHSC will provide notice of the changes through HHSC’s website.

(g) Evaluation Reports.

(1) HHSC will evaluate the success of the program based on a statewide review of reported metrics. HHSC may publish more detailed information about specific performance of various participating physician groups, classes of physician groups, or service delivery areas.

(2) HHSC will publish interim evaluation findings regarding the degree to which the arrangement advanced the established goal and objectives of each capitation rate component.

(3) HHSC will publish a final evaluation report within 270 days of the conclusion of the program period.

§353.1317. Quality Metrics for Rural Access to Primary and Preventive Services Program.

(a) Introduction. This section establishes the quality metrics that may be used in the Rural Access to Primary and Preventive Services (RAPPS) program.

(b) Definitions. The following definitions apply when the terms are used in this section. Other terms used in this section may be defined in §353.1301 of this subchapter (relating to General Provisions) or §353.1315 of this subchapter (relating to Rural Access to Primary and Preventive Services Program).

(1) Baseline—An initial standard used as a comparison against performance in each metric throughout the program period to determine progress in a RAPPS quality metric.

(2) Benchmark—A metric-specific initial standard set prior to the start of the program period and used as a comparison against a rural health clinic's (RHC's) progress throughout the program period.

(3) Measurement period—The time period used to measure achievement of a quality metric.

(c) Quality metrics. For each program period, the Texas Health and Human Services Commission (HHSC) will designate quality metrics for each RAPPS capitation rate component as described in §353.1315(h) of this subchapter.

(1) Each quality metric will be identified as a structure measure, improvement over self (IOS) measure, or benchmark measure.
(2) Each quality metric will be evidence-based.

(d) Quality metric requirements. For each program period, HHSC will specify the requirements that will be associated with the designated quality metric.

(1) Reporting of quality metrics. An RHC must report all quality metrics as a condition of participation in the program. An RHC must stratify any reported data by payor type and must report data according to requirements published under subsection (g) of this section.

(2) Achievement of quality metrics.

(A) To achieve a structure measure, an RHC must report its progress on associated activities for each measurement period.

(B) To achieve an IOS or benchmark measure, an RHC must meet or exceed the measure's goal for a measurement period. Goals will be established as either a target percentage improvement over self or performance above a benchmark as specified by the metric and determined by HHSC. In year one of the program, providers will establish a baseline for IOS measures.

(c) Participating RHC reporting frequency. Participating RHCs must report quality metrics semi-annually unless otherwise specified by the quality metric. Participating RHCs will also be required to furnish information and data related to quality measures and performance requirements established in accordance with subsection (f) of this section within 30 calendar days after a request from HHSC for more information.

(f) Notice and hearing.

(1) HHSC will publish notice of the proposed quality metrics and their associated requirements no later than January 31, preceding the first month of the program period. The notice must be published either by publication on HHSC's website or in the Texas Register. The notice required under this section will include the following:

(A) instructions for interested parties to submit written comments to HHSC regarding the proposed metrics and requirements; and

(B) the date, time, and location of a public hearing.

(2) Written comments will be accepted for 15 business days following publication. There will also be a public hearing within that 15-day period to allow interested persons to present comments on the proposed metrics and requirements.

(g) Publication of final metrics and requirements. Final quality metrics and requirements will be provided through HHSC's website on or before February 28 of the calendar year that also contains the first month of the program period. If the Centers for Medicare and Medicaid Services requires changes to quality metrics or requirements after February 28, HHSC will provide notice of the changes through HHSC's website.

(h) Evaluation Reports.

(1) HHSC will evaluate the success of the program based on a review of reported metrics. HHSC may publish more detailed information about specific performance of various participating RHCs, classes of RHCs, or service delivery areas.

(2) HHSC will publish interim evaluation findings regarding the degree to which the arrangement advanced the established goal and objectives of each capitation rate component.

(3) HHSC will publish a final evaluation report within 270 days of the conclusion of the program period.


(a) Introduction. This section establishes the quality metrics and required reporting that may be used in the Directed Payment Program for Behavioral Health Services.

(b) Definitions. The following definitions apply when the terms are used in this section. Terms that are used in this section may be defined in §353.1301 (relating to General Provisions) or §353.1320 (relating to Directed Payment Program for Behavioral Health Services) of this subchapter.

(1) Baseline--An initial standard used as a comparison against performance in each metric throughout the program period to determine progress in the program's quality metrics.

(2) Benchmark--A metric-specific initial standard set prior to the start of the program period and used as a comparison against a provider's progress throughout the program period.

(3) Measurement period--The time period used to measure achievement of a quality metric.

(c) Quality metrics. For each program period, the Texas Health and Human Services Commission (HHSC) will designate quality metrics for each of the program's capitation rate components as described in §353.1320(h) of this subchapter.

(1) Each quality metric will be identified as a structure measure, improvement over self (IOS) measure, or benchmark measure.

(2) Each quality metric will be evidence-based and will be presented to the public for comment in accordance with subsection (e) of this section.

(d) Quality Metric requirements. For each program period, HHSC will specify the requirements that will be associated with the designated quality metric that is expected to advance at least one of the goals and objectives in the Medicaid quality strategy. Quality metric data will be used to evaluate the degree to which the arrangement advances at least one of the goals and objectives that are incentivized by the payments described under §353.1320(h) of this subchapter.

(1) Reporting of quality metrics. All quality metrics must be reported as a condition of participation in the program. Participating providers must stratify any reported data by payor type and must report data according to requirements published under subsection (f) of this section.

(2) Reporting frequency. Providers must report quality metrics semi-annually, unless otherwise specified by the metric. Participating providers will also be required to furnish information and data related to quality measures and performance requirements established in accordance with subsection (e) of this section within 30 calendar days after a request from HHSC for more information.

(3) Other metrics related to improving the quality of care for Texas Medicaid beneficiaries. If HHSC develops additional metrics for inclusion in the Directed Payment Program for Behavioral Health Services, the associated performance requirements will be presented to the public for comment in accordance with subsection (e) of this section.

(e) Notice and hearing.

(1) HHSC will publish notice of the proposed quality metrics and their associated requirements no later than January 31 preceding the first month of the program period. The notice must be published either by publication on HHSC's website or in the Texas Register. The notice required under this section will include the following:
(A) instructions for interested parties to submit written comments to HHSC regarding the proposed metrics and requirements; and

(B) the date, time, and location of a public hearing.

(2) Written comments will be accepted for 15 business days following publication. There will also be a public hearing within that 15-day period to allow interested persons to present comments on the proposed metrics and requirements.

(f) Publication of final metrics and requirements. Final quality metrics and requirements will be provided through HHSC’s website on or before February 28 of the calendar year that also contains the first month of the program period. If the Centers for Medicare and Medicaid Services requires changes to quality metrics or requirements after February 28 of the calendar year, HHSC will provide notice of the changes through HHSC’s website.

(g) Evaluation Reports.

(1) HHSC will evaluate the success of the program based on a statewide review of reported metrics. HHSC may publish more detailed information about specific performance of various participating providers, classes of providers, or service delivery areas.

(2) HHSC will publish interim evaluation findings regarding the degree to which the arrangement advanced the established goal and objectives of each capitation rate component.

(3) HHSC will publish a final evaluation report within 270 days of the conclusion of the program period.

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

Filed with the Office of the Secretary of State on May 11, 2022.

TRD-202201840
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
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Proposal publication date: March 18, 2022
For further information, please call: (512) 424-6637

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 17. MARKETING AND PROMOTION

SUBCHAPTER K. GO TEXAN - MARKETING ENHANCEMENT GRANT ASSISTANCE PROGRAM

4 TAC §§17.700 - 17.706

The Texas Department of Agriculture (the Department) adopts new Title 4, Part 1, Chapter 17, Marketing and Promotion, Subchapter K, §§17.700 - 17.706 to the Texas Administrative Code, providing rules related to the establishment, implementation, and administration of the GO TEXAN - Marketing Enhancement Grant Assistance Program (Program), including eligibility, use of funds, application process, and reporting requirements. Section 17.705, concerning Filing Requirements; Consideration of Project Requests; Grant Awards; and §17.706, concerning Reporting Requirements, of Subchapter K, are adopted without changes to the proposed text as published in the March 18, 2022, issue of the Texas Register (47 TexReg 1357). These rules will not be republished. Section 17.700, concerning Statement of Purpose; §17.701, concerning Definitions; §17.702, concerning Administration; §17.703, concerning Eligibility; and §17.704, concerning Use of Grant, of Subchapter K, are adopted with changes to the proposed text as published in the March 18, 2022, issue of the Texas Register (47 TexReg 1357). These rules will be republished. Changes in the adopted text of the new rules respond to public comments by clarifying the Department’s intent to use information required by the application form as selection criteria or otherwise reflect non-substantive variations from the proposed text. The revisions result in no change to the nature or scope of the proposed text of the rules, affect no new individuals other than those given notice, and impose no additional requirements for compliance than the proposed text.

The adopted rules establish a new grant program designed for the purposes of assisting the Department with its marketing and promotion functions related to the GO TEXAN program and raising awareness of GO TEXAN participants and products as authorized by Chapter 12 of the Texas Agriculture Code. The adopted rules relate to the purpose of the Program, define relevant terms and phrases, and provide rules for Program administration, grant eligibility, use of grant funds, application requirements, grant project requests, and reporting requirements.

PUBLIC COMMENTS

The 30-day public comment period ended April 18, 2022. During this period, the Department received written comments from a sole entity, the Farm and Ranch Freedom Alliance (FARFA), as well as fifteen members of the public, eleven of whom expressed direct support for FARFA’s comments (in whole or in part) and four individuals whose comments restated those also submitted by FARFA. FARFA commented against the proposed rules relating to grant administration, eligibility, and disbursement of grant funds on a cost-reimbursement basis. FARFA also commented on subject matter involving the Department that falls outside the scope of the proposed rules in Subchapter K.

COMMENT: FARFA and other commenters expressed concern that selection criteria was not proposed in rule and despite acknowledging the need for flexibility, urged the Department to address grant selection criteria through rulemaking.

RESPONSE: The Department declines to amend the proposed text in §17.702 and §17.703. The Department complies with the Texas Grant Management Standards (TxGMS) promulgated by the Office of the Texas Comptroller of Public Accounts (CPA), which are designed to ensure transparency, objectivity, and integrity in the grantee selection process. The Department follows the customary practice of Texas state agencies, as noted by CPA in the TxGMS, namely announcing grant opportunities on the Department’s public website and publishing a complete Request for Grant Applications (RFGA) for each available grant opportunity related to programs administered by the Department. Each RFGA includes specific information related to grant eligibility, grant application requirements, selection criteria, application submission instructions, eligible and ineligible costs, and reporting requirements. The Department also complies with state
law requirements to post certain grant awards on its public website, to implement internal controls to ensure grant evaluation and award procedures are consistently followed, and to retain records associated with grant programs.

**COMMENT:** FARFA and multiple commenters expressed further concern that the MEGA Program will give greatest benefit to large entities.

**RESPONSE:** The Department disagrees and declines to amend the proposed text in §17.703. Eligibility to participate in grant opportunities offered under the MEGA Program is not based on the size of an applicant's business entity and such information is not sought as part of the grant application. Marketing and promotional activities that raise awareness of the GO TEXAN Program, participating businesses or products result in an overall benefit to all GO TEXAN participants.

**COMMENT:** FARFA and other commenters assert the Department should include, as a key selection criterion, preference to products based on the percentage of ingredients that are Texas grown.

**RESPONSE:** The Department disagrees and declines to amend the proposed text. As stated in new §17.701, the purpose of the Program is to assist the Department with its marketing and promotion functions related to the entire GO TEXAN program and to raise awareness of GO TEXAN participants and products. The MEGA Program is intended to benefit multiple GO TEXAN categories including Associate partners who would be eligible for event grants to bring awareness to the GO TEXAN Program as a whole and product promotion grants to assist GO TEXAN participants to sample, sell, and promote their products to new audiences. To the extent these comments seek to address or modify the GO TEXAN Program, the comments relate to subject matter outside the scope of the proposed rules.

**COMMENT:** FARFA and other commenters also expressed concern about the reimbursement process and how delayed payments create an additional burden for very small businesses. FARFA and other commenters further proposed that the Department advance funds to small businesses or expedite processing within 10 days of receiving reimbursement requests from small businesses.

**RESPONSE:** The Department disagrees and declines to amend the proposed text of §17.704. Distribution of grant funds on a cost-reimbursement basis is required by Article IX, §4.02 of the General Appropriations Act and the TxGMS except when statute provides otherwise or if an agency determines an alternative method of distribution is necessary. In addition, this method of distribution complies with TxGMS requirements that all state agencies, including the Department, implement sufficient controls associated with grant transactions to ensure the public purpose is carried out.

**COMMENT:** One commenter who restated FARFA's comments further raised concern that §17.703 did not contain standard eligibility criteria and outlined possible consequences due to uncertainty.

**RESPONSE:** The Department disagrees and declines to revise the proposed text in §17.703 to include standard eligibility criteria. The Department anticipates offering more than one grant opportunity under the MEGA Program and therefore requires flexibility in establishing eligibility. The Department complies with TxGMS and will include specific eligibility requirements in published Requests for Grant Applications.

**COMMENT:** FARFA and several individuals offered comments against various aspects of the GO TEXAN Program.

**RESPONSE:** The Department declines to revise the proposed rules in Subchapter K based on these comments as they relate to subject matter outside the scope of the proposed rules.

**COMMENT:** One commenter requested information on previous grant recipients and asked if the health and wellness of the community improved.

**RESPONSE:** The Department declines to revise the proposed text based on this comment. Information on previous grant recipients and grants programs administered by the Department is available by submitting a written request to the Department pursuant to the Texas Public Information Act, Texas Government Code, Chapter 552. The inquiry concerning the impacts of grants on community health and wellness is outside the stated purpose of the MEGA Program, as stated in §17.700, which is to assist with marketing and promotional activities to raise awareness of the GO TEXAN Program, its participants, and products.

The rules are adopted pursuant to §12.016 of the Texas Agriculture Code (Code), which authorizes the Department to adopt rules as necessary for the administration of its powers and duties under the Code.

§17.700. Statement of Purpose.
The GO TEXAN-Marketing Enhancement Grant Assistance Program is designed to provide grant funds to GO TEXAN partners to assist with the marketing and promotion of certified Texas agricultural products, including those that have been produced, processed, or otherwise had value added to the product in Texas; certified Texas non-agricultural products; Associate GO TEXAN Registrants; or the GO TEXAN Program.

§17.701. Definitions.
General definitions applicable to Title 4, Part 1, including this subchapter, are located in Chapter 1, Rule 1.1. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

1. Associate GO TEXAN Registrants--Persons who apply and are granted limited use of the mark by the department for assistance in the promotion and implementation of the GO TEXAN Program.

2. Good standing--Means that an applicant's GO TEXAN registration is in full compliance with all of the provisions of the GO TEXAN Program, including applicant's GO TEXAN registration has been approved by the Department and is not currently suspended or terminated, all registration fees have been paid, and the Registrant's account has no outstanding issues.

3. GO TEXAN Program--Texas Department of Agriculture's promotion of Texas-made, grown, manufactured or processed products, as well as services and communities.

4. MEGA Program--GO TEXAN-Marketing Enhancement Grant Assistance Program.

5. Registrant--A person in good standing with the Department who is authorized to use the GO TEXAN certification mark for the purpose of verifying their product or service is grown, manufactured or provided in Texas.

§17.702. Administration.
(a) The Department shall administer the MEGA Program, subject to the availability of funds.

(b) The Department may create multiple grant opportunities under the MEGA Program to benefit products or Associate GO
TEXAN Registrants by bringing awareness to the businesses and the GO TEXAN Program as a whole.

(c) The Department shall approve a standard grant application for each MEGA Program grant cycle. The request for grant applications, standard application form, or related guidance materials for each MEGA Program grant cycle shall state the purpose of the grant program, eligibility criteria, required information, selection criteria, due date for submission of applications, and estimated award date.

(d) Information required by the application form for each type of grant opportunity offered under the MEGA Program will serve as the selection criteria used by the Department to determine grant awards. The Department shall publish an application form and provide additional information concerning each type of grant opportunity in its Request for Grant Applications, which will be made available to the public on the Department's website.

(e) The Department shall review submitted applications according to the published selection criteria and make funding recommendations to the Commissioner.

§17.703. Eligibility.

(a) An eligible applicant must be a current GO TEXAN Program Registrant in good standing, as defined in this subchapter. Selected applicants must maintain an appropriate level of GO TEXAN participation throughout the term of the MEGA Program grant, based on grant eligibility criteria published in the request for grant application for each MEGA Program grant cycle.

(b) Eligibility to participate in the MEGA Program is determined upon the deadline to submit applications.

(c) An applicant that has a family, employment or business relationship with an executive, officer or employee of the Department is not eligible for a grant and may not participate in the MEGA Program. A family relationship is defined as a relationship within the third degree of consanguinity or second degree of affinity, as established pursuant to Chapter 573 of the Texas Government Code.

§17.704. Use of Grant.

(a) Funds received under this subchapter may only be used for activities related to the specified purpose of the grant opportunity offered as part of the MEGA Program namely, marketing and promotion of certified GO TEXAN agricultural and non-agricultural products, Associate GO TEXAN Registrants, or the GO TEXAN Program. The published request for grant applications will clearly identify the purpose of the grant and include information related to eligible and ineligible expenditures.

(b) Funds shall be distributed to selected applicants on a cost reimbursement basis in accordance with the grant agreement.

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

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 24. SUBSTANTIVE RULES APPLICABLE TO WATER AND SEWER SERVICE PROVIDERS

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §24.3

The Public Utility Commission of Texas (commission) adopts amendments to 16 Texas Administrative Code (TAC) §24.3, relating to definitions of terms for Chapter 24. The commission adopts these rules with changes to the proposed rules as published in the November 12, 2021, issue of the Texas Register (46 TexReg 7694). Changes to §24.3 include a more comprehensive definition of "affected county" and "inactive connection"; the deletion of "temporary rate for service provided for a non-functioning system;" and changes to clarify the language of other definitions in Chapter 24. The rule will be republished.

The commission received comments on the proposed rule from Alliance for Retail Markets (ARM); ChargePoint, EVgo, and Tesla (collectively, Joint EVSE Providers); Office of Public Utility Counsel (OPUC); Texas Caterpillar Dealers Legislative Council (TCDLC); Texas Electric Cooperatives (TEC); and Texas Public Power Association (TPPA).

Chapter 24 General Comments

16 TAC §24.3 defines specific terms for their usage and context within Chapter 24.

OPUC was generally supportive of the changes to §24.3 and had no further comments.

Commission Response

The commission agrees with OPUC and adopts the proposed changes to §24.3 accordingly.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting this rule, the commission makes other minor modifications for the purpose of clarifying its intent.

The amendments to §24.3 are adopted under the following provisions of Chapter 13 of the Texas Water Code (TWC): §13.041(a), which provides the commission with general power to regulate and supervise the business of each water and sewer utility within its jurisdiction and to do all things, whether specifically designated or implied in Chapter 13, that are necessary and convenient to the exercise of its powers and jurisdiction; and §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross reference to statutes: PURA §14.001, §14.002, §31.002(4-b), §31.002(6), §31.002(6)(J)(iv) §37.001(3), and §37.002; TWC §13.041(a) and §13.041(b).

§24.3. Definitions of Terms.

In this chapter, the following definitions apply unless the context indicates otherwise.

(1) Affected county--A county that:
(A) Has a per-capita income that averaged 25% below the state average for the most recent three consecutive years for which statistics are available and an unemployment rate that averaged 25% above the state average for the most recent three consecutive years for which statistics are available;

(B) Has an international border;

(C) Is located in whole or in part within 100 miles of an international border and contains a majority of the area of a municipality with a population of more than 250,000; or

(D) Has an economically distressed area which has a median household income that is not greater than 75% of the median state household income.

(2) Affected person--Any landowner within an area for which a certificate of public convenience and necessity is filed, any retail public utility affected by any action of the regulatory authority, any person or corporation whose utility service or rates are affected by any proceeding before the regulatory authority, or any person or corporation that is a competitor of a retail public utility with respect to any service performed by the retail public utility or that desires to enter into competition.

(3) Affiliated interest or affiliate--

(A) any person or corporation owning or holding directly or indirectly 5.0% or more of the voting securities of a utility;

(B) any person or corporation in any chain of successive ownership of 5.0% or more of the voting securities of a utility;

(C) any corporation owning or holding 5.0% or more of the voting securities of which is owned or controlled directly or indirectly by a utility;

(D) any corporation owning or holding 5.0% or more of the voting securities of which is owned or controlled directly or indirectly by any person or corporation that owns or controls directly or indirectly 5.0% or more of the voting securities of any utility or by any person or corporation in any chain of successive ownership of 5.0% of those utility securities;

(E) any person who is an officer or director of a utility or of any corporation in any chain of successive ownership of 5.0% or more of voting securities of a public utility;

(F) any person or corporation that the commission, after notice and hearing, determines actually exercises any substantial influence or control over the policies and actions of a utility or over which a utility exercises such control or that is under common control with a utility, such control being the possession directly or indirectly of the power to direct or cause the direction of the management and policies of another, whether that power is established through ownership or voting of securities or by any other direct or indirect means; or

(G) any person or corporation that the commission, after notice and hearing, determines is exercising substantial influence over the policies and actions of the utility in conjunction with one or more persons or corporations with which they are related by ownership or blood relationship, or by action in concert, that together they are affiliated within the meaning of this section, even though no one of them alone is so affiliated.

(4) Billing period--The period between meter-reading dates for which a bill is issue or, if usage is not metered, the period between bill issuance dates.

(5) Class A Utility--A public utility that provides retail water or sewer utility service to 10,000 or more taps or active connections.

If a public utility provides both water and sewer utility service, the number of active water connections determines how the utility is classified.

(6) Class B Utility--A public utility that provides retail water or sewer utility service to 2,300 or more taps or active connections but fewer than 10,000 taps or active connections. If a public utility provides both water and sewer utility service, the number of active water connections determines how the utility is classified.

(7) Class C Utility--A public utility that provides retail water or sewer utility service to 500 or more taps or active connections but fewer than 2,300 taps or active connections. If a public utility provides both water and sewer utility service, the number of active water connections determines how the utility is classified.

(8) Class D Utility--A public utility that provides retail water or sewer utility service to fewer than 500 taps or active connections. If a public utility provides both water and sewer utility service, the number of active water connections determines how the utility is classified.

(9) Commission--The Public Utility Commission of Texas.

(10) Corporation--Any corporation, joint-stock company, or association, domestic or foreign, and its lessees, assignees, trustees, receivers, or other successors in interest, having any of the powers or privileges of corporations not possessed by individuals or partnerships, but does not include municipal corporations unless expressly provided in TWC chapter 13.

(11) Customer--Any entity that purchases services from a retail public utility.

(12) Customer class--A group of customers with similar cost-of-service characteristics that take utility service under a single set of rates.

(13) Customer service line--The pipe connecting the water meter to the customer's point of use or the pipe that conveys sewage from the customer's premises to the service provider's service line.

(14) District--District has the meaning assigned to it by TWC §49.001(a).

(15) Facilities--All the plant and equipment of a retail public utility, including all tangible and intangible real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with the business of any retail public utility.

(16) Inactive connection--A water or wastewater connection is considered to be inactive when the ability to provide water or wastewater service is either physically removed or permanently closed.

(17) Incident of tenancy--Water or sewer service provided to tenants of rental property for which no separate or additional service fee is charged other than the rental payment.

(18) Landowner--An owner or owners of a tract of land.

(19) Member--A person who holds a membership in a water supply or sewer service corporation and who is a record owner of a fee simple title to property in an area served by a water supply or sewer service corporation, or a person who is granted a membership and who either currently receives or will be eligible to receive water or sewer utility service from the corporation. In determining member control of a water supply or sewer service corporation, a person is entitled to only one vote regardless of the number of memberships the person owns.
(20) Minimum Monthly Charge--The fixed amount billed to a customer each month even if the customer uses no water or wastewater.

(21) Municipality--Cities organized under the general, home rule, or special laws of this state.

(22) Municipally owned utility--Any retail public utility owned, operated, and controlled by a municipality or by a nonprofit corporation whose directors are appointed by one or more municipalities.

(23) Nonfunctioning system or utility--A system that is operating as a retail public utility and:
   (A) is required to have a CCN and is operating without a CCN; or
   (B) is under supervision in accordance with §24.353 of this title (relating to Supervision of Certain Utilities); or
   (C) is under the supervision of a receiver, temporary manager, or has been referred for the appointment of a temporary manager or receiver, in accordance with §24.355 of this title (relating to Operation of Utility that Discontinues Operation or Is Referred for Appointment of a Receiver) and §24.357 of this title (relating to Operation of a Utility by a Temporary Manager).

(24) Person--Natural persons, partnerships of two or more persons having a joint or common interest, mutual or cooperative associations, water supply or sewer service corporations, and corporations.

(25) Point of use--The primary service connection point where water is used or sewage is generated.

(26) Potable water--Water that is suitable for drinking.

(27) Potential connections--Total number of active plus inactive connections.

(28) Premises--A tract of land or real estate including buildings and other appurtenances thereon.

(29) Rate--Every compensation, tariff, charge, fare, toll, rental, and classification or any of those items demanded, observed, charged, or collected, whether directly or indirectly, by any retail public utility, for any service, product, or commodity described in TWC §13.002(23), and any rules, regulations, practices, or contracts affecting that compensation, tariff, charge, fare, toll, rental, or classification.

(30) Requested area--The area that a petitioner or applicant seeks to obtain, add to, or remove from a retail public utility's certificated service area.

(31) Retail public utility--Any person, corporation, public utility, water supply or sewer service corporation, municipality, political subdivision or agency operating, maintaining, or controlling in this state facilities for providing potable water service or sewer service, or both, for compensation.

(32) Retail water or sewer utility service--Potable water service or sewer service, or both, provided by a retail public utility to the ultimate consumer for compensation.

(33) Service--Any act performed, anything furnished or supplied, and any facilities or lines committed or used by a retail public utility in the performance of its duties under TWC chapter 13 to its patrons, employees, other retail public utilities, and the public, as well as the interchange of facilities between two or more retail public utilities.

(34) Service area--Area to which a retail public utility is obligated to provide retail water or sewer utility service.

(35) Stand-by fee--A charge, other than a tax, imposed on undeveloped property:
   (A) with no water or wastewater connections; and
   (B) for which water, sanitary sewer, or drainage facilities and services are available; water supply, wastewater treatment plant capacity, or drainage capacity sufficient to serve the property is available; or major water supply lines, wastewater collection lines, or drainage facilities with capacity sufficient to serve the property are available.

(36) Test year--The most recent 12-month period beginning on the first day of a calendar- or fiscal-year quarter for which operating data for a retail public utility are available.

(37) Tract of land--An area of land that has common ownership and is not severed by other land under different ownership, whether owned by government entities or private parties; such other land includes roads and railroads. A tract of land may be acquired through multiple deeds or shown in separate surveys.

(38) Water and sewer utility, utility, or public utility--Any person, corporation, cooperative corporation, affected county, or any combination of those persons or entities, other than a municipal corporation, water supply or sewer service corporation, or a political subdivision of the state, except an affected county, or their lessees, trustees, and receivers, owning or operating for compensation in this state equipment or facilities for the transmission, storage, distribution, sale, or provision of potable water to the public or for the resale of potable water to the public for any use or for the collection, transportation, treatment, or disposal of sewage or other operation of a sewage disposal service for the public, other than equipment or facilities owned and operated for either purpose by a municipality or other political subdivision of this state or a water supply or sewer service corporation, but does not include any person or corporation not otherwise a public utility that furnishes the services or commodity only to itself or its employees or tenants as an incident of that employee service or tenancy when that service or commodity is not resold to or used by others.

(39) Water supply or sewer service corporation--Any nonprofit corporation organized and operating under TWC chapter 67, that provides potable water or sewer service for compensation and that has adopted and is operating in accordance with bylaws or articles of incorporation which ensure that it is member-owned and member-controlled. The term does not include a corporation that provides retail water or sewer utility service to a person who is not a member, except that the corporation may provide retail water or sewer utility service to a person who is not a member if the person only builds on or develops property to sell to another and the service is provided on an interim basis before the property is sold.

(40) Water use restrictions--Restrictions implemented to reduce the amount of water that may be consumed by customers of the utility due to emergency conditions or drought.

(41) Wholesale water or sewer service--Potable water service or sewer service, or both, provided to a person, political subdivision, or municipality who is not the ultimate consumer of the service.

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

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CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §25.5

The Public Utility Commission of Texas (commission) adopts amendments to 16 Texas Administrative Code (TAC) §25.5, relating to definitions for Chapter 25. The commission adopts this rule with changes to the proposed rule as published in the November 12, 2021, issue of the Texas Register (46 TexReg 7697). Changes to §25.5 revise definitions to comport with changes made by House Bill (HB) 1572 and Senate Bill (SB) 1202, passed by the 87th Legislature (Regular Session). Specifically, these changes relate to amendments to PURA §31.002(4-b), (6), and (17); PURA §31.0021; PURA §37.001(3); and PURA §37.002. The rule will be republished.

The commission received comments on the proposed rule from Alliance for Retail Markets (ARM); Chargepoint, EVgo, and Tesla (collectively, Joint EVSE Providers); Office of Public Utility Counsel (OPUC); Texas Caterpillar Dealers Legislative Council (TCDLC); Texas Electric Cooperatives (TEC); and Texas Public Power Association (TPPA).

Chapter 25 General Comments

16 TAC §25.5 defines specific terms for their usage and context within Chapter 25.

OPUC was generally supportive of the changes to §25.5 and had no further comments.

Joint EVSE providers commented that the language of the proposed rule lacked a definition for charging service as described in SB 1202. Joint EVSE providers recommend adopting the following definition of "charging service" under §25.5:

Charging Service - The commission may by rule exempt from the definition of "electric utility" or "retail electric provider" under Section 31.002 a provider who owns or operates equipment used solely to provide electricity charging service for a mode of transportation.

Commission Response

The commission declines to adopt the definition of "charging service" proposed by Joint EVSE, because the proposed language is not a definition - it is a partial description of the commission's authority to modify its definitions of "electric utility" and "retail electric provider." Accordingly, the commission disagrees that this is an appropriate definition for the term "charging station."

TPPA recommended the commission distinguish between the term "ERCOT" as defined under §25.5(39) and "ERCOT region" as used in §25.5(48), as the definitions of the two terms are similar and overlap.

Commission Response

The commission acknowledges that the term "ERCOT" is defined as describing either an organization or a geographic region, and the term "ERCOT region" specifically refers to the geographic region. However, this is consistent with how the terms are used in the commission's rules. Moreover, the term "ERCOT" appears more than a thousand times in the commission's rules and modifying the application of these terms risks unintended consequences. The commission also acknowledges that the two definitions do not use identical language to describe the geographic region of ERCOT, but both descriptions unambiguously describe the same region. Accordingly, the commission declines to modify either definition.

§25.5(41) - "Electric utility"

Subsection §25.5(41) defines "electric utility" and lists exclusions from the definition. Proposed §25.5(41) adds to these exclusions a person or individual that "is an electric generation equipment lessor or operator."

TCDLC supported the commission's proposed definition of electric utility under §25.5(41), which reflects the exempt status of those leasing or operating certain electric generation equipment. ARM and TEC recommended including the definition for "electric generation equipment lessor or operator" as stated in HB 1572, codified as PURA §31.002(4-b), for clarity in proposed §25.5. In the alternative, ARM and TEC recommended including a reference to PURA §31.002(4-b) in the exemptions to the definition of electric utility under subparagraph §25.5(41)(J)(iv) for clarity.

Commission Response

The commission agrees with ARM's recommendation to define "electric generation equipment lessor or operator" in proposed §25.5, as it would clarify usage of the term elsewhere in the rule and incorporate statutory language for the same. The commission defines "electric generation equipment lessor or operator" under adopted §25.5(37).

§25.5(47) - "ERCOT protocols"

Proposed §25.5(47) removes the following sentence from the definition of "ERCOT protocols": "The procedures, initially approved by the commission, include a revisions process that may be appealed to the commission, and are subject to the oversight and review of the commission."

TPPA agreed with the commission's deletion of the sentence from the proposed definition of "ERCOT protocols" under §25.5(47). TPPA recommended adding language that explicitly states, consistent with SB 2, that ERCOT rule revisions must have commission approval and are not effective until such approval is finalized.

Commission Response

The commission declines to add language reflecting the revised process for the definition of "ERCOT protocols" as recommended by TPPA, because such language is substantive rather than definitional. The commission will address the substantive requirements for the ERCOT protocol revision process, as appropriate, in a separate rulemaking project.

§25.5(88) - "Proceding"

Proposed §25.5(88) amends the definition of "proceeding" by making the following changes:

Proceeding--A hearing, investigation, inquiry, or other procedure for finding facts or making a decision, including adopting a rule
or setting a rate. The term includes a denial of relief or dismissal of a complaint. (It may be rulemaking or nonrulemaking; rate setting or non-rate setting.)

TPPA recommended amending the language of §25.5(88) defining "proceeding" to include "adopting, amending or repealing a rule or setting a rate" to better comport with the definition of "(r)ule" under §25.5(119).

Commission Response

The commission agrees with TPPA's recommendation and amends the definition of proceeding accordingly.

§25.5(92) - "Public Utility or Utility"

Proposed §25.5(92) defines "public utility or utility" as "(a) an electric utility as that term is defined in this section, or a public utility or utility as those terms are defined in PURA §51.002."

TPPA opposed the commission's proposed changes to the definition of "public utility or utility" under §25.5(92) and argued "that the Commission is currently contemplating a rule wherein a MOU would be included in the definition of "utility" under proposed number 52345. TPPA recommended amending the definition of "public utility or utility" by adding the phrase "(e)xcept as otherwise provided in this chapter," to the beginning of the definition to mirror the definition of electric utility under §25.5(41) and "to better alert the public and market participants that the meaning of the term is not consistent throughout the Commission's rules."

Commission Response

The commission declines to modify the definition of "public utility or utility" with the phrase "(e)xcept as otherwise provided in this chapter" as proposed by TPPA because the addition is unnecessary. The introductory language of §25.5 states that each definition laid out in this section applies "unless the context indicates otherwise." Based upon that introductory language and general principles of code construction, the specific language adopted in §25.52(h) (relating to Reliability and Continuity of Service) takes precedence over this definition in the context of that subsection. Moreover, the commission disagrees that the proposed modification would alleviate any confusion over the usage of the term "utility" in commission rules. The use of the term in §25.52(h) is defined with specificity in that subsection and is far more instructive as to the appropriate interpretation of that term in the context of that section than a general modification to the definition of "public utility or utility" in §25.5.

§25.5(114) - Retail Electric Provider (REP)

Proposed §25.5(114) modifies the definition of "retail electric provider (REP)" to clarify that the term does not include "a person not otherwise a retail electric provider who owns or operates equipment used solely to provide electricity charging service for consumption."

ARM, Joint EVSE Providers, and TEC stated that SB 1202 added an exemption in PURA §31.002(17) for the definition of "REP" that is not fully represented in the current or proposed language of §25.5. To prevent unintended interpretations of this exemption, the commenters recommended adding the phrase "by an alternatively fueled vehicle, as defined by Section 502.004, Transportation Code" from PURA §31.002(17) to the end of the definition.

Commission Response

The commission agrees with the recommendations of ARM, Joint EVSE, and TEC and amends the definition of REP under §25.5(114) to conform with statutory language accordingly.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting this rule, the commission makes other minor modifications for the purpose of clarifying its intent.

The amendments to §25.5 are adopted under the following provisions of PURA: §14.001, which provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction; §14.002, which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; §31.002(4-b), which defines an electric generation equipment lessor or operator, §31.002(6), which exempts from the definition of "electric utility" an electric generation equipment lessor or operator; §31.002(6)(J)(iv), which exempts from the definition of "electric utility" a person that owns or operates equipment used solely for consumption by an alternatively fueled vehicle, as defined by Section 502.004, Transportation Code; and §37.001(3), which exempts from the definition of "retail electric utility" an electric generation equipment lessor or operator; and §37.002, which permits the commission by rule to exempt from the definition of "retail electric utility" under §37.001 a provider who owns or operates equipment used solely to provide electricity charging service for a mode of transportation.

Cross reference to statutes: PURA §14.001, §14.002, §31.002(4-b), §31.002(6), §31.002(6)(J)(iv) §37.001(3), and §37.002; TWC §13.041(a) and §13.041(b).

§25.5. Definitions.

In this chapter, the following definitions apply unless the context indicates otherwise:

(1) Above-market purchased power costs--Wholesale demand and energy costs that a utility is obligated to pay under an existing purchased power contract to the extent the costs are greater than the purchased power market value.

(2) Affected person--means:

(A) a public utility or electric cooperative affected by an action of a regulatory authority;

(B) a person whose utility service or rates are affected by a proceeding before a regulatory authority; or

(C) a person who:

(i) is a competitor of a public utility with respect to a service performed by the utility; or

(ii) wants to enter into competition with a public utility.

(3) Affiliate--means:

(A) a person who directly or indirectly owns or holds at least 5.0% of the voting securities of a public utility;

(B) a person in a chain of successive ownership of at least 5.0% of the voting securities of a public utility;

(C) a corporation that has at least 5.0% of its voting securities owned or controlled, directly or indirectly, by a public utility;
(D) a corporation that has at least 5.0% of its voting securities owned or controlled, directly or indirectly, by:
  
  (i) a person who directly or indirectly owns or controls at least 5.0% of the voting securities of a public utility; or
  
  (ii) a person in a chain of successive ownership of at least 5.0% of the voting securities of a public utility;

(E) a person who is an officer or director of a public utility or of a corporation in a chain of successive ownership of at least 5.0% of the voting securities of a public utility; or

(F) a person determined to be an affiliate under Public Utility Regulatory Act (PURAs) §11.006.

(4) Affiliated electric utility--The electric utility from which an affiliated retail electric provider was unbundled in accordance with PURA §39.051.

(5) Affiliated power generation company (APGC)--A power generation company that is affiliated with or the successor in interest of an electric utility certified to serve an area.

(6) Affiliated retail electric provider (AREP)--A retail electric provider that is affiliated with or the successor in interest of an electric utility certified to serve an area.

(7) Aggregation--Includes the following:

(A) the purchase of electricity from a retail electric provider, a municipally owned utility, or an electric cooperative by an electricity customer for its own use in multiple locations, provided that an electricity customer may not avoid any non-bypassable charges or fees as a result of aggregating its load; or

(B) the purchase of electricity by an electricity customer as part of a voluntary association of electricity customers, provided that an electricity customer may not avoid any non-bypassable charges or fees as a result of aggregating its load.

(8) Aggregator--A person joining two or more customers, other than municipalities and political subdivision corporations, into a single purchasing unit to negotiate the purchase of electricity from retail electric providers. Aggregators may not sell or take title to electricity. Retail electric providers are not aggregators.

(9) Ancillary service--A service necessary to facilitate the transmission of electric energy including load following, standby power, backup power, reactive power, and any other services the commission may determine by rule.

(10) Base rate--Generally, a rate designed to recover the cost of service other than certain costs separately identified and recovered through a rider, rate schedule, or other schedule. For bundled utilities, these separately identified costs may include items such as a fuel factor, power cost recovery factor, and surcharge. Distribution service providers may have separately identified costs such as transition costs, the excess mitigation charge, transmission cost recovery factors, and the competition transition charge.

(11) Bundled Municipally Owned Utilities/Electric Cooperatives (MOU/COOP)--A municipally owned utility/electric cooperative that is conducting both transmission and distribution activities and competitive energy-related activities on a bundled basis without structural or functional separation of transmission and distribution functions from competitive energy-related activities and that makes a written declaration of its status as a bundled municipally owned utility/electric cooperative pursuant to §25.275(o)(3)(A) of this title (relating to Code of Conduct for Municipally Owned Utilities and Electric Cooperatives Engaged in Competitive Activities).

(12) Calendar year--January 1 through December 31.

(13) Commission--The Public Utility Commission of Texas.

(14) Competition transition charge (CTC)--Any non-bypassable charge that recovers the positive excess of the net book value of generation assets over the market value of the assets, taking into account all of the electric utility's generation assets, any above market purchased power costs, and any deferred debit related to a utility's discontinuance of the application of Statement of Financial Accounting Standards Number 71 ("Accounting for the Effects of Certain Types of Regulation") for generation-related assets if required by the provisions of PURA chapter 39. For purposes of PURA §39.262, book value shall be established as of December 31, 2001, or the date a market value is established through a market valuation method under PURA §39.262(h), whichever is earlier, and shall include stranded costs incurred under PURA §39.263. Competition transition charges also include the transition charges established pursuant to PURA §39.302(7) unless the context indicates otherwise.

(15) Competitive affiliate--An affiliate of a utility that provides services or sells products in a competitive energy-related market in this state, including telecommunications services, to the extent those services are energy-related.

(16) Competitive energy efficiency services--Energy efficiency services that are defined as competitive energy services under §25.341 of this title (relating to Definitions).

(17) Competitive retailer--A retail electric provider, or a municipally owned utility or electric cooperative, that has the right to offer electric energy and related services at unregulated prices directly to retail customers who have customer choice, without regard to geographic location.

(18) Congestion zone--An area of the transmission network that is bounded by commercially significant transmission constraints or otherwise identified as a zone that is subject to transmission constraints, as defined by an independent organization.

(19) Control area--An electric power system or combination of electric power systems to which a common automatic generation control scheme is applied in order to:

(A) match, at all times, the power output of the generators within the electric power system(s) and capacity and energy purchased from entities outside the electric power system(s), with the load within the electric power system(s);

(B) maintain, within the limits of good utility practice, scheduled interchange with other control areas;

(C) maintain the frequency of the electric power system(s) within reasonable limits in accordance with good utility practice; and

(D) obtain sufficient generating capacity to maintain operating reserves in accordance with good utility practice.

(20) Corporation--A domestic or foreign corporation, joint-stock company, or association, and each lessee, assignee, trustee, receiver, or other successor in interest of the corporation, company, or association, that has any of the powers or privileges of a corporation not possessed by an individual or partnership. The term does not include a municipal corporation or electric cooperative, except as expressly provided by PURA.

(21) Critical loads--Loads for which electric service is considered crucial for the protection or maintenance of public health and safety; including but not limited to hospitals, police stations, fire sta-
tions, critical water and wastewater facilities, and customers with special in-house life-sustaining equipment.

(22) Customer choice--The freedom of a retail customer to purchase electric services, either individually or through voluntary aggregation with other retail customers, from the provider or providers of the customer's choice and to choose among various fuel types, energy efficiency programs, and renewable power suppliers.

(23) Customer class--A group of customers with similar electric-service characteristics (e.g., residential, commercial, industrial, sales for resale) taking service under one or more rate schedules. Qualified businesses as defined by the Texas Enterprise Zone Act, Texas Government Code, title 10, chapter 2303 may be considered to be a separate customer class of electric utilities.

(24) Day-ahead--The day preceding the operating day.

(25) Deemed savings--A pre-determined, validated estimate of energy and peak demand savings attributable to an energy efficiency measure in a particular type of application that a utility may use instead of energy and peak demand savings determined through measurement and verification activities.

(26) Demand--The rate at which electric energy is delivered to or by a system at a given instant, or averaged over a designated period, usually expressed in kilowatts (kW) or megawatts (MW).

(27) Demand savings--A quantifiable reduction in the rate at which energy is delivered to or by a system at a given instance, or averaged over a designated period, usually expressed in kilowatts (kW) or megawatts (MW).

(28) Demand-side management (DSM)--Activities that affect the magnitude or timing of customer electrical usage, or both.

(29) Demand-side resource or demand-side management--Equipment, materials, and activities that result in reductions in electric generation, transmission, or distribution capacity needs or reductions in energy usage or both.

(30) Disconnection of service--Interruption of a customer's supply of electric service at the customer's point of delivery by an electric utility, a transmission and distribution utility, a municipally owned utility or an electric cooperative.

(31) Distribution line--A power line operated below 60,000 volts, when measured phase-to-phase, that is owned by an electric utility, transmission and distribution utility, municipally owned utility, or electric cooperative.

(32) Distributed resource--A generation, energy storage, or targeted demand-side resource, generally between one kilowatt and ten megawatts, located at a customer's site or near a load center, which may be connected at the distribution voltage level (below 60,000 volts), that provides advantages to the system, such as deferring the need for upgrading local distribution facilities.

(33) Distribution service provider (DSP)--An electric utility, municipally-owned utility, or electric cooperative that owns or operates for compensation in this state equipment or facilities that are used for the distribution of electricity to retail customers including retail customers served at transmission voltage levels.

(34) Economically distressed geographic area--Zip-code area in which the average household income is less than or equal to 60% of the statewide median income as reported in the most recently available United States Census data.

(35) Electric cooperative--
(F) a corporation described by PURA §32.053 to the extent the corporation sells electricity exclusively at wholesale and not to the ultimate consumer;

(G) an electric cooperative;

(H) a retail electric provider;

(I) the state of Texas or an agency of the state; or

(J) a person not otherwise an electric utility who:

(i) furnishes an electric service or commodity only to itself, its employees, or its tenants as an incident of employment or tenancy, if that service or commodity is not resold to or used by others;

(ii) owns or operates in this state equipment or facilities to produce, generate, transmit, distribute, sell or furnish electric energy to an electric utility, if the equipment or facilities are used primarily to produce and generate electric energy for consumption by that person;

(iii) owns or operates in this state a recreational vehicle park that provides metered electric service in accordance with Texas Utilities Code, subchapter C, chapter 184;

(iv) is an electric generation equipment lessor or operator; or

(v) owns or operates in this state equipment used solely to provide electricity charging service for consumption by an alternatively fueled vehicle, as defined by section 502.004 of the Transportation Code.

(43) Energy efficiency--Programs that are aimed at reducing the rate at which electric energy is used by equipment or processes. Reduction in the rate of energy used may be obtained by substituting technically more advanced equipment to produce the same level of end-use services with less electricity; adoption of technologies and processes that reduce heat or other energy losses; or reorganization of processes to make use of waste heat. Efficient use of energy by customer-owned end-use devices implies that existing comfort levels, convenience, and productivity are maintained or improved at a lower customer cost.

(44) Energy efficiency measures--Equipment, materials, and practices that when installed and used at a customer site result in a measurable and verifiable reduction in either purchased electric energy consumption, measured in kilowatt-hours (kWh), or peak demand, measured in kW, or both.

(45) Energy efficiency project--An energy efficiency measure or combination of measures installed under a standard offer contract or a market transformation contract that results in both a reduction in customers' electric energy consumption and peak demand, and energy costs.

(46) Energy efficiency service provider (EESP)--A person who installs energy efficiency measures or performs other energy efficiency services. An energy efficiency service provider may be a retail electric provider or large commercial customer, if the person has executed a standard offer contract.

(47) Energy savings--A quantifiable reduction in a customer's consumption of energy.

(48) ERCOT protocols--Body of procedures developed by ERCOT to maintain the reliability of the regional electric network and account for the production and delivery of electricity among resources and market participants.

(49) ERCOT region--The geographic area under the jurisdiction of the commission that is served by transmission service providers that are not synchronously interconnected with transmission service providers outside of the state of Texas.

(50) Exempt wholesale generator--A person who is engaged directly or indirectly through one or more affiliates exclusively in the business of owning or operating all or part of a facility for generating electric energy and selling electric energy at wholesale who does not own a facility for the transmission of electricity, other than an essential interconnecting transmission facility necessary to effect a sale of electric energy at wholesale.

(51) Existing purchased power contract--A purchased power contract in effect on January 1, 1999, including any amendments and revisions to that contract resulting from litigation initiated before January 1, 1999.

(52) Facilities--All the plant and equipment of an electric utility, including all tangible and intangible property, without limitation, owned, operated, leased, licensed, used, controlled, or supplied for, by, or in connection with the business of an electric utility.

(53) Financing order--An order of the commission adopted under PURA §39.201 or §39.262 approving the issuance of transition bonds and the creation of transition charges for the recovery of qualified costs.

(54) Freeze period--The period beginning on January 1, 1999, and ending on December 31, 2001.

(55) Generation assets--All assets associated with the production of electricity, including generation plants, electrical interconnections of the generation plant to the transmission system, fuel contracts, fuel transportation contracts, water contracts, lands, surface or subsurface water rights, emissions-related allowances, and gas pipeline interconnections.

(56) Generation service--The production and purchase of electricity for retail customers and the production, purchase, and sale of electricity in the wholesale power market.

(57) Good utility practice--Any of the practices, methods, or acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods, or acts that, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, and expedition. Good utility practice is not intended to be limited to the optimum practice, method, or act, to the exclusion of all others, but rather is intended to include acceptable practices, methods, and acts generally accepted in the region.

(58) Hearing--Any proceeding at which evidence is taken on the merits of the matters at issue, not including prehearing conferences.

(59) Independent organization--An independent system operator or other person that is sufficiently independent of any producer or seller of electricity that its decisions will not be unduly influenced by any producer or seller.

(60) Independent system operator--An entity supervising the collective transmission facilities of a power region that is charged with non-discriminatory coordination of market transactions, systemwide transmission planning, and network reliability.

(61) Installed generation capacity--All potentially marketable electric generation capacity, including the capacity of:
(A) generating facilities that are connected with a transmission or distribution system;

(B) generating facilities used to generate electricity for consumption by the person owning or controlling the facility; and

(C) generating facilities that will be connected with a transmission or distribution system and operating within 12 months.

(62) Interconnection agreement—The standard form of agreement that has been approved by the commission. The interconnection agreement sets forth the contractual conditions under which a company and a customer agree that one or more facilities may be interconnected with the company's utility system.

(63) Licensing—The commission process for granting, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.

(64) Load factor—The ratio of average load to peak load during a specific period of time, expressed as a percent. The load factor indicates to what degree energy has been consumed compared to maximum demand or utilization of units relative to total system capability.

(65) Low-income customer—An electric customer who receives assistance under the Supplemental Nutrition Assistance Program (SNAP) from Texas Health and Human Services Commission (HHSC) or medical assistance from a state agency administering a part of the medical assistance program.

(66) Low-Income List Administrator (LILA)—A third-party administrator contracted by the commission to administer aspects of the low-income customer identification process established under PURA §17.007.

(67) Market power mitigation plan—A written proposal by an electric utility or a power generation company for reducing its ownership and control of installed generation capacity as required by PURA §39.154.

(68) Market value—For nonnuclear assets and certain nuclear assets, the value the assets would have if bought and sold in a bona fide third-party transaction or transactions on the open market under PURA §39.262(h) or, for certain nuclear assets, as described by PURA §39.262(i), the value determined under the method provided by that subsection.

(69) Master meter—A meter used to measure, for billing purposes, all electric usage of an apartment house or mobile home park, including common areas, common facilities, and dwelling units.

(70) Municipality—A city, incorporated village, or town, existing, created, or organized under the general, home rule, or special laws of the state.

(71) Municipally-owned utility (MOU)—Any utility owned, operated, and controlled by a municipality or by a nonprofit corporation whose directors are appointed by one or more municipalities.

(72) Nameplate rating—The full-load continuous rating of a generator under specified conditions as designated by the manufacturer.

(73) Native load customer—A wholesale or retail customer on whose behalf an electric utility, electric cooperative, or municipally-owned utility, by statute, franchise, regulatory requirement, or contract, has an obligation to construct and operate its system to meet in a reliable manner the electric needs of the customer.

(74) Natural gas energy credit (NGEC)—A tradable instrument representing each megawatt of new generating capacity fueled by natural gas, as authorized by PURA §39.9044 and implemented under §25.172 of this title (relating to Goal for Natural Gas).

(75) Net book value—The original cost of an asset less accumulated depreciation.

(76) Net dependable capability—The maximum load in megawatts, net of station use, that a generating unit or generating station can carry under specified conditions for a given period of time without exceeding approved limits of temperature and stress.

(77) New on-site generation—Electric generation with capacity greater than ten megawatts capable of being lawfully delivered to the site without use of utility distribution or transmission facilities, which was not, on or before December 31, 1999, either:

(A) A fully operational facility; or

(B) A project supported by substantially complete filings for all necessary site-specific environmental permits under the rules of the Texas Natural Resource Conservation Commission (TNRCC) in effect at the time of filing.

(78) Off-grid renewable generation—The generation of renewable energy in an application that is not interconnected to a utility transmission or distribution system.

(79) Other generation sources—A competitive retailer's or affiliated retail electric provider's supply of generated electricity that is not accounted for by a direct supply contract with an owner of generation assets.

(80) Person—Includes an individual, a partnership of two or more persons having a joint or common interest, a mutual or cooperative association, and a corporation, but does not include an electric cooperative.

(81) Power cost recovery factor (PCRF)—A charge or credit that reflects an increase or decrease in purchased power costs not in base rates.

(82) Power generation company (PGC)—A person that:

(A) generates electricity that is intended to be sold at wholesale, including the owner or operator of electric energy storage equipment or facilities to which the Public Utility Regulatory Act, chapter 35, subchapter E applies;

(B) does not own a transmission or distribution facility in this state, other than an essential interconnecting facility, a facility not dedicated to public use, or a facility otherwise excluded from the definition of "electric utility" under this section; and

(C) does not have a certificated service area, although its affiliated electric utility or transmission and distribution utility may have a certificated service area.

(83) Power marketer—A person who becomes an owner of electric energy in this state for the purpose of selling the electric energy at wholesale; does not own generation, transmission, or distribution facilities in this state and does not have a certificated service area.

(84) Power region—A contiguous geographical area that is a distinct region of the North American Electric Reliability Council.

(85) Pre-interconnection study—A study or studies that may be undertaken by a utility in response to its receipt of a completed application for interconnection and parallel operation with the utility system at distribution voltage. Pre-interconnection studies may include, but are not limited to, service studies, coordination studies, and utility system impact studies.
(86) Premises--A tract of land or real estate or related commonly used tracts including buildings and other appurtenances thereon.

(87) Price to beat (PTB)--A price for electricity, as determined under PURA §39.202, charged by an affiliated retail electric provider to eligible residential and small commercial customers in its service area.

(88) Proceeding--A hearing, investigation, inquiry, or other procedure for finding facts or making a decision, including adopting, amending, or repealing a rule or setting a rate. The term includes a denial of relief or dismissal of a complaint.

(89) Proprietary customer information--Any information obtained by a retail electric provider, an electric utility, or a transmission and distribution business unit, as defined in §25.275(c)(16) of this title, on a customer in the course of providing electric service or by an aggregator on a customer in the course of aggregating electric service that makes possible the identification of any individual customer by matching such information with the customer's name, address, account number, type or classification of service, historical electricity usage, expected patterns of use, types of facilities used in providing service, individual contract terms and conditions, price, current charges, billing records, or any information that the customer has expressly requested not be disclosed. Information that is redacted or organized in such a way as to make it impossible to identify the customer to whom the information relates does not constitute proprietary customer information.

(90) Provider of last resort (POLR)--A retail electric provider (REP) certified in Texas that has been designated by the commission to provide a basic, standard retail service package in accordance with §25.43 of this title (relating to Provider of Last Resort (POLR)).

(91) Public retail customer--A retail customer that is an agency of this state, a state institution of higher education, a public school district, or a political subdivision of this state.

(92) Public utility or utility--An electric utility as that term is defined in this section, or a public utility or utility as those terms are defined in PURA §51.002.

(93) Public Utility Regulatory Act (PURA)--The enabling statute for the Public Utility Commission of Texas, located in the Texas Utilities Code Annotated, §§11.001 et. seq.

(94) Purchased power market value--The value of demand and energy bought and sold in a bona fide third-party transaction or transactions on the open market and determined by using the weighted average costs of the highest three offers from the market for purchase of the demand and energy available under the existing purchased power contracts.

(95) Qualified scheduling entity--A market participant that is qualified by ERCOT in accordance with section 16, Registration and Qualification of Market Participants of ERCOT’s protocols, to submit balanced schedules and ancillary services bids and settle payments with ERCOT.

(96) Qualifying cogenerator--As defined by 16 U.S.C. §796(18)(C). A qualifying cogenerator that provides electricity to the purchaser of the cogenerator’s thermal output is not for that reason considered to be a retail electric provider or a power generation company.

(97) Qualifying facility--A qualifying cogenerator or qualifying small power producer.

(98) Qualifying small power producer--As defined by 16 U.S.C. §796(17)(D).

(99) Rate--A compensation, tariff, charge, fare, toll, rental, or classification that is directly or indirectly demanded, observed, charged, or collected by an electric utility for a service, product, or commodity described in the definition of electric utility in this section and a rule, practice, or contract affecting the compensation, tariff, charge, fare, toll, rental, or classification that must be approved by a regulatory authority.

(100) Rate class--A group of customers taking electric service under the same rate schedule.

(101) Rate year--The 12-month period beginning with the first date that rates become effective. The first date that rates become effective may include, but is not limited to, the effective date for bonded rates or the effective date for interim or temporary rates.

(102) Ratemaking proceeding--A proceeding in which a rate may be changed.

(103) Registration agent--Entity designated by the commission to administer registration and settlement, premise data, and other processes concerning a customer's choice of retail electric provider in the competitive electric market in Texas.

(104) Regulatory authority--In accordance with the context where it is found, either the commission or the governing body of a municipality.

(105) Renewable demand side management (DSM) technologies--Equipment that uses a renewable energy resource (renewable resource) as defined in this section, that, when installed at a customer site, reduces the customer's net purchases of energy (kWh), electrical demand (kW), or both.

(106) Renewable energy--Energy derived from renewable energy technologies.

(107) Renewable energy credit (REC)--A tradable instrument representing the generation attributes of one MWh of electricity from renewable energy sources, as authorized by the PURA §39.904 and implemented under §25.173(e) of this title (relating to Goal for Renewable Energy).

(108) Renewable energy credit account (REC account)--An account maintained by the renewable energy credits trading program administrator for the purpose of tracking the production, sale, transfer, purchase, and retirement of RECs by a program participant.

(109) Renewable energy resource (renewable resource)--A resource that produces energy derived from renewable energy technologies.

(110) Renewable energy technology--Any technology that exclusively relies on an energy source that is naturally regenerated over a short time and derived directly from the sun, indirectly from the sun, or from moving water or other natural movements and mechanisms of the environment. Renewable energy technologies include those that rely on energy derived directly from the sun, on wind, geothermal, hydroelectric, wave, or tidal energy, or on biomass or biomass-based waste products, including landfill gas. A renewable energy technology does not rely on energy resources derived from fossil fuels, waste products from fossil fuels, or waste products from inorganic sources.

(111) Repowering--Modernizing or upgrading an existing facility in order to increase its capacity or efficiency.

(112) Residential customer--Retail customers classified as residential by the applicable bundled utility tariff, unbundled transmis-
sion and distribution utility tariff or, in the absence of classification under a residential rate class, those retail customers that are primarily end users consuming electricity at the customer's place of residence for personal, family or household purposes and who are not resellers of electricity.

(113) Retail customer--The separately metered end-use customer who purchases and ultimately consumes electricity.

(114) Retail electric provider (REP)--A person that sells electric energy to retail customers in this state. A retail electric provider may not own or operate generation assets. The term does not include a person not otherwise a retail electric provider who owns or operates equipment used solely to provide electricity charging service for consumption by an alternatively fueled vehicle, as defined by Section 502.004, Transportation Code.

(115) Retail electric provider (REP) of record--The REP assigned to the electric service identifier (ESI ID) in ERCOT's database. There can be no more than one REP of record assigned to an ESI ID at any specific point in time.

(116) Retail stranded costs--That part of net stranded cost associated with the provision of retail service.

(117) Retrofit--The installation of control technology on an electric generating facility to reduce the emissions of nitrogen oxide, sulfur dioxide, or both.

(118) River authority--A conservation and reclamation district created under the Texas Constitution, article 16, section 59, including any nonprofit corporation created by such a district pursuant to the Texas Water Code, chapter 152, that is an electric utility.

(119) Rule--A statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of the commission. The term includes the amendment or repeal of a prior rule, but does not include statements concerning only the internal management or organization of the commission and not affecting private rights or procedures.

(120) Separately metered--Metered by an individual meter that is used to measure electric energy consumption by a retail customer and for which the customer is directly billed by a utility, retail electric provider, electric cooperative, or municipally owned utility.

(121) Service--Has its broadest and most inclusive meaning. The term includes any act performed, anything supplied, and any facilities used or supplied by an electric utility in the performance of its duties under PURA to its patrons, employees, other public utilities or electric utilities, an electric cooperative, and the public. The term also includes the interchange of facilities between two or more public utilities or electric utilities.

(122) Spanish-speaking person--A person who speaks any dialect of the Spanish language exclusively or as their primary language.

(123) Standard meter--The minimum metering device necessary to obtain the billing determinants required by the transmission and distribution utility's tariff schedule to determine an end-use customer's charges for transmission and distribution service.

(124) Stranded cost--The positive excess of the net book value of generation assets over the market value of the assets, taking into account all of the electric utility's generation assets, any above-market purchased-power costs, and any deferred debit related to a utility's discontinuance of the application of Statement of Financial Accounting Standards Number 71 ("Accounting for the Effect of Certain Types of Regulation") for generation-related assets if required by the provisions of PURA Chapter 39. For purposes of PURA §39.262, book value shall be established as of December 31, 2001, or the date a market value is established through a market valuation method under PURA §39.262(h), whichever is earlier, and shall include stranded costs incurred under PURA §39.263.

(125) Submetering--Metering of electricity consumption on the customer side of the point at which the electric utility measures electricity consumption for billing purposes.

(126) Summer net dependable capability--The net capability of a generating unit in megawatts (MW) for daily planning and operational purposes during the summer peak season, as determined in accordance with requirements of the reliability council or independent organization in which the unit operates.

(127) Supply-side resource--A resource, including a storage device, that provides electricity from fuels or renewable resources.

(128) System emergency--A condition on a utility's system that is likely to result in imminent, significant disruption of service to customers or is imminently likely to endanger life or property.

(129) Tariff--The schedule of a utility, municipally-owned utility, or electric cooperative containing all rates and charges stated separately by type of service, the rules and regulations of the utility, and any contracts that affect rates, charges, terms or conditions of service.

(130) Termination of service--The cancellation or expiration of a sales agreement or contract by a retail electric provider by notification to the customer and the registration agent.

(131) Tenant--A person who is entitled to occupy a dwelling unit to the exclusion of others and who is obligated to pay for the occupancy under a written or oral rental agreement.

(132) Test year--The most recent 12 months for which operating data for an electric utility, electric cooperative, or municipally-owned utility are available and shall commence with a calendar quarter or a fiscal year quarter.

(133) Texas jurisdictional installed generation capacity--The amount of an affiliated power generation company's installed generation capacity properly allocable to the Texas jurisdiction. Such allocation shall be calculated pursuant to an existing commission-approved allocation study, or other such commission-approved methodology, and may be adjusted as approved by the commission to reflect the effects of divestiture or the installation of new generation facilities.

(134) Transition bonds--Bonds, debentures, notes, certificates, of participation or of beneficial interest, or other evidences of indebtedness or ownership that are issued by an electric utility, its successors, or an assignee under a financing order, that have a term not longer than 15 years, and that are secured or payable from transition property.

(135) Transition charges--Non-bypassable amounts to be charged for the use or availability of electric services, approved by the commission under a financing order to recover qualified costs, that shall be collected by an electric utility, its successors, an assignee, or other collection agents as provided for in a financing order.

(136) Transmission and distribution business unit (TDBU)--The business unit of a municipally owned utility/electric cooperative, whether structurally unbundled as a separate legal entity or functionally unbundled as a division, that owns or operates for compensation in this state equipment or facilities to transmit or distribute electricity at retail, except for facilities necessary to interconnect a generation facility with the transmission or distribution network, a facility not dedicated to public use, or a facility otherwise excluded from

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the definition of electric utility in a qualifying power region certified under PURA §39.152. Transmission and distribution business unit does not include a municipally owned utility/electric cooperative that owns, controls, or is an affiliate of the transmission and distribution business unit if the transmission and distribution business unit is organized as a separate corporation or other legally distinct entity. Except as specifically authorized by statute, a transmission and distribution business unit shall not provide competitive energy-related activities.

(137) Transmission and distribution utility (TDU)--A person or river authority that owns, or operates for compensation in this state equipment or facilities to transmit or distribute electricity, except for facilities necessary to interconnect a generation facility with the transmission or distribution network, a facility not dedicated to public use, or a facility otherwise excluded from the definition of "electric utility", in a qualifying power region certified under PURA §39.152, but does not include a municipally owned utility or an electric cooperative. The TDU may be a single utility or may be separate transmission and distribution utilities.

(138) Transmission line--A power line that is operated at 60 kilovolts (kV) or above, when measured phase-to-phase.

(139) Transmission service--Service that allows a transmission service customer to use the transmission and distribution facilities of electric utilities, electric cooperatives and municipally owned utilities to efficiently and economically utilize generation resources to reliably serve its loads and to deliver power to another transmission service customer. Includes construction or enlargement of facilities, transmission over distribution facilities, control area services, scheduling resources, regulation services, reactive power support, voltage control, provision of operating reserves, and any other associated electrical service the commission determines appropriate, except that, on and after the implementation of customer choice in any portion of the ERCOT region, control area services, scheduling resources, regulation services, provision of operating reserves, and reactive power support, voltage control and other services provided by generation resources are not transmission service.

(140) Transmission service customer--A transmission service provider, distribution service provider, river authority, municipally-owned utility, electric cooperative, power generation company, retail electric provider, federal power marketing agency, exempt wholesale generator, qualifying facility, power marketer, or other person whom the commission has determined to be eligible to be a transmission service customer. A retail customer, as defined in this section, may not be a transmission service customer.

(141) Transmission service provider (TSP)--An electric utility, municipally-owned utility, or electric cooperative that owns or operates facilities used for the transmission of electricity.

(142) Transmission system--The transmission facilities at or above 60 kilovolts (kV) owned, controlled, operated, or supported by a transmission service provider or transmission service customer that are used to provide transmission service.

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

Filed with the Office of the Secretary of State on May 12, 2022.
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Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
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For further information, please call: (512) 936-7244

TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS

SUBCHAPTER A. BOARD OF TRUSTEES

RELATIONSHIP

19 TAC §61.3

The State Board of Education (SBOE) adopts new §61.3, concerning school safety training for school board members. The new section is adopted without changes to the proposed text as published in the February 25, 2022 issue of the Texas Register (47 TexReg 848). The rule will not be republished. The new rule reflects changes made by House Bill (HB) 690, 87th Texas Legislature, Regular Session, 2021, to the SBOE’s duty to provide training courses for independent school district trustees.

REASONED JUSTIFICATION: Texas Education Code (TEC), §11.159, Member Training and Orientation, requires the SBOE to provide a training course for school board trustees. Chapter 61, Subchapter A, addresses this statutory requirement. School board trustee training under current SBOE rule includes a local school district orientation session, a basic orientation to the TEC, an annual team-building session with the local school board and the superintendent, specified hours of continuing education based on identified needs, training on evaluating student academic performance, and training on identifying and reporting potential victims of sexual abuse, human trafficking, and other maltreatment of children.

HB 690, 87th Texas Legislature, Regular Session, 2021, added new TEC, §11.159(b-1), which required that the SBOE, in coordination with the Texas School Safety Center, develop the curriculum and materials for school safety training by January 1, 2022. At the September 2021 SBOE meeting, the board discussed an outline of the school safety training curriculum proposed by the Texas School Safety Center and provided feedback on the outline. The SBOE approved the school safety training curriculum and materials developed by the Texas School Safety Center at its November 2021 meeting.

New TEC, §11.159(b-1), also obligates the SBOE to require trustees to complete training on school safety. Proposed new §61.3 codifies the school safety training requirement in rule.

The SBOE approved the proposed new section for first reading and filing authorization at its January 28, 2022 meeting and for second reading and final adoption at its April 8, 2022 meeting.

In accordance with Texas Education Code, §7.102(f), the SBOE approved the new section for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2022-2023 school year. The earlier effective date will allow school districts to begin preparing for implementation of the new section. The effective date is 20 days after filing as adopted with the Texas Register.
SUMMARY OF COMMENTS AND RESPONSES: The public comment period on the proposal began February 25, 2022, and ended at 5:00 p.m. on April 1, 2022. The SBOE also provided an opportunity for registered oral and written comments at its April 2022 meeting in accordance with the SBOE board operating policies and procedures. No public comments were received.

STATUTORY AUTHORITY. The new section is adopted under Texas Education Code, §11.159(b-1), as added by House Bill 690, 87th Texas Legislature, Regular Session, 2021, which obligates the State Board of Education (SBOE) to require trustees to complete training on school safety. The SBOE, in coordination with the Texas School Safety Center, was required to develop the curriculum and materials for the training by January 1, 2022.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §11.159(b-1).

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

Filed with the Office of the Secretary of State on May 11, 2022.

TRD-202201842
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: May 31, 2022
Proposal publication date: February 25, 2022
For further information, please call: (512) 475-1497

CHAPTER 101. ASSESSMENT
SUBCHAPTER BB. COMMISSIONER’S RULES CONCERNING GRADE ADVANCEMENT AND ACCELERATED INSTRUCTION


REASONED JUSTIFICATION: HB 4545, 87th Texas Legislature, Regular Session, 2021, amended Texas Education Code (TEC), §28.0211 and §28.0217, to remove grade advancement requirements and focus on the provision of accelerated instruction and related supports for students who have failed to perform satisfactorily on assessments required under TEC, §39.023.

Because of the significant changes to accelerated instruction by HB 4545, the rules in Chapter 101, Subchapter BB, are no longer applicable. The adopted repeal will remove the obsolete rules.

In a separate rulemaking action, TEA has proposed new 19 TAC §104.1001, Accelerated Instruction, Modified Teacher Assign-
TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 108. PROFESSIONAL CONDUCT

SUBCHAPTER A. PROFESSIONAL RESPONSIBILITY

22 TAC §108.7

The State Board of Dental Examiners (Board) adopts this amendment to 22 TAC §108.7(3) - (4), concerning the minimum standard of care. The rule is adopted in accordance with House Bill 2056 of the 87th Texas Legislature, Regular Session (2021), and Chapter 111, Texas Occupations Code. The bill amended Chapter 111, Texas Occupations Code, which allows dental health professionals to provide teledentistry dental services to patients. The bill's intent is to eliminate barriers pertaining to access to care, and allow dental health professionals to treat patients without having an in-person visit if the standard of care is met. This adopted amendment changes §108.7(3) - (4) to allow for the provision of teledentistry dental services without requiring an in-person examination prior to providing the service as long as the dentist adheres to the standard of care. A dentist must ask the patient to come into the office for a physical examination if the diagnosis or treatment utilizing teledentistry is not adequate or consistent with the standard of care.

Paragraph (3) is adopted without changes to the proposed text as published in the March 11, 2022, issue of the Texas Register (47 TexReg 1174). Paragraph (4) is adopted with non-substantive changes to the proposed text as published in the March 11, 2022, issue of the Texas Register (47 TexReg 1174). The text of the rule will be republished.

The Board received public written comments regarding this rule from the following commenters: Align Technology (Align); American Teledentistry Association (ATDA); Dial Care; Dr. Clark Colville, DDS; Dr. Larry Tadlock, DDS; Dr. Peter Vig, DDS; Senator Lois Kolkhorst; Smile Direct Club (Smile Direct); Texas Dental Association (TDA); and Tech Net.

The following is a summary of the comments and the Board’s responses:

Align Technology provided a written comment in opposition of adoption of the rule as proposed. Align states a patient must receive at least an initial physical examination before undergoing orthodontic treatment, and requests that the Board change paragraph (4) to the following: "maintain and review a limited physical examination when a reasonable and prudent dentist would do so under the same or similar circumstances. At a minimum a limited physical examination should be renewed and updated annually. A physical examination shall be performed prior to orthodontic treatment."

Response: The Board’s proposed amendment allows a dentist to provide teledentistry dental services without requiring an in-person examination prior to providing the service as long as the dentist adheres to the standard of care. No changes to this proposed rule were made as a result of the comment.

American Teledentistry Association (ATDA) provided a written comment in support of adoption of the rule as proposed. ATDA states the legislature was clear that no prior in-person examination should be required and that the standard of care should dictate how services are delivered. ATDA states that all dentists regardless of delivery method used is held to the same standard of care, which is now defined in this rule as what a reasonable and prudent dentist would do under the same or similar circumstances.

Response: The Board’s proposed amendment allows a dentist to provide teledentistry dental services without requiring an in-person examination prior to providing the service as long as the dentist adheres to the standard of care. No changes to this proposed rule were made as a result of the comment.

Dial Care provided a written comment in support of adoption of the rule as proposed. Dial Care states that a reasonable and prudent dentist can decide whether and when an in-person examination is required. Dial Care states the proposed rule suggests an annual examination as a best practice, which leaves it to each dentist to determine using professional judgment whether an in-person examination should be performed.

Response: The Board’s proposed amendment allows a dentist to provide teledentistry dental services without requiring an in-person examination prior to providing the service as long as the dentist adheres to the standard of care. No changes to this proposed rule were made as a result of the comment.

Dr. Clark Colville, DDS provided a written comment in opposition of adoption of the rule as proposed. He states initiating orthodontic treatment without a thorough physical evaluation combined with necessary high-quality diagnostic records can result in irreversible damage. He states the proposed amendment is vague in that it requires a dentist to perform a physical examination when a reasonable and prudent dentist would do so under the same or similar circumstances. He states a reasonable and prudent dentist would not initiate a clinical procedure that could cause irreversible damage without adequately assessing the hard and soft tissues in person.

Response: The Board’s proposed amendment allows a dentist to provide teledentistry dental services without requiring an in-person examination prior to providing the service as long as the dentist adheres to the standard of care. No changes to this proposed rule were made as a result of the comment.

Dr. Larry Tadlock, DDS provided a written comment in opposition of adoption of the rule as proposed. He believes the proposed amendment removes the standard for an in-person examination, and as a consequence, the need to review appropriate patient diagnostic records prior to initiating orthodontic treatment. He states an in-person examination prior to initiating active tooth movement is critical to protect the health and safety of patients, and periodic visits beyond once a year are also required to protect patients.

Response: The Board’s proposed amendment allows a dentist to provide teledentistry dental services without requiring an in-person examination prior to providing the service as long as
the dentist adheres to the standard of care. No changes to this proposed rule were made as a result of the comment.

Dr. Peter Vig, DDS provided a written comment in support of adoption of the rule as proposed. He states the proposed rule holds each licensee responsible for using professional discretion to select the technology appropriate to diagnose and sufficient to treat the patient for the condition as presented to meet the standard of care.

Response: The Board's proposed amendment allows a dentist to provide teledentistry dental services without requiring an in-person examination prior to providing the service as long as the dentist adheres to the standard of care. No changes to this proposed rule were made as a result of the comment.

Senator Lois Kolkhorst provided a written comment in opposition of adoption of the rule as proposed. She states evidence supports that the minimum standard of care for dental treatment requires an in-person physical examination before beginning orthodontic treatment, and effective orthodontic treatment cannot be provided by relying solely on photographs. She requests that the Board revise the rule to require an in-person examination before a patient begins orthodontic treatment, or prior to treatment for an irreversible dental procedure.

Response: The Board's proposed amendment allows a dentist to provide teledentistry dental services without requiring an in-person examination prior to providing the service as long as the dentist adheres to the standard of care. The Board declines to include rule language pertaining to an irreversible procedure because even some of the least complicated dental procedures could be considered irreversible. No changes to this proposed rule were made as a result of the comment.

Smile Direct Club (Smile Direct) provided a written comment in support of adoption of the rule as proposed. Smile Direct states the Board has made clear that the minimum standard of care for all practice of dentistry, including teledentistry, is the same and is consistent with that of a reasonable and prudent dentist under the same or similar circumstances. Smile Direct states removing language pertaining to the taking of blood pressure and pulse/heart rate measurements and replacing it with the limited physical examination when a reasonable and prudent dentist would do so is appropriate.

Response: The Board's proposed amendment allows a dentist to provide teledentistry dental services without requiring an in-person examination prior to providing the service as long as the dentist adheres to the standard of care. No changes to this proposed rule were made as a result of the comment.

Texas Dental Association (TDA) provided a written comment in opposition of adoption of the rule as proposed. TDA states that the limited physical examination is essential for a dentist to determine the relationship between a patient's overall health and oral health. TDA agrees that although it is infeasible to perform a limited physical examination of a patient at an initial teledentistry dental appointment, the accepted benchmark of care for dental patients is that dentists perform a limited physical examination of the patient at least annually. TDA requests that the Board change paragraph (4) to the following: "perform and review a limited physical examination when a reasonable and prudent dentist would do so under the same or similar circumstances. At a minimum, a limited physical examination shall be performed and reviewed annually."

Response: The Board's proposed amendment allows a dentist to provide teledentistry dental services without requiring an in-person examination prior to providing the service as long as the dentist adheres to the standard of care. As a result of the comment, the Board made the following changes to paragraph (4): "perform and review a limited physical examination when a reasonable and prudent dentist would do so under the same or similar circumstances. At a minimum, a limited physical examination should be performed and reviewed annually."

Tech Net provided a written comment in support of adoption of the rule as proposed. Tech Net states that the rule before the proposed amendment would have required an in-person examination prior to providing teledentistry dental services. TechNet states that the proposed amendment ensures access to oral healthcare.

Response: The Board's proposed amendment allows a dentist to provide teledentistry dental services without requiring an in-person examination prior to providing the service as long as the dentist adheres to the standard of care. No changes to this proposed rule were made as a result of the comment.

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

Legal counsel for the Board has reviewed the adopted rule and has found it to be within the Board's authority to adopt.

§108.7. Minimum Standard of Care, General.

Each dentist shall:

1. conduct his/her practice in a manner consistent with that of a reasonable and prudent dentist under the same or similar circumstances;
2. maintain patient records that meet the requirements set forth in §108.8 of this title (relating to Records of the Dentist);
3. obtain, maintain, and review an initial medical history. The medical history shall include, but shall not necessarily be limited to, known allergies to drugs, serious illness, current medications, previous hospitalizations and significant surgery, and a review of the physiologic systems obtained by patient history. A "check list," for consistency, may be utilized in obtaining information. The dentist shall review the medical history with the patient at any time a reasonable and prudent dentist would do so under the same or similar circumstances. At a minimum, a medical history should be reviewed and updated annually;
4. perform and review a limited physical examination when a reasonable and prudent dentist would do so under the same or similar circumstances. At a minimum, a limited physical examination should be performed and reviewed annually;
5. for office emergencies:
   A. maintain a positive pressure breathing apparatus including oxygen which shall be in working order;
   B. maintain other emergency equipment and/or currently dated drugs as a reasonable and prudent dentist with the same or similar training and experience under the same or similar circumstances would maintain;
   C. provide training to dental office personnel in emergency procedures which shall include, but not necessarily be limited to, basic cardiac life support, inspection and utilization of emergency
equipment in the dental office, and office procedures to be followed in the event of an emergency as determined by a reasonable and prudent dentist under the same or similar circumstances; and

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

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

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

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

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

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

(11) maintain a centralized inventory of drugs;

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

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

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

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

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

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

Filed with the Office of the Secretary of State on May 13, 2022.

TRD-202201874

Lauren Studdard
General Counsel

State Board of Dental Examiners

Effective date: June 2, 2022

Proposal publication date: March 11, 2022

For further information, please call: (512) 305-8910

22 TAC §180.16

The State Board of Dental Examiners (Board) adopts new rule 22 TAC §108.16, concerning teledentistry. The adopted rule pertains to standards for the provision of teledentistry dental services as set out in House Bill 2056 of the 87th Texas Legislature, Regular Session (2021), and Chapter 111, Texas Occupations Code. This new rule is adopted with no changes to the proposed text as published in the March 11, 2022 issue of the Texas Register (47 TexReg 1176), and will not be republished.

This rule was initially published in the November 12, 2021 issue of the Texas Register. During the public comment period, the Board received several stakeholder comments pertaining to the reference of §108.7 in §108.16(e)(2)(A). As a result of stakeholder feedback, the Board voted to amend §108.7, and also voted to re-propose this rule with no changes. Both rules were published in the March 11, 2022 issue of the Texas Register.

The Board received public written comments regarding this rule from the following commenters: Align Technology (Align); American Association of Orthodontists (AAO); American Teledentistry Association (ATDA); American Telemedicine Association (ATA); Byte; Coalition of Texans with Disabilities (CTD); Dial Care; Dr. Clark Colville, DDS; Dr. Larry Tadlock, DDS; Dr. Peter, Vig, DDS; Dr. Rhonda Stokley, DDS; Representative Stephanie Klick; Senator Charles Perry; Senator Lois Kolkhorst; Smile Direct Club (Smile Direct); Smiley Doctors; Tech Net; Texas Academy of Pediatric Dentistry (TAPD); Texas Association of Business (TAB); Texas Association of Orthodontists (TAO); Texas Conservative Coalition Research Institute (TCCRI); Texas Dental Association (TDA); Texas e-Health Alliance; Texas Public Policy Foundation (TPPF); and United Spinal Association.

The following is a summary of the comments and the Board’s responses:

Align Technology (Align) provided a written comment in opposition of adoption of the rule as proposed. Subsection (e)(2)(A) of this rule refers to §108.7, but Align disagrees with the proposed amendment to §108.7(4) regarding a limited physical examination. The proposed amendment to §108.7(4) will require a dentist to perform a limited physical examination when a reasonable and prudent dentist would do so under the same or similar circumstances. Align states a patient must receive at least an initial physical examination before undergoing orthodontic treatment, and requests that the Board revise this rule to reflect that a physical examination is required prior to orthodontic treatment.

Response: The Board’s proposed amendment to §108.7 allows a dentist to provide teledentistry dental services without requiring an in-person examination prior to providing the service as long as the dentist adheres to the standard of care. No changes to this proposed rule were made as a result of the comment.

American Association of Orthodontists (AAO) provided a written comment in opposition of adoption of the rule as initially proposed in the November 12, 2021 issue of the Texas Register. Subsection (e)(2)(A) of this rule refers to §108.7, but AAO disagrees with the proposed amendment to §108.7(4) regarding a limited physical examination. The proposed amendment to §108.7(4) will require a dentist to perform a limited physical examination when a reasonable and prudent dentist would do so under the same or similar circumstances. AAO requests that the Board revise the rule to require dentists to perform a physical examination on a patient prior to performing an irreversible dental procedure. AAO also concerned that subsection (c) does not clearly indicate what is expected from licensees and requests further details regarding the rule’s prevention of fraud and abuse.

Response: The Board’s proposed amendment to §108.7 allows a dentist to provide teledentistry dental services without requiring an in-person examination prior to providing the service as long as the dentist adheres to the standard of care. The Board declines to include rule language pertaining to an irreversible procedure.
because even some of the least complicated dental procedures could be considered irreversible. Subsection (c) of this rule requires dentists to adopt protocols to prevent fraud and abuse through the use of teledentistry dental services. In accordance with §108.9(6), dentists are required to comply with all laws relating to the regulation of dentists, which includes applicable laws pertaining to fraud and abuse. No changes to this proposed rule were made as a result of the comment.

American Teledentistry Association (ATDA) provided a written comment in support of adoption of the rule as proposed. ATDA agrees with subsection (e)(2)(A) of this rule because of the proposed amendment to §108.7(4), which will require a dentist to perform a limited physical examination when a reasonable and prudent dentist would do so under the same or similar circumstances.

Response: The Board's proposed amendment to §108.7 allows a dentist to provide teledentistry dental services without requiring an in-person examination prior to providing the service as long as the dentist adheres to the standard of care. No changes to this proposed rule were made as a result of the comment.

American Telemedicine Association (ATA) provided a written comment in opposition of adoption of the rule as initially proposed in the November 12, 2021 issue of the Texas Register. ATA states the reference to §108.7 in subsection (e)(2)(A) of this rule requires an in-person examination of the patient before the dentist can perform teledentistry dental services. ATA requests that the Board revise the rule to clarify that dentists are not required to perform an in-person examination prior to providing teledentistry dental services.

Response: The Board's proposed amendment to §108.7 allows a dentist to provide teledentistry dental services without requiring an in-person examination prior to providing the service as long as the dentist adheres to the standard of care. No changes to this proposed rule were made as a result of the comment.

Byte provided a written comment in opposition of adoption of the rule as initially proposed in the November 12, 2021 issue of the Texas Register. Byte states that the reference to §108.7 in subsection (e)(2)(A) of this rule requires an in-person visit by requiring dentists to perform a physical examination for all dental patients. Byte requests that the Board revise the rule to clarify that dentists are not required to perform an in-person examination prior to providing teledentistry dental services.

Response: The Board's proposed amendment to §108.7 allows a dentist to provide teledentistry dental services without requiring an in-person examination prior to providing the service as long as the dentist adheres to the standard of care. No changes to this proposed rule were made as a result of the comment.

Coalition of Texans with Disabilities (CTD) provided a written comment in opposition of adoption of the rule as initially proposed in the November 12, 2021 issue of the Texas Register.

CTD states that teledentistry may be used to establish a doctor-patient relationship, and has the added benefit of allowing practitioners to plan and prepare an accommodation for a person's disability prior to being seen in the office. CTD states that the rule will restrict the ability of providers to use technologies to deliver high-quality dental care, and requests that the Board reconsider the reference in this rule that requires an in-person office visit prior to teledentistry services.

Response: The Board's proposed amendment to §108.7 allows a dentist to provide teledentistry dental services without requiring an in-person examination prior to providing the service as long as the dentist adheres to the standard of care. No changes to this proposed rule were made as a result of the comment.

Dial Care provided a written comment in support of adoption of the rule as proposed. Dial Care agrees with subsection (e)(2)(A) of this rule because of the proposed amendment to §108.7(4), which will allow dentists to use their professional judgment to determine whether and when a limited physical examination is required.

Response: The Board's proposed amendment to §108.7 allows a dentist to provide teledentistry dental services without requiring an in-person examination prior to providing the service as long as the dentist adheres to the standard of care. No changes to this proposed rule were made as a result of the comment.

Dr. Clark Colville, DDS provided a written comment in opposition of adoption of the rule as proposed. He states initiating orthodontic treatment without a thorough physical evaluation combined with necessary high-quality diagnostic records can result in irreversible damage. He states the proposed amendment to §108.7 is vague in that it requires a dentist to perform a physical examination when a reasonable and prudent dentist would do so under the same or similar circumstances. He states the Board's recordkeeping requirements in §108.8 cannot be met if a dentist performs teledentistry dental services in accordance with subsection (e)(2)(C) of this rule because dentists are required to document a written review a patient's medical history and limited physical examination, and document the findings of a tactile and visual examination of the soft and hard tissues of the oral cavity.

Response: The Board's proposed amendment to §108.7 allows a dentist to provide teledentistry dental services without requiring an in-person examination prior to providing the service as long as the dentist adheres to the standard of care. The Board disagrees that §108.8 cannot be met. If a dentist does not record a review of a patient's medical history and limited physical examination, or does not record findings of a tactile and visual examination, then §108.8(c)(12) requires a dentist to record why those items are missing. In other words, §108.8 can be met when certain required items are missing as long as a dentist provides an adequate explanation why the required items are missing. No changes to this proposed rule were made as a result of the comment.

Dr. Larry Tadlock, DDS provided a written comment in opposition of adoption of the rule as proposed. Subsection (e)(2)(A) of this rule refers to §108.7, but Dr. Tadlock disagrees with the proposed amendment to §108.7(4) regarding a limited physical examination. The proposed amendment to §108.7(4) will require a dentist to perform a limited physical examination when a reasonable and prudent dentist would do so under the same or similar circumstances. Dr. Tadlock states that an in-person examination prior to initiating active tooth movement is critical to protect the health and safety of patients.

Response: The Board's proposed amendment to §108.7 allows a dentist to provide teledentistry dental services without requiring an in-person examination prior to providing the service as long as the dentist adheres to the standard of care. No changes to this proposed rule were made as a result of the comment.

Dr. Peter Vig, DDS provided a written comment in support of adoption of the rule as proposed. He agrees with the re-publication of this rule in the March 11, 2022 issue of the Texas Register in that it amends provisions of the cross referenced §108.7 to be
based on what a reasonable and prudent dentist would do so under the same or similar circumstances.

Response: The Board’s proposed amendment to §108.7 allows a dentist to provide teledentistry dental services without requiring an in-person examination prior to providing the service as long as the dentist adheres to the standard of care. No changes to this proposed rule were made as a result of the comment.

Dr. Rhonda Stokley, DDS provided a written comment in opposition of adoption of the rule as initially proposed in the November 12, 2021 issue of the Texas Register. Dr. Stokley requests that the Board revise the rule to explicitly state that teledentistry is allowed for dental public health programs. Dr. Stokley also requests clarification on the application of subsection (e)(2)(B) in public health programs as there may not be an existing patient relationship based on the nature of these programs.

Response: A dentist, dental hygienist, or dental assistant who works for a dental public health program can provide teledentistry services to a patient located in Texas if they hold an active Texas license or registration issued by the Board, and they follow all applicable law. A dentist may use teledentistry technologies to establish a practitioner-patient relationship. No changes to this proposed rule were made as a result of the comment.

Representative Stephanie Klick and Senator Charles Perry provided a written comment in opposition of adoption of the rule as initially proposed in the November 12, 2022 issue of the Texas Register. They state that a physician can treat a patient without having an in-person visit as long as the standard of care is met, however the physician must ask the patient to come into the office if the diagnosis or treatment utilizing telemedicine is not adequate or consistent with the standard of care. They request that the Board reconsider the in-person requirement referenced in the proposed rule so that patients can utilize teledentistry dental services without imposing barriers that do not exist in telemedicine.

Response: The Board’s proposed amendment to §108.7 allows a dentist to provide teledentistry dental services without requiring an in-person examination prior to providing the service as long as the dentist adheres to the standard of care. No changes to this proposed rule were made as a result of the comment.

Senator Lois Kolkhorst provided a written comment in opposition of adoption of the rule as proposed. She states evidence supports that the minimum standard of care for dental treatment requires an in-person physical examination before beginning orthodontic treatment, and effective orthodontic treatment cannot be provided by relying solely on photographs. She requests that the Board revise the rule to require an in-person examination before a patient begins orthodontic treatment, or prior to treatment for an irreversible dental procedure.

Response: The Board’s proposed amendment to §108.7 allows a dentist to provide teledentistry dental services without requiring an in-person examination prior to providing the service as long as the dentist adheres to the standard of care. The Board declines to include rule language pertaining to an irreversible procedure because even some of the least complicated dental procedures could be considered irreversible. No changes to this proposed rule were made as a result of the comment.

Smile Direct Club (Smile Direct) provided a written comment in opposition of adoption of the rule as proposed. Smile Direct states that the Board has made clear that the minimum standard of care for the practice of dentistry, including teledentistry, is consistent with that of a reasonable and prudent dentist under the same or similar circumstances. Smile Direct states that the recordkeeping requirement in §108.8(c) could appear to require through the phrase “records must include documentation of the following when services are rendered” mandatory radiographs and tactile examinations regardless of the clinical appropriateness of such diagnostics. Smile Direct requests that the Board consider issuing a policy statement on the application of recordkeeping. Smile Direct requests that the Board replace the language in subsection (c) of this rule to the following: “Teledentistry dental services may only be provided following the patient’s initiation of a dentist-patient relationship or pursuant to a referral made by a patient’s licensed dentist with whom the patient has an established dentist-patient relationship.”

Response: The Board disagrees with Smile Direct’s interpretation of §108.8. If a dentist does not have documentation of radiographs or a tactile examination, then §108.8(c)(12) requires a dentist to record why those items are missing. In other words, §108.8 can be met when certain required items are missing as long as a dentist provides an adequate explanation why the required items are missing. Subsection (c) of this rule requires dentists to adopt protocols to prevent fraud and abuse through the use of teledentistry dental services. In accordance with §108.9(6), dentists are required to comply with all laws relating to the regulation of dentists, which includes applicable laws pertaining to fraud and abuse. No changes to this proposed rule were made as a result of the comment.

Smile Doctors provided a written comment in support of adoption of the rule as initially proposed in the November 12, 2021 issue of the Texas Register. Smile Doctors is concerned that patients are not receiving appropriate initial care. Smile Doctors states that doctor directed care following an initial physical evaluation will protect patients and improve treatment outcomes.

Response: The Board’s proposed amendment to §108.7 allows a dentist to provide teledentistry dental services without requiring an in-person examination prior to providing the service as long as the dentist adheres to the standard of care. No changes to this proposed rule were made as a result of the comment.

Tech Net provided a written comment in support of adoption of the rule as proposed. Tech Net was originally concerned with the reference to §108.7 in subsection (e)(2)(A) of this rule because Tech Net states it would have required an in-person examination prior to providing teledentistry dental services. TechNet states that the proposed amendment to §108.7 ensures access to oral healthcare.

Response: The Board’s proposed amendment to §108.7 allows a dentist to provide teledentistry dental services without requiring an in-person examination prior to providing the service as long as the dentist adheres to the standard of care. No changes to this proposed rule were made as a result of the comment.

Texas Academy of Pediatric Dentistry (TAPD) provided a written comment in opposition of adoption of the rule as initially proposed in the November 12, 2021 issue of the Texas Register: Subsection (e)(2)(A) of this rule refers to §108.7, but TAPD disagrees with the proposed amendment to §108.7(4) regarding a limited physical examination. The proposed amendment to §108.7(4) will require a dentist to perform a limited physical examination when a reasonable and prudent dentist would do so under the same or similar circumstances. TAPD requests that the Board revise the rule to require a physical examination at
least annually because physical dental examinations are important for preventative care and maintaining a child’s oral health.

Response: The Board’s proposed amendment to §108.7 allows a dentist to provide teledentistry dental services without requiring an in-person examination prior to providing the service as long as the dentist adheres to the standard of care. No changes to this proposed rule were made as a result of the comment.

Texas Association of Business (TAB) provided a written comment in opposition of adoption of the rule as initially proposed in the November 12, 2021 issue of the Texas Register. TAB states the reference to §108.7 in subsection (e)(2)(A) of this rule requires an in-person examination of the patient before the dentist can perform teledentistry dental services. TAB requests that the Board revise the rule to clarify that dentists are not required to perform an in-person examination prior to providing teledentistry dental services.

Response: The Board’s proposed amendment to §108.7 allows a dentist to provide teledentistry dental services without requiring an in-person examination prior to providing the service as long as the dentist adheres to the standard of care. No changes to this proposed rule were made as a result of the comment.

Texas Association of Orthodontists (TAO) provided a written comment in opposition of adoption of the rule as proposed. Subsection (e)(2)(A) of this rule refers to §108.7, but TAO disagrees with the proposed amendment to §108.7(4) regarding a limited physical examination. The proposed amendment to §108.7(4) will require a dentist to perform a limited physical examination when a reasonable and prudent dentist would do so under the same or similar circumstances. TAO requests that the Board revise the rule to require dentists to perform a physical examination on a patient prior to performing an irreversible dental procedure. TAO is also concerned that subsection (c) does not clearly indicate what is expected from licensees and requests further details regarding the rule’s prevention of fraud and abuse.

Response: The Board’s proposed amendment to §108.7 allows a dentist to provide teledentistry dental services without requiring an in-person examination prior to providing the service as long as the dentist adheres to the standard of care. The Board declines to include rule language pertaining to an irreversible procedure because even some of the least complicated dental procedures could be considered irreversible. Subsection (c) of this rule requires dentists to adopt protocols to prevent fraud and abuse through the use of teledentistry dental services. In accordance with §108.9(6), dentists are required to comply with all laws relating to the regulation of dentists, which includes applicable laws pertaining to fraud and abuse. No changes to this proposed rule were made as a result of the comment.

Texas Conservative Coalition Research Institute (TCCRI) provided a written comment in opposition of adoption of the rule as initially proposed in the November 12, 2021 issue of the Texas Register. TCCRI is concerned with subsection (e)(2)(A) of this rule in that it references §108.7, which appears to require a physical in-person examination to establish the practitioner-patient relationship prior to the provision of teledentistry services. TCCRI requests that the Board require dentists to establish a practitioner-patient relationship, but not require that to be done solely by an in-office visit.

Response: The Board’s proposed amendment to §108.7 allows a dentist to provide teledentistry dental services without requiring an in-person examination prior to providing the service as long as the dentist adheres to the standard of care. No changes to this proposed rule were made as a result of the comment.

Texas Dental Association (TDA) provided a written comment in opposition of adoption of the rule as proposed. TDA believes the proposed rule is consistent with House Bill 2056, however it requests that the Board change subsection (e)(5) of this rule to the following: “Any individual may provide any photography or digital imaging to a Texas licensed dentist or Texas licensed dental hygienist for the sole and limited purpose of screening, assessment, or examination that is within the scope of that dentist’s or hygienist’s respective license.” TDA states that this change will ensure there is no confusion about the scope of practice under teledentistry.

Response: The scope of practice for dentists and hygienists is specified in the Dental Practice Act and Board rules, and this proposed rule does not change or expand the law in this regard. No changes to this proposed rule were made as a result of the comment.

Texas e-Health Alliance submitted a comment in opposition of adoption of the rule as initially proposed in the November 12, 2021 issue of the Texas Register. The organization is concerned the rule’s reference to §108.7 prevents technology from being used to replicate an in-person physical examination under any circumstances.

Response: The Board’s proposed amendment to §108.7 allows a dentist to provide teledentistry dental services without requiring an in-person examination prior to providing the service as long as the dentist adheres to the standard of care. No changes to this proposed rule were made as a result of the comment.

Texas Public Policy Foundation (TPPF) submitted a comment in opposition of adoption of the rule as proposed in the November 12, 2021 issue of the Texas Register. TPPF states that the requirement of an in-person examination inhibits practitioners of teledentistry from expanding their practices by increasing the difficulty of reaching new markets that teledentistry technologies make easy and efficient.

Response: The Board’s proposed amendment to §108.7 allows a dentist to provide teledentistry dental services without requiring an in-person examination prior to providing the service as long as the dentist adheres to the standard of care. No changes to this proposed rule were made as a result of the comment.

United Spinal Association (United Spinal) submitted a written comment in opposition of adoption of the rule as initially proposed in the November 12, 2021 issue of the Texas Register. United Spinal provides that teledentistry is a valuable tool, especially for people with mobility challenges, and the in-person examination requirement would make access to teledentistry impossible. United Spinal states that this requirement is unnecessary so long as the treatment is performed to the standard of care. United Spinal requests that the Board remove the reference to §108.7 in subsection (e)(2)(A) of this rule.

Response: The Board’s proposed amendment to §108.7 allows a dentist to provide teledentistry dental services without requiring an in-person examination prior to providing the service as long as the dentist adheres to the standard of care. No changes to this proposed rule were made as a result of the comment.
This rule is adopted under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

Legal counsel for the Board has reviewed the adopted rule and has found it to be within the Board's authority to adopt.

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

Filed with the Office of the Secretary of State on May 13, 2022.
TRD-202201873
Lauren Studdard
General Counsel
State Board of Dental Examiners
Effective date: June 2, 2022
Proposal publication date: March 11, 2022
For further information, please call: (512) 305-8910

PART 11. TEXAS BOARD OF NURSING
CHAPTER 217. LICENSURE, PEER ASSISTANCE AND PRACTICE
22 TAC §217.6

The Texas Board of Nursing (Board) adopts amendments to §217.6(j), relating to Failure to Renew License, without changes to the proposed text published in the February 18, 2022, issue of the Texas Register (47 TexReg 727). The rule will not be republished.

Reasoned Justification. On June 15, 2020, the Board launched the Texas Nurse Portal. The Texas Nurse Portal is a paperless, online system that allows individuals to apply for nurse licensure by examination, endorsement, or renewal. In an effort to continue moving the Board's work flow to a paperless system, the adopted amendments require the reactivation application and supporting documentation for a military spouse applicant to be submitted online through the Texas Nurse Portal.

How the Section Will Function. Adopted §217.6(j) provides that a military spouse applicant may be exempt from paying late fees and fines associated with a reactivation application if the applicant submits to the Board: a completed reactivation application submitted through the Texas Nurse Portal accessible through the Board's website, and documentation, also submitted through the Texas Nurse Portal accessible through the Board's website, showing that the applicant is the spouse of an individual serving on active duty as a member of the armed forces of the United States.

Summary of Comments Received. No comments were received on the proposal.
Names of Those Commenting For and Against the Proposal. For: None. Against: None. For, with changes: None. Neither for nor against, with changes: None.

Statutory Authority. The amendments are adopted under the authority of the Occupations Code §301.151. Section 301.151 addresses the Board's rulemaking authority. Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders under Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

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

Filed with the Office of the Secretary of State on May 10, 2022.
TRD-202201831
Jena Abel
Deputy General Counsel
Texas Board of Nursing
Effective date: May 30, 2022
Proposal publication date: February 18, 2022
For further information, please call: (512) 228-1862

PART 14. TEXAS OPTOMETRY BOARD
CHAPTER 273. GENERAL RULES
22 TAC §273.5

The Texas Optometry Board (Board) adopts amendments to §273.5 with changes to the proposed text published in the March 25, 2022, issue of the Texas Register (47 TexReg 1583). The word "and" was added at the end of subsection (b)(3) to clarify that all four paragraphs under subsection (b) are the duties and responsibilities of the dean. This rule will be republished.

The adopted amendments in §273.5(a)(1) replace "Council on Optometric Education of the American Optometric Association (COEAOA)" with "Accreditation Council on Optometric Education (ACOE)". The adopted amendments in §273.5(g)(1) - (2) remove the "in-state" college of optometry requirement.

No public comments were received.

The amendment to Board Rule 273.5 is adopted under the Texas Optometry Act, Texas Occupations Code, §351.151. The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession.

§273.5. Clinical Instruction and Practice - Limited License for Clinical Faculty:

(a) Issuance of limited license. The criteria for the issuance of a limited faculty license are as follows:

(1) the applicant must be a full-time faculty member of an institution accredited by the Accreditation Council on Optometric Education (ACOE) or a state recognized accrediting entity;

(2) the applicant must be a graduate of an institution accredited by the ACOE;

(3) the applicant's practice must be limited to the premises of the institution and its affiliated clinics;
(4) the practice must be an adjunct to the institution's teaching program; and

(5) the applicant must have paid the fees required by §273.4 of this title (relating to Fees).

(b) Duties and Responsibilities of Dean of Institution. As a condition to continued approval of the institution, the board imposes the following duties and responsibilities upon the dean of the institution relating to those faculty members performing professional optometric services in programs of the institution. The dean shall:

(1) furnish each applicant for a limited faculty license a certificate that such applicant is a bona fide member of the faculty;

(2) report immediately to the board any information received relating in any way to a member of the faculty holding only a limited license who is performing professional optometric services other than as an adjunct to such faculty member's function at the institution. Every reasonable means to prevent such unlawful practice shall be used by the dean;

(3) cooperate fully and completely with the board toward the end that the limited license provided will be used only for the purpose for which it is intended; and

(4) promptly notify the board of any changes in limited license personnel on the faculty.

(c) Application and renewal. Each member of the faculty desiring a limited license shall make written application to the executive director of the board and attach to the application the original certificate of the dean hereinafore provided and shall enclose therewith the payment of a fee of $50 for the issuance of the limited license and the fee imposed by Section 351.153 of the Texas Optometry Act. The annual renewal fee for a limited license is equal to the fee charged for a regular license as specified in §273.4 of this title (relating to Fees). Holders of limited licenses shall also be required to meet the same continuing education requirements as holders of regular licenses. Said renewal fee shall be due on January 1 and expire after December 31 of each year. Failure to pay the renewal fee on or before January 1 shall subject the license to the same requirements of renewal as a regular license, including late penalties.

(d) Validity of limited license. The limited license shall be valid as long as the holder thereof remains a faculty member of the institution and abides by all regulations of the board.

(e) Limitation of limited license. It shall be a violation of this rule for the holder of a limited license who is not regularly licensed under the statutes to perform optometric services in any manner except as part of the program of the institution and as an adjunct to teaching functions in the institution.

(f) Revocation of limited license. Those persons granted a limited license shall be subject to the same disciplinary procedures as the holder of a regular license. If, after disciplinary proceedings as set out in board rules, a holder of a limited license is found to be in violation of the Texas Optometry Act or board rules, the board may revoke the limited license. In such event, the executive director shall promptly notify the limited licensee and the dean of the institution.

(g) A student currently enrolled in an approved college of optometry or school may participate in clinical instruction and practice, provided that:

(1) The clinical instruction and practice is conducted on the premises of an approved college of optometry or school, or the affiliated clinics and offices, under the instruction and supervision of a licensed optometrist, or physician employed by the college of optometry; or

(2) The clinical instruction and practice is conducted as an externship in the office of a licensed optometrist or physician appointed as a clinical instructor by an approved college of optometry or school. The clinical training must be under the instruction and supervision of the appointed clinical instructor.

(b) No provision of this rule is intended to remove an exemption provided by statute.

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

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TRD-202201827
Kelly Parker
Executive Director
Texas Optometry Board
Effective date: May 30, 2022
Proposal publication date: March 25, 2022
For further information, please call: (512) 305-8502

CHAPTER 277. PRACTICE AND PROCEDURE

22 TAC §277.13
The Texas Optometry Board (Board) adopts new §277.13, concerning the investigation process for glaucoma complaints pursuant to §351.2034 of the Optometry Act. The Texas Optometry Board has collaborated with the Texas Medical Board as required for finalization of this rule.

Rule 277.13 is adopted with technical changes to the proposed text published in the March 25, 2022, issue of the Texas Register (47 TexReg 1584). This rule will be republished.

SUMMARY OF TECHNICAL CHANGES MADE IN THE PROPOSED RULE BY SECTION:

Section §277.13(a) - Change "board" to "Board".

Section §277.13(c) - Added a sentence to clarify process but did not change process. "The Case Review Consultant shall have access to the initial investigation materials."); Removed a comma after "a, qualified physician".

Section §277.13(d)(2) - Removed "relevant".

Section §277.13(f) - Added "If".

Section §277.13(g) - Added "If"; removed "relevant"; changed "cases" to "complaints".

Section §277.13(h) - Changed "that" to "who".

SUMMARY OF COMMENTS AND RESPONSES:

The public comment period on the proposed amendments opened on March 25, 2022, and closed thirty days later. During the public comment period, the Board received written comments from the Texas Medical Association (TMA), Texas Ophthalmological Association (TOA), and Texas 400. The Texas Optometry Board reviewed the comments at its May 6, 2022 meeting. No public comments were offered at the May 6, 2022 meeting.

Comment: Objection to the word "jurisdiction" or "jurisdictional" when describing glaucoma complaints.
Response: The Board acknowledged and considered the comments. The Board opines the agency only has jurisdiction over its licensees. The agency shall only investigate jurisdictional complaints. If a complaint is filed against a Texas licensed optometrist regarding glaucoma treatment, it is jurisdictional. Further, legal counsel for the Board has reviewed the use of "jurisdictional" in the rule and found it to be appropriate.

Comment: Remove the word "relevant" as it relates to medical records.

Response: The Board acknowledged and considered the comments. The Board agreed with this comment and removed the word "relevant" as it relates to medical records.

Comment: Provide the Texas Medical Board (TMB) with a copy of the Case Review Consultant report.

Response: The Board acknowledged and considered the comments. The Board opines that the statute only requires the agency to notify TMB of the receipt and disposition of a complaint, not the investigative materials. A Case Review Consultant’s report is part of the investigative file and not subject to disclosure under the statute.

Comment: If the Case Review Consultant determines that the standard of care was met, the complaint should still be forwarded to the Expert Panel.

Response: The Board acknowledged and considered this comment. The Board disagrees with this comment in its entirety. If the initial review by the Case Review Consultant determines that the standard of care was met, there is no need for further investigation. Furthermore, the Board will receive quarterly reports at public board meetings regarding glaucoma complaints. No glaucoma complaint will be dismissed without the appropriate consideration.

Comment: Objection to the de-identification of names in the complaint.

Response: The Board acknowledged and considered this comment but did not make a change. Pursuant to §351.2045 of the Optometry Act, all investigative information is privileged and confidential. Any disclosure of investigative information may limit or negate the confidential nature or privilege of same. The Board has a duty to protect the personal information of complainants (patients) and licensees. The Board is very concerned about the unauthorized release of investigative information when using contracted reviewers. If there is a public disciplinary action taken against a licensee related to glaucoma, the matter will be public record and the licensee’s identity will be disclosed.

Comment: The statute requires the Board to investigate complaints "regarding a therapeutic optometrist's treatment of a patient for glaucoma," not just complaints "resulting from the treatment of glaucoma."

Response: The Board acknowledge and considered this comment. The enabling statute, §351.2034, is entitled "Complaints Resulting From Glaucoma Treatment". The Board further opines that all jurisdictional complaints resulting from, regarding, or involving glaucoma treatment, or the failure to refer glaucoma treatment, will be investigated through the process outlined in the rule.

Comment: The Case Review Consultant should have access to the information gathered in the Initial Investigation.

Response: The Board acknowledged and considered this comment. The Board agreed with this comment and inserted a clarifying sentence in §277.13(c). The Board's position has been and remains that the Case Review Consultant should have access to the information in the Initial Investigation.

Comment: The Board should have discretion to send a complaint regarding a therapeutic optometrist's treatment of a patient for glaucoma to the Expert Panel after an Initial Investigation, even if a Case Review Consultant does not find a violation.

Response: The Board acknowledged and considered this comment but did not make a change. The Board opines that the necessary process is established in both statute and rule.

Statement of Authority

New Board Rule §277.13 is adopted under the Texas Optometry Act, Texas Occupations Code, §351.151. The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession.


(a) Each jurisdictional complaint received by the Board related to a therapeutic optometrist's treatment of a patient for glaucoma or a jurisdictional complaint that includes allegations involving failure to refer glaucoma treatment to an ophthalmologist pursuant to §351.3581(d) of the Optometry Act, shall be subject to a two-step investigation process as set forth more thoroughly in this Rule. A complaint is jurisdictional if it alleges conduct by a licensee that, if true, would constitute a violation of the Optometry Act or Board rules.

(b) Each jurisdictional complaint shall be subjected to an Initial Investigation, which may then result in an official Investigation overseen by the Expert Panel, as contemplated in §277.14 of this title (relating to Complaints Resulting From Glaucoma Treatment-Use of Case Review Consultant and Expert Panel).

(c) Upon receipt of a complaint regarding glaucoma treatment, for which the Board has jurisdiction, such complaint shall undergo an Initial Investigation by the Board, including an initial review by a qualified physician licensed in this state who specializes in ophthalmology selected by the Board from a list of ophthalmologists approved by the Texas Medical Board (such qualified licensed physician being hereinafter referred to as the "Case Review Consultant"). Each jurisdictional complaint referred to the Case Review Consultant shall be provided to the Texas Medical Board. The Case Review Consultant shall have access to the initial investigation materials.

(d) The Initial Investigation shall at least include the following:

(1) Any and all information received from the complainant;
(2) Any and all medical records related to the complaint;
(3) Any and all communication or response to the complaint from the Respondent; and
(4) The Case Review Consultant's written report that determines whether the treatment of the patient for glaucoma violated the standard of care applicable to a physician specializing in ophthalmology.

(e) If, at the conclusion of the Initial Investigation, the Case Review Consultant determines that the standard of care was violated, the Board shall commence the Official Investigation procedure contemplated in §277.14 of this title.
(f) If, at the conclusion of the Initial Investigation, the Case Review Consultant did not determine that the Respondent violated the standard of care related to the treatment of glaucoma, the matter shall be referred to the Board for further investigation not related to the treatment of glaucoma or referred to the Board for dismissal. The Texas Medical Board shall be advised of the disposition of the complaints.

(g) In all events, if the Case Review Consultant determines that a complaint regarding glaucoma treatment suggests that the continued practice by a licensee or the continued performance by a licensee of a procedure for which the person holds a glaucoma certification would constitute a clear, imminent, or continuing threat to a patient's health or well-being, the Board shall appoint a three-member disciplinary panel consisting of board members to determine whether the license issued should be temporarily suspended or restricted pursuant to §351.5015 of the Texas Optometry Act.

(h) Board staff shall use reasonable efforts to ensure that any information shared with the Case Review Consultant and/or Expert Panel contemplated in this section and §277.14 of this title hereof shall be redacted and de-identified so as to maintain anonymity of the licensee who is the subject of the complaint.

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

Filed with the Office of the Secretary of State on May 11, 2022.
TRD-202201837
Kelly Parker
Executive Director
Texas Optometry Board
Effective date: May 31, 2022
Proposal publication date: March 25, 2022
For further information, please call: (512) 305-8502

22 TAC §277.14
The Texas Optometry Board (Board) adopts new §277.14, concerning the process for Complaints Resulting From Glaucoma Treatment - Use of Case Review Consultant and Expert Panel, pursuant to §351.2034 of the Optometry Act. The Texas Optometry Board has collaborated with the Texas Medical Board as required for finalization of this rule.
Section 277.14 is adopted with technical non-substantive changes to the proposed text published in the March 25, 2022, issue of the Texas Register (47 TexReg 1585). This rule will be republished.

SUMMARY OF TECHNICAL CHANGES MADE IN THE PROPOSED RULE BY SECTION:
Section §277.14(a) - Capitalized "Optometric Glaucoma Specialist".
Section §277.14(b)(1) - Inserted "Is a"; inserted "who has"; deleted "and".
Section §277.14(b)(2) - Changed "Have" to "Has".
Section §277.14(b)(4) - Inserted "neither"; inserted "or"; deleted "nor".
Section §277.14(c) - Deleted the comma between "contracted" and "fee".

SUMMARY OF COMMENTS AND RESPONSES:
The public comment period on the proposed amendments opened on March 25, 2022, and closed thirty days later.

During the public comment period, the Board received written comments from the Texas Medical Association (TMA), Texas Ophthalmological Association (TOA) and Texas 400. The Texas Optometry Board reviewed the comments at its May 6, 2022, meeting. No public comments were offered at the May 6, 2022, meeting.

Comment: Objections regarding the Expert Panel recommendations being "not binding".
Response: The Board acknowledged and considered this comment. The Texas Optometry Board is the only authority that has disciplinary authority over licensed optometrists and therapeutic optometrists in this state. The Board takes seriously its charge to protect the public but also must ensure due process for its licensees through the disciplinary process. In §351.2034(d)(2) of the Act, it states that the panel is submitting recommendations. A "recommendation" is a "suggestion or proposal" by definition and not a binding action. Furthermore, the Board opines that the intent of the statute is not to take away or remove the Board’s disciplinary authority over glaucoma complaints. The intent was to create an expert review process. Legal counsel for the Board, has reviewed the use of "not binding" in the rule and found it to be appropriate.

Comment: The statute requires the Board to investigate complaints "regarding a therapeutic optometrist's treatment of a patient for glaucoma," not just complaints "resulting from the treatment of glaucoma."
Response: The Board acknowledged and considered this comment. The enabling statute, §351.2034, is entitled "Complaints Resulting From Glaucoma Treatment". The Board further opines that all jurisdictional complaints resulting from, regarding, or involving glaucoma treatment, or the failure to refer glaucoma treatment, will be investigated through the process outlined in the rule.

Comment: Suggested practical revisions to the conflict-of-interest reporting requirement and clarification on the "known potential or apparent" conflicts.
Response: The Board acknowledged and considered this comment but no changes were made. The Board opines that the rule as written is adequate.

Comment: Objection to the five-business-day notice for resignation.
Response: The Board acknowledged and considered this comment but no changes were made. The Board disagreed with the comment. The Board opines that the rule as written is adequate.

Comment: Clarify language regarding direct contact in §277.14(d)(9).
Response: The Board acknowledged and considered this comment but no changes were made. The Board opines that the rule as written is adequate.

Comment: Objections to the language proposing that the Board "may" give deference to the Expert Panel's findings and not "shall" give deference to the Expert Panel's findings.
Response: The Board acknowledged and considered this comment. The Texas Optometry Board is the only authority that has disciplinary authority over licensed optometrists and therapeutic optometrists in this state. The Board takes seriously its charge.
to protect the public but also must ensure due process for its licensees through the disciplinary process. Legal counsel for the Board, has reviewed the use of "may" in this rule and found it to be appropriate.

Comment: The Texas Medical Board is the only agency who may exercise the authority to remove a physician from the appointment as the initial review physician expert and/or the expert panel 2 and/or removal from the list of physicians specializing in ophthalmology approved by the Texas Medical Board if they are not properly fulfilling their duties in either role.

Response: The Board acknowledged and considered this comment. The Board disagrees with this comment and no change was made. The Board and the Texas Medical Board have collaborated as required by statute and agree to the process outlined in this rule. All Case Review Consultants and/or Expert Panel members shall enter a contract for services with the Texas Optometry Board as stated in this rule. The Board and Texas Medical Board will collaborate on any removal issue also as stated in this rule.

Statement of Statutory Authority

New §277.14 is adopted under the Texas Optometry Act, Texas Occupations Code, §351.151. The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession.


(a) Composition. Upon a determination under §277.13 of this title (relating to Complaints Resulting From Glaucoma Treatment - Investigation Process) by the Case Review Consultant that a Respondent has violated the standard of care for the treatment of glaucoma, the Texas Optometry Board shall forward the complaint and report to an Expert Panel appointed by the Texas Optometry Board and the Texas Medical Board. The panel shall be composed of an equal number of physicians who specialize in ophthalmology and therapeutic optometrists. Ophthalmologists shall be selected from a list approved by the Texas Medical Board for such purposes and the therapeutic optometrists certified as Optometric Glaucoma Specialists shall be selected from a list approved by the Texas Optometry Board.

(b) Qualifications. To be eligible to serve as a Case Review Consultant or as a member of the Expert Panel, interest shall be submitted to the Texas Optometry Board and Texas Medical Board through an application. The Texas Optometry Board and Texas Medical Board will collaborate to approve Case Review Consultants and Expert Panel Members. An applicant may be considered if they meet the following criteria:

(1) Is a Texas-licensed therapeutic optometrist certified as an Optometric Glaucoma Specialist or a Texas-licensed physician specializing in ophthalmology who has been in active practice in Texas for at least the last five (5) consecutive years immediately preceding the application;

(2) Has had no disciplinary action taken by any healthcare regulatory board in Texas or in another state within the last 10 years;

(3) Is not a member of the faculty or board of trustees of an optometry school or an institution of higher education with an affiliated school of optometry; or

(4) Is not an officer, employee, or paid consultant of a Texas trade association, or married to a spouse who is an officer, employee, or paid consultant of a Texas trade association, as defined by §351.053 of the Optometry Act, in the field of health care.

(c) Payment. Approved Case Review Consultants and Expert Panel Members shall enter a contract for services with the Texas Optometry Board. The Texas Optometry Board shall pay a reasonable, contracted fee to each Case Review Consultant and Expert Panel member.

(d) Term; Resignation; Removal. A Case Review Consultant or Expert Panel member shall serve until resignation, removal, or non-renewal of contract. A Case Review Consultant or Expert Panel member may resign at any time with at least five (5) business days' advance notice to the Board and, if necessary, the Texas Medical Board. A Case Review Consultant or Expert Panel member may be removed for good cause at any time, with the approval of the Texas Optometry Board and the Texas Medical Board. Good cause for removal may include without limitation:

(1) Failure to maintain eligibility requirements;

(2) Failure to inform the Board of known potential or apparent conflicts of interest;

(3) Repeated failure to timely review complaints or timely submit reports to the Board;

(4) Sharing of confidential information regarding complaints; or

(5) Direct contact with the Complainant, Respondent and/or other health care providers identified in the complaint.

(e) Vacancy on Expert Panel. A vacancy of the therapeutic optometrist serving on the Expert Panel shall be filled by selecting another qualified individual from the list approved by the Texas Optometry Board, and a vacancy of an ophthalmologist serving on the Expert Panel shall be filled by selecting another individual from the list approved by the Texas Medical Board.

(f) Conflict of Interest. If a Case Review Consultant or Expert Panel member has a known personal or professional interest that might reasonably tend to influence the discharge of the individual's duties in the review of case, the Case Review Consultant or Expert Panel member shall disclose that conflict immediately to the Executive Director for assignment to a different Case Review Consultant or Expert Panel member.

(1) A potential professional conflict of interest exists if the reviewer lives or practices optometry and/or ophthalmology in the same geographical market as the Respondent in the filed complaint and is in direct competition with the licensee.

(2) A potential personal conflict of interest exists if the reviewer has a personal relationship with the Respondent and/or complainant. A personal relationship is considered to be a situation in which the Case Review Consultant or Expert Panel member has personal interests such as financial interests, family or social factors that could impair one's ability to act impartially.

(g) Expert Panel Review of Case. The Expert Panel members will be provided with the Case Review Consultant's report and all relevant information related to the complaint, including records collected by the agency during the investigation. The Expert Panel members shall submit to the Texas Optometry Board a written report (or separate reports in the event the members of the panel do not have consensus) which includes whether the therapeutic optometrist should be subject to disciplinary action and, if so, whether the disciplinary action should include suspension or revocation of the therapeutic optometrist's license or certificate issued under §351.3581(a) of the Optometry Act.

(h) Upon receipt of an Expert Panel Report, the Board shall evaluate the report, complaint, and any other relevant information and
shall comply with §277.2 of this title (relating to Disciplinary Proceedings) as necessary. The Expert Panel recommendations are not binding but the Board may give deference to the Panel's findings when making a final determination for disciplinary action.

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

Filed with the Office of the Secretary of State on May 11, 2022.
TRD-202201839
Kelly Parker
Executive Director
Texas Optometry Board
Effective date: May 31, 2022
Proposal publication date: March 25, 2022
For further information, please call: (512) 305-8502

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TITLE 26. HEALTH AND HUMAN SERVICES
PART 1. HEALTH AND HUMAN SERVICES COMMISSION
CHAPTER 558. LICENSING STANDARDS FOR HOME AND COMMUNITY SUPPORT SERVICES AGENCIES
SUBCHAPTER C. MINIMUM STANDARDS FOR ALL HOME AND COMMUNITY SUPPORT SERVICES AGENCIES
DIVISION 4. PROVISION AND COORDINATION OF TREATMENT SERVICES

26 TAC §558.303
The Texas Health and Human Services Commission (HHSC) adopts an amendment to §558.303, concerning Standards for Possession of Sterile Water or Saline, Certain Vaccines or Tuberculin, and Certain Dangerous Drugs. The amendment to §558.303 is adopted without changes to the proposed text as published in the November 12, 2021, issue of the Texas Register (46 TexReg 7707). This rule will not be republished.

BACKGROUND AND JUSTIFICATION
The amendment is necessary to comply with Texas Health and Safety Code §142.0062(a), amended by House Bill 797, 87th Legislature, Regular Session, 2021, which requires HHSC to allow a Home and Community Support Services Agency (HCSSA) to purchase, store, or transport for administering any vaccine approved, authorized for emergency use, or otherwise permitted by the United States Food and Drug Administration to treat or mitigate the spread of a communicable disease.

COMMENTS
The 31-day comment period ended December 13, 2021.
During this period, HHSC received two comments regarding the proposed rule. One comment was submitted by the Texas and New Mexico Hospice Organization and one comment was submitted by the Texas Nurse Practitioners Association. A summary of comments relating to the rules and HHSC's responses follow.

Comment: A commenter thanked state staff for their hard work and diligence in getting emergency rules written and stated they look forward to permanent vaccine rules. The commenter said that some hospice providers are denied the ability to provide the vaccine due to the requirements for a certain freezer type as recommended by the manufacturer. The commenter understands that this won't be changed in rule.

Response: HHSC thanks the commenter and makes no changes in response to this comment because HHSC does not have the authority to regulate the freezer types recommended by vaccine manufacturers or to change the manufacturers' recommendations.

Comment: A commenter stated the rules are restrictive and do not reflect nurse practitioner (NP) practices. The commenter stated that NPs who own their own practice often purchase, store, and transport vaccines and dangerous drugs for vaccine clinics in community-based settings, home visits, and other community-based health promotion activities.

Response: HHSC thanks the commenter and makes no changes in response to the comment because the request is outside the scope of this project.

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 Health and Safety Code §142.0011, which provides that the Executive Commissioner of HHSC shall adopt rules establishing minimum standards for acceptable quality of care provided to clients by HCSSAs.

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

Filed with the Office of the Secretary of State on May 12, 2022.
TRD-202201846
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: June 1, 2022
Proposal publication date: November 12, 2021
For further information, please call: (512) 438-3161

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CHAPTER 570. LONG-TERM CARE PROVIDER RULES DURING A PUBLIC HEALTH EMERGENCY OR DISASTER
The Texas Health and Human Services Commission (HHSC) adopts in Texas Administrative Code Title 26, Part 1, new Chapter 570, consisting of §§570.2, 570.111, 570.113, 570.325, 570.327, 570.513, 570.514, 570.611, 570.613, 570.711, and 570.713, concerning Subchapter A, Introduction; Subchapter B, Assisted Living Facilities; Subchapter D, Home and Community Support Services Agencies; Subchapter F, Nursing Facilities; Subchapter G, Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions; and Subchapter H, Home and Community-Based Services.
Proposed §§570.2, 570.111, 570.113, 570.325, 570.327, 570.513, 570.514, 570.611, 570.613, 570.711, and 570.713 are adopted with changes to the proposed text as published in the November 12, 2021, issue of the Texas Register (46 TexReg 7709). These rules will be republished.

Proposed §§570.1, 570.101, 570.103, 570.105, 570.107, 570.109, 570.201, 570.203, 570.205, 570.207, 570.209, 570.211, 570.301, 570.302, 570.303, 570.305, 570.307, 570.309, 570.311, 570.313, 570.315, 570.317, 570.318, 570.319, 570.321, 570.323, 570.329, 570.401, 570.403, 570.405, 570.407, 570.409, 570.411, 570.501, 570.503, 570.505, 570.507, 570.509, 570.511, 570.515, 570.517, 570.601, 570.603, 570.605, 570.607, 570.609, 570.701, 570.703, 570.705, 570.707, 570.709, 570.801, 570.802, 570.803, 570.805, and 570.807 are not proceeding to adoption at this time and are withdrawn elsewhere in this issue of the Texas Register.

BACKGROUND AND JUSTIFICATION

The new rules apply to Assisted Living Facilities (ALFs), Home and Community Support Services Agencies (HCSSAs), Nursing Facilities (NFs), Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions (ICF/IID), and Home and Community-based Services (HCS) program providers during a public health emergency or disaster.

The new rules are necessary to comply with Texas Health and Safety Code, Chapter 260B, Right to Essential Caregiver Visits for Certain Residents, created by Senate Bill (S.B.) 25, 87th Legislature, Regular Session, 2021. Chapter 260B states that all residents of an ALF, NF or ICF/IID and individuals receiving services through an HCS program provider in a residence have the right to designate an essential caregiver and have essential caregiver visits. A facility or program provider may not prohibit in-person visitation with an essential caregiver, except for certain limited periods of time as provided in Chapter 260B.

The new rules are also necessary to comply with Texas Health and Safety Code, Chapter 260C, In-Person Visitation with Religious Counselor, created by S.B. 572, 87th Legislature, Regular Session, 2021. Chapter 260C protects the religious liberty of each individual or resident of an HCSSA, NF, or ALF by prohibiting a HCSSA, NF, or ALF from preventing a resident or client from receiving in-person visitation with a religious counselor during a public health emergency unless there is a federal law or a federal agency that prohibits in-person visitation during that period.

COMMENTS

The 31-day comment period ended December 13, 2021.

During this period, HHSC received 40 comments regarding proposed §§570.2, 570.111, 570.113, 570.325, 570.327, 570.513, 570.514, 570.611, 570.613, 570.711, and 570.713. Comments were received from nine individuals and organizations including the Texas and New Mexico Hospice Organization, Denton SSLC Family Association, Texas Association for Home Care and Hospice, Texas Catholic Conference of Bishops, Texas Health Care Association, Texas Assisted Living Association, Leading Age, HHSC Long-term Care Ombudsman, and the Texas Medical Association.

A summary of comments relating to the adopted rules and HHSC’s responses follows.

Comment: A commenter recommended a work group be convened prior to the finalization of the rules in order to ensure that the rules do not hamper facilities in their efforts to deliver quality care.

Response: HHSC will continue to have dialogue with stakeholders to discuss these rules and provide guidance to providers to help them understand the rules and how to implement them.

Comment: A commenter suggested modifying the definition of “essential caregiver” in proposed §570.2(15) to change the word “selected” to “designated.”

Response: HHSC agrees and revised the definition which has been renumbered to §570.2(7) due to other revisions made to the section.

Comment: A commenter asked if the definition of “individual” in proposed §570.2(21), now §570.2(11), applied to the Community Living Assistance and Support Services (CLASS) program and asked for clarification on the intent of the definition used in Chapter 570.

Response: The definition for ”individual” in these rules relates specifically to the programs listed in the definition, which are the ICF/IID and HCS programs only. Long-term care regulation does not license or regulate the CLASS program; therefore, the CLASS program is not included. The CLASS program is outside the scope of this rule project. HHSC declines to revise the rule because the comment is asking for clarification and does not request or recommend a rule change.

Comment: Several commenters commented on the definitions of “clergy” in proposed §570.2(4) and “religious counselor” in proposed §570.2(43), now §570.2(176), and other provisions throughout the rules related to visits by clergy and religious counselors. Two commenters recommended removing the definition of “clergy” in proposed §570.2(4). One commenter recommended removing all the provisions in these rules permitting clergy visitations. One commenter recommended removing §571.513(b), which requires a NF to permit clergy to visit a resident at the resident’s request. Another commenter suggested the use of the term “clergy” has the potential to discriminate against non-Christian religions and recommended that it be replaced with “religious counselor” in §§570.111 and §570.513(b).

Response: HHSC agrees in part and deleted the definition of “clergy” in proposed §570.2(4) and replaced the term “clergy” with “religious counselor” in §§570.111, 570.325, 570.513, 570.611, and 570.711. HHSC added the definition of “religious counselor visit” to §570.2(18). In addition to implementing Texas Health and Safety Code, Chapter 260B, these rules also implement Texas Health and Safety Code, Chapter 260C, which permits religious visitors. As such, rules pertaining to religious visitors must be included and do not conflict with rules implementing Chapter 260B.

Comment: A commenter asked for clarification to the definition of “residence” in proposed §570.2(44)(B), now §570.2(19)(B), related to the HCSSA program. The commenter asked about non-standard residences such as clients living in hotels. The commenter suggested HHSC include all residence types, including non-standard residences.

Response: HHSC agrees and revised the rule. For clarification, HHSC added subparagraph (C) to the definition of "residence" to include all residence types in a HCSSA program.
Comment: A commenter suggested adding a definition for "resident representative" to §570.2 because the term is used throughout Chapter 570. The commenter suggested the definition: "Resident representative - means any of the following: (1) A person chosen by the resident to act on behalf of the resident in order to support the resident in decision-making; access medical, social or other personal information of the resident; manage financial matters; or receive notifications; (2) A person authorized by State or Federal law (including but not limited to agents under power of attorney, representative payees, and other fiduciaries) to act on behalf of the resident in order to support the resident in decision-making; access medical, social or other personal information of the resident; manage financial matters; or receive notifications; (3) Legal representative, as used in section 712 of the Older Americans Act; or (4) The court-appointed guardian or conservator of a resident."

Response: HHSC agrees and revised the rule.

Comment: A commenter, in reference to §570.111(f), recommended adding language indicating that end-of-life visits must be in accordance with guidance issued by the CDC, HHSC, or DSHS.

Response: HHSC will provide guidance regarding requirements for and immediately communicating changes in a resident's condition that would qualify the resident for end-of-life visits to the resident representative. HHSC declines to modify the requirements in this rule.

Comment: A commenter, in reference to §570.111 related to visitation, stated that an ALF needs to maintain the discretion to move the visit to a less risky setting as needed. The commenter suggested deleting the language "upon request by" from the rule.

Response: HHSC declines to make a rule change to §570.111 because an ALF is permitted to change visitation policies and procedures as needed during a public health emergency or disaster. If moving a visit to a less risky setting is necessary, an ALF has the flexibility to do so during a future public health emergency or disaster. The rules in §570.111 do not include language "upon request by", but that language is located in §570.113(c) related to where an ALF must permit an essential caregiver visit to occur. HHSC declines to make changes to §570.113(c) because an ALF is required to permit an essential caregiver visit to occur in the location requested by the resident.

Comment: A commenter, in reference to §570.111 related to visitation, stated that with mandatory essential caregiver visits, the restriction on provider discretion is inappropriate.

Response: HHSC intends for the rule language to be broad so that a facility may adjust visitation policies and procedures as needed based on the public health emergency or disaster. HHSC declines to revise the rule.

Comment: A commenter suggested striking the second sentence and amending the first sentence in §§§570.111(c), 570.325(c), and 570.513(c) to state that only "...family member unless a federal law or a federal agency requires the facility to prohibit in-person visitation during that period."

Response: HHSC agrees and revised §570.111(b), §570.325(c), and §570.513(c).

Comment: In regard to §570.111(d) and §570.513(d), a commenter recommended removing the specific requirements in paragraphs (1) - (4) for the policies and procedures an ALF or NF is required to develop regarding in-person visitation with a religious counselor during a contagious disease outbreak, epidemic, or pandemic and replacing those requirements with a requirement that the policies and procedures state that the ALF or NF will follow guidance from HHSC.

Response: The rules are minimum standards a facility or program provider must follow to protect the health and safety of residents, visitors, and staff during a future public health emergency or disaster. HHSC declines to revise the rules.

Comment: A commenter referenced §570.113 and suggested the rule language include the statement "does not pose a serious risk to residents" regarding an ALF's petition to suspend in-person essential caregiver visits rules.

Response: The rule language is consistent among all program and facility types for this chapter. "Community health risk" means a risk to the community of individuals or residents at a facility. HHSC declines to revise the rule.

Comment: Several commenters referenced rules in §570.113(c). One commenter stated that the rules were confusing as written and recommended modifying the language. One comment suggested removing §570.113(c) and §570.514(c).

Response: HHSC agrees and revised §570.113(c). The rule encompasses a resident's right to privacy and resident's choice. HHSC revised the rule to state "designated for visitation by the ALF" to reflect that a visit may occur in either location. The rule lists places where visitation may occur such as outdoors, in the resident's bedroom, or the area designated for visitation. A facility may have other considerations such as infection control protocol or roommate preferences. HHSC declines to remove §570.113(c) and §570.514(c). These provisions are necessary because they provide minimum standards for essential caregiver visitation rules.

Comment: A commenter, in reference to §570.514(b), suggested that essential caregiver visits are not without conditions. The commenter stated the rules should be changed to reflect a requirement that an essential caregiver must pass the visitation screening requirements in §570.509. The commenter requested modification of rule language in §570.514(b) to state: "A nursing facility (NF) must permit essential caregiver visits except as provided in Section 570.509 and as limited by nursing facility developed safety protocols."

Response: Essential caregiver visits must occur except as provided by §570.514(j).

Comment: A commenter, in reference to §570.514(e), stated that additional procedures were not necessary to allow physical contact between a resident and an essential caregiver and recommended amending the rule to remove the requirement that a NF have procedures in place to enable physical contact between a resident and the essential caregiver.

Response: HHSC disagrees and declines to revise the rule as recommended by this commenter. However, HHSC did add language to §570.514(e) to clarify that physical contact is a matter of resident choice.

Comment: A commenter recommended adding language to §570.514(i)(3) to permit a NF to revoke an essential caregiver's status for an additional failure to follow a nursing facility's safety protocol following a hearing officer's decision. The commenter said this rule needed to be clarified to allow further revocation following a hearing officer's decision in the event an essential caregiver fails to comply with nursing facility safety protocols.
Response: If a hearing officer determines a facility does not have a right to revoke a person's designation as an essential caregiver and the facility believes the essential caregiver has failed to follow safety protocols again, the facility can seek to revoke the person's designation as an essential caregiver through the process again. HHSC disagrees and declines to revise the rule.

Comment: Some commenters said the rules addressing essential caregivers are not consistent in terms of how many essential caregivers a resident, individual, or client can have and how many can visit at one time. The commenter recommends that the rules specify that a resident, individual, or client can have two essential caregivers.

Response: HHSC agrees and revised §§570.113, 570.613, and 570.713, regarding essential caregiver visits, to permit the designation of "at least one essential caregiver" rather than "an essential caregiver." HHSC made this change to clarify that HHSC does not intend to limit essential caregivers to just one person.

Comment: Many commenters requested a rule change to ensure guardians have authority to choose essential caregivers and to indicate that essential caregivers are subject to a guardian's decision making. Many commenters expressed concern that the rules do not include the rights of guardians to choose essential caregivers.

Response: HHSC agrees and clarified in §570.2(7), defining "essential caregiver," that guardians choose the essential caregivers in accordance with the terms of the applicable guardianship. Specifically, HHSC revised the definition to include the following new language: "In case of conflict between an individual's, resident's, or client's selection and a guardian's selection on behalf of the individual, resident, or client, the guardian's selection prevails, in accordance with the terms of the guardianship." Typically, a judge's order appointing a guardian and assigning the guardian's duties are ultimately what govern the relationship between the guardian and the ward. The guardian should work with the ward and assert its decision-making authority when needed to fulfill guardianship duties to the ward.

Comment: Several comments were received concerning the relationship between end-of-life visits and religious visits as permitted by S.B. 572. Concerns were expressed that end-of-life visits in the rules were not distinguished from religious visits.

Response: HHSC agrees and revised the rules to further clarify that religious visits are different from end-of-life visits. HHSC made changes to the definitions by adding a definition for religious counselor visit, which means an in-person visit between a religious counselor and an individual or resident that may occur at any time and that may not be limited to residents at the end-of-life.

Comment: Numerous comments were received regarding end-of-life visits in relation to implementation of S.B. 572 throughout the rules. Three commenters stated that end-of-life visits were not contemplated by Texas Health and Safety Code, Chapter 260B or Chapter 260C. A commenter asserted that the definition of end-of-life visit is overbroad and recommended that an end-of-life visit be defined as "a personal visit between a visitor and an individual, resident, or client with a terminal or irreversible condition, as those terms are defined by Texas Health and Safety Code §166.002(9 and 13), which has been diagnosed and certified in writing by an attending physician." Two commenters suggested removing end-of-life visits from the rules and definitions. In the alternative, one of these commenters suggested limiting end-of-life visits to religious counselors and essential caregivers.

Response: HHSC declines to remove end-of-life visits from Chapter 570 rules. The rules define end-of-life visits as "a personal visit between a visitor and an individual, resident, or client who is receiving hospice services; who is at or near end-of-life, with or without receiving hospice services; or whose prognosis does not indicate recovery." During the drafting phase of this rule project, several comments and concerns were received based on family and friends missing the opportunity to see their loved one before their loved one passed away. Stakeholders, family, friends of loved ones testified during the legislative session about missing the opportunity to say goodbye and about the emotional and mental impact that had. HHSC included the end-of-life visit in these rules to prevent this from occurring in the future.

The rules require all facilities and program providers to communicate changes in an individual's or resident's condition that would qualify a resident or individual for an end-of-life visit and requires that an end-of-life visit be permitted.

Comment: A comment was received stating that HHSC exceeded the scope of Texas Health and Safety Code, Chapters 260B and 260C, by providing visitation rights for residents and individuals beyond the visitation rights exclusive to S.B. 25 and S.B. 572.

Response: HHSC disagrees and declines to revise the rules. The legislation establishes rights that HHSC cannot restrict further than the legislation permits. HHSC also has a statutory duty to protect the health and safety of residents and individuals and authority to promulgate rules to fulfill this obligation. As the legislation does not prohibit HHSC from addressing visitation of other individuals and residents, the rule is consistent with the legislation and HHSC's statutory authority and duties.

Comment: A commenter suggested HHSC consider how visitation guidance from CMS may impact essential caregiver visit in that CMS does not recognize essential caregivers, which may cause potential conflict and confusion for providers.

Response: Article I, Section 35, of the Texas Constitution and Texas Health and Safety Code, Chapter 260B, require HHSC to implement essential caregiver visits. The Chapter 570 rules do not currently conflict with CMS guidance on visitation. HHSC will address any future conflicts if and when they arise. HHSC declines to revise the rules.

Comment: A commenter stated, "This whole rule set is an attempt to make it look like the problems we had during COVID19 could have been fixed by changes to an HCSSA policy manual when the real failures happened at a government level."

Response: This comment is outside the scope of these rules. HHSC declines to revise the rules because the comment does not request or recommend a rule change.

Comment: A commenter stated these rules are arbitrary and HHSC cannot write rules based on a future unpredictable situation.

Response: HHSC believes that these rules are reasonable and necessary to protect the health and safety of Texans served by the facilities, agencies, and program providers covered by these rules during a future public health emergency or disaster. These rules are also necessary to implement Texas Health and Safety Code, Chapters 260B and 260C. Furthermore, HHSC believes that these rules will reduce the need for the implementation of emergency rules to address a future public health emergency or disaster. HHSC disagrees and declines to revise the rules.
Comment: Some comments referenced the COVID-19 HCSSA Frequently Asked Questions document and had questions pertaining to that document.

Response: This comment is outside the scope of this rule project. HHSC declines to revise the rule because the comment does not request or recommend a rule change.

Comment: Several commenters stated that they supported HHSC’s efforts in drafting Chapter 570. Likewise, several comments expressing support were received regarding specific portions of Chapter 570.

Response: HHSC thanks commenters for their support. No rule revisions were made based on these supportive comments.

Minor editorial changes were made throughout the rules to improve clarity of the rules.

The title of Chapter 570 was changed to "Long-Term Care Provider Rules During A Public Health Emergency Or Disaster" to clarify that the scope of Chapter 570 only applies during these circumstances, and no longer applies during any contagious disease outbreak, epidemic, or pandemic.

The definition of communicable disease was added to §570.2(3) to provide a definition for what it means. HHSC defines it as "An infection transmissible by direct contact with an affected individual or the individual's body fluids, or by indirect means, or by direct or indirect contact with disease carriers."

The definition of community health risk was added to §570.2(4) to provide clarity.

The definition of public health emergency or disaster was added to §570.2(16) to provide a definition of what a public health emergency or disaster means. HHSC defines it as "A federal declaration of public health emergency or a statewide or regional declaration of a public health disaster by the commissioner of the DSHS under Chapter 81 of the Health and Safety Code. A state or regional public health disaster can be declared only if the governor has declared a state of disaster for the same threat under Chapter 418 of the Government Code."

SUBCHAPTER A. INTRODUCTION

26 TAC §570.2

STATUTORY AUTHORITY

The new sections are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code §142.0011 and §142.012, which provide that the Executive Commissioner of HHSC shall adopt rules protecting the quality of care and quality of life of HCSSA clients and necessary to implement Chapter 142, respectively; Texas Health and Safety Code §242.001, which states that the goal of Chapter 242 is to ensure that nursing facilities in Texas deliver the highest possible quality of care and establish the minimum acceptable levels of care for individuals who are living in a nursing facility, and Texas Health and Safety Code §242.037, which requires the Executive Commissioner of HHSC to make and enforce rules prescribing the minimum standards relating to quality of life, quality of care, and resident rights for nursing facility residents; Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and ensure the quality of care and protection of residents' health and safety, respectively; Texas Health and Safety Code §252.008, which provides that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 252; Texas Human Resources Code §32.021, which provides that the Executive Commissioner of HHSC shall adopt rules for the proper and efficient operation of the medical assistance program; Texas Health and Safety Code §260B.002(b), which requires the Executive Commissioner of HHSC to by rule develop guidelines to assist facilities and program providers in establishing essential caregiver visitation policies and procedures; and Texas Health and Safety Code §260C.002(b), which requires the Executive Commissioner of HHSC to by rule develop guidelines to assist health care facilities in establishing in-person religious counselor visitation policies and procedures.

§570.2. Definitions.

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

(1) Assisted Living Facility (ALF) -- A facility licensed under Texas Health and Safety Code, Chapter 247.

(2) Client -- For a Home and Community Support Services Agency (HCSSA), this term means a person receiving home health, hospice, or personal assistance services from a HCSSA.

(3) Communicable disease -- An infection transmissible by direct contact with an affected individual or the individual's body fluids, or by indirect means, or by direct or indirect contact with disease carriers.

(4) Community health risk -- A risk to the community of individuals or residents residing at a facility.

(5) DSHS -- Texas Department of State Health Services.

(6) End-of-life visit -- A personal visit between a visitor and an individual, resident, or client who is receiving hospice services; who is at or near the end of life, with or without receiving hospice services; or whose prognosis does not indicate recovery.

(7) Essential caregiver -- A family member, friend, guardian, volunteer, or other person designated for in-person visits by an individual, resident, or client or the individual's, resident's, or client's guardian or legally authorized representative (LAR). In case of conflict between an individual's, resident's, or client's selection and a guardian's selection on behalf of the individual, resident, or client, the guardian's selection prevails, in accordance with the terms of the guardianship. If an individual, resident, or client has no guardian and is unable to select an essential caregiver, the individual's, resident's, or client's LAR may select the essential caregiver.

(8) Essential caregiver visit -- An in-person visit between an individual, resident, or client and a designated essential caregiver.

(9) Home and Community-based Services (HCS) -- A program operated by HHSC as authorized by Centers for Medicare and Medicaid Services (CMS) in accordance with §1915(c) of the Social Security Act.

(10) Home and Community Support Services Agency (HCSSA) -- An agency licensed under Texas Health and Safety Code, Chapter 142, to provide home health, hospice, or personal assistance services.

(11) Individual -- A person enrolled in the Intermediate Care Facility for Individuals with an Intellectual Disability or Related Condition (ICF/IID) program or HCS program. This definition applies to the ICF/IID and HCS programs only.
(12) Intermediate Care Facility for Individuals with an Intellectual Disability or Related Condition (ICF/IID)--A facility licensed under Texas Health and Safety Code, Chapter 252, or exempt from licensure under Texas Health and Safety Code §252.003.

(13) Legally authorized representative (LAR)--A person authorized by law to act on behalf of an individual, resident, or client with regard to a matter described by this chapter, and who may be the parent of a minor child or the legal guardian of or surrogate decision maker for the individual, resident, or client.

(14) Nursing facility (NF)--A facility licensed under Texas Health and Safety Code, Chapter 242.

(15) Program provider--A contractor, as defined in 40 TAC §49.102 (relating to Definitions), that has a contract with the Texas Health and Human Services Commission (HHSC) to provide HCS program services, excluding a Financial Management Services Agency.

(16) Public health emergency or disaster--A federal declaration of a public health emergency or a statewide or regional declaration of a public health disaster by the commissioner of DSHS under Chapter 81 of the Texas Health and Safety Code. A state or regional public health disaster can be declared only if the governor has declared a state of disaster for the same threat under Chapter 418 of the Texas Government Code.

(17) Religious counselor--A person acting substantially in a pastoral or religious capacity to provide spiritual counsel to other persons.

(18) Religious counselor visit--An in-person visit between a religious counselor and an individual or resident, that may occur at any time. A religious counselor visit must not be limited to an individual or resident at the end of life.

(19) Residence--
(A) for purposes of Subchapter H of this chapter (relating to Home and Community-Based Services), a host home or companion care, three-person, or four-person residence, as defined by the HCS billing guidelines, unless otherwise specified; or
(B) a private home, a nursing facility, an assisted living facility, an ICF/IID facility, or an unlicensed independent living environment; or
(C) for purposes of Subchapter D of this chapter (relating to Home and Community Support Services Agencies), a place where a client resides.

(20) Resident--A person residing in a facility. This definition applies to NFs and ALFs only.

(21) Resident representative--
(A) A person chosen by the resident to act on behalf of the resident in order to support the resident in decision-making; access medical, social, or other personal information of the resident; manage the resident's financial matters; or receive notifications regarding the resident; or
(B) A person authorized by state or federal law (including agents under power of attorney, representative payees, and other fiduciaries) to act on behalf of the resident in order to support the resident in decision-making; access medical, social, or other personal information of the resident; manage the resident's financial matters; or receive notifications regarding the resident; or
(C) A legally authorized representative; or
(D) The court-appointed guardian of a resident.

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

Filed with the Office of the Secretary of State on May 12, 2022.

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Karen Ray
Chief Counsel
Health and Human Services Commission
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Proposal publication date: November 12, 2021
For further information, please call: (512) 438-3161

SUBCHAPTER B. ASSISTED LIVING FACILITIES
26 TAC §§570.111, §§570.113

STATUTORY AUTHORITY
The new sections are adopted under Texas Government Code §§531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code §142.0011 and §142.012, which provide that the Executive Commissioner of HHSC shall adopt rules protecting the quality of care and quality of life of HCSSA clients and necessary to implement Chapter 142, respectively; Texas Health and Safety Code §242.001, which states that the goal of Chapter 242 is to ensure that nursing facilities in Texas deliver the highest possible quality of care and establish the minimum acceptable levels of care for individuals who are living in a nursing facility, and Texas Health and Safety Code §242.037, which requires the Executive Commissioner of HCSSA to make and enforce rules prescribing the minimum standards relating to quality of life, quality of care, and resident rights for nursing facility residents; Texas Health and Safety Code §§247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and ensure the quality of care and protection of residents' health and safety, respectively; Texas Health and Safety Code §252.008, which provides that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 252; Texas Human Resources Code §32.021, which provides that the Executive Commissioner of HHSC shall adopt rules for the proper and efficient operation of the medical assistance program; Texas Health and Safety Code §260B.0002(b), which requires the Executive Commissioner of HHSC to by rule develop guidelines to assist facilities and program providers in establishing essential caregiver visitation policies and procedures; and Texas Health and Safety Code §260C.002(b), which requires the Executive Commissioner of HHSC to by rule develop guidelines to assist health care facilities in establishing in-person religious counselor visitation policies and procedures.

§570.111. Visitation.
(a) An assisted living facility's visitation policies and procedures may change during a public health emergency or disaster. Assisted living facility (ALF) visitation policies and procedures may not be more restrictive than guidance or directives issued by HHSC, DSHS, executive or local orders.
(b) An ALF may not prohibit a resident from receiving in-person visitation with a religious counselor during a public health emer-
gency or disaster on request from the resident, resident's legally authorized representative (LAR), or resident's family member unless a federal law or a federal agency requires the facility to prohibit in-person visitation during a public health emergency.

(c) An ALF must adopt policies and procedures for in-person visitation with a religious counselor during a public health emergency or disaster. These policies and procedures:

   (1) must comply with the minimum health and safety requirements for in-person visitation with religious counselors developed by HHSC;
   
   (2) may include reasonable time, place, and manner restrictions on in-person visitation with religious counselors to:
       (A) mitigate the spread of a communicable disease; and
       (B) address the resident's medical condition;
   
   (3) must include special consideration for residents receiving end-of-life care; and
   
   (4) may condition in-person visitation with a religious counselor on the religious counselor's compliance with an ALF's guidelines, policies, and procedures for in-person visitation with a religious counselor.

(d) An ALF must permit end-of-life visits and immediately communicate any changes in a resident's condition that would qualify the resident for end-of-life visits to the resident representative.

§570.113. Essential Caregiver Visits.

(a) A resident or the resident's legally authorized representative (LAR), if the resident is unable, has the right to designate at least one essential caregiver.

(b) An assisted living facility (ALF) must permit essential caregiver visits except as provided by subsection (j) of this section.

(c) An ALF must allow essential caregiver visits to occur outdoors, in the resident's bedroom, or in another area designated for visitation by the ALF upon request by a resident or resident's LAR.

(d) An ALF must develop a visitation policy that permits an essential caregiver to visit the resident for at least two hours each day.

(e) An ALF must have procedures in place to enable physical contact between the resident and the essential caregiver.

(f) The ALF must develop safety protocols for essential caregiver visits. The safety protocols may not be more stringent for essential caregivers than safety protocols for staff.

(g) An ALF must obtain the signature of the essential caregiver certifying that the essential caregiver will follow the facility's safety protocols for essential caregiver visits.

(h) An ALF may revoke an essential caregiver designation if the caregiver violates the facility's safety protocols or rules adopted under this chapter.

(i) If an ALF revokes a person's designation as an essential caregiver under subsection (h) of this section:

   (1) the resident or the resident's LAR has the right to immediately designate another person as the essential caregiver;

   (2) within 24 hours after the revocation, the facility must inform the resident or the resident's legally authorized representative, in writing, of the right to appeal the revocation and the procedures for filing an appeal with the Texas Health and Human Services Commission (HHSC) Appeals Division by:

   (A) email at OCC_Appeals_Contested-Cases@hhs.texas.gov; or
   
   (B) mail at HHSC Appeals Division, P.O. Box 149030, MC W-613, Austin, TX 78714-9030; and

   (3) the ALF must comply with a hearing officer's decision regarding an appeal of an essential caregiver revocation.

(j) An ALF may petition HHSC to suspend in-person essential caregiver visits for no more than seven consecutive calendar days if in-person visitation poses a serious community health risk. An ALF may request an extension from HHSC to suspend in-person essential caregiver visitation beyond the ALF's original request, but HHSC may not approve an extension for a period that exceeds seven days and an ALF must separately request each extension. HHSC may deny the ALF's original request to suspend in-person essential caregiver visitation or the ALF's extension request if HHSC determines that in-person visitation does not pose a serious community health risk.

(k) An ALF may not suspend in-person essential caregiver visits in a calendar year for a time period that:

   (1) is more than 14 consecutive days; or
   
   (2) is more than a total of 45 days.

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

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TRD-202201863
Karen Ray
Chief Counsel
Health and Human Services Commission

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SUBCHAPTER D. HOME AND COMMUNITY SUPPORT SERVICES AGENCIES
DIVISION 2. HOSPICE AGENCIES OPERATING AN INPATIENT FACILITY

26 TAC §570.325, §570.327

STATUTORY AUTHORITY

The new sections are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HSSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code §142.0011 and §142.012, which provide that the Executive Commissioner of HSSC shall adopt rules protecting the quality of care and quality of life of HCSSA clients and necessary to implement Chapter 142, respectively; Texas Health and Safety Code §242.001, which states that the goal of Chapter 242 is to ensure that nursing facilities in Texas deliver the highest possible quality of care and establish the minimum acceptable levels of care for individuals who are living in a nursing facility, and Texas Health and Safety Code §242.037, which requires the Executive Commissioner of HSSC to make and enforce rules prescribing the minimum standards relating to quality of life, quality of care, and resident rights for nursing facility res-
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§570.325. Safety

(b) A hospice agency operating a hospice inpatient unit must permit essential caregiver visits except as provided by subsection (i) of this section.

(c) A hospice agency operating a hospice inpatient unit must develop a visitation policy that permits an essential caregiver to visit the resident for at least two hours each day.

(d) A hospice agency operating a hospice inpatient unit must have procedures in place to enable physical contact between the resident and the essential caregiver.

(e) A hospice agency operating a hospice inpatient unit must develop safety protocols for essential caregiver visits. The safety protocols may not be more stringent for essential caregivers than safety protocols for staff.

(f) A hospice agency operating a hospice inpatient unit must obtain the signature of the essential caregiver certifying that the essential caregiver will follow the facility's safety protocols for essential caregiver visits.

(g) A hospice agency operating a hospice inpatient unit may revoke an essential caregiver designation if the caregiver violates the facility's safety protocols or rules adopted under this chapter.

(h) If a hospice agency operating a hospice inpatient unit revokes a person's designation as an essential caregiver under subsection (g) of this section:

(1) the resident or the resident's LAR has the right to immediately designate another person as the essential caregiver;

(2) within 24 hours after the revocation, the hospice agency operating a hospice inpatient unit must inform the resident or the resident's LAR, in writing, of the right to appeal the revocation and the with the Texas Health and Human Services Commission (HHSC) Appeals Division by:

(A) email at OCC_Appeals_Contested-Cases@hhs.texas.gov; or

(B) mail at HHSC Appeals Division, P.O. Box 149030, MC W-613, Austin, TX 78714-9030; and

(3) the hospice agency operating a hospice inpatient unit must comply with a hearing officer's decision regarding an appeal of an essential caregiver revocation.

(i) A hospice agency operating a hospice inpatient unit may petition HHSC to suspend in-person essential caregiver visits for no more than seven consecutive calendar days if in-person visitation poses a serious community health risk. A hospice agency operating a hospice inpatient unit may request an extension from HHSC to suspend in-person essential caregiver visitation beyond the hospice agency operating a hospice inpatient unit's original request, but HHSC may not approve an extension for a period that exceeds seven days and a hospice agency operating a hospice inpatient unit must separately request each extension. HHSC may deny the hospice agency operating a hospice inpatient unit's original request to suspend in-person essential caregiver visitation or the hospice agency operating a hospice inpatient unit's extension request if HHSC determines that in-person visitation does not pose a serious community health risk.

(j) A hospice agency operating a hospice inpatient unit may not suspend in-person essential caregiver visits in a calendar year for a time period that:

(1) is more than 14 consecutive days; or

(2) is more than a total of 45 days.

§570.327. Essential Caregiver Visits.

(a) A resident or the resident's legally authorized representative (LAR), if the resident is unable, has the right to designate at least one essential caregiver.

§570.327. Essential Caregiver Visits.

(a) A resident or the resident's legally authorized representative (LAR), if the resident is unable, has the right to designate at least one essential caregiver.
The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER F. NURSING FACILITIES
26 TAC §570.513, §570.514

STATUTORY AUTHORITY

The new sections are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code §§142.0011 and 142.012, which provide that the Executive Commissioner of HHSC shall adopt rules protecting the quality of care and quality of life of HCSSA clients and necessary to implement Chapter 142, respectively; Texas Health and Safety Code §242.001, which states that the goal of Chapter 242 is to ensure that nursing facilities in Texas deliver the highest possible quality of care and establish the minimum acceptable levels of care for individuals who are living in a nursing facility, and Texas Health and Safety Code §242.037, which requires the Executive Commissioner of HHSC to make and enforce rules prescribing the minimum standards relating to quality of life, quality of care, and resident rights for nursing facility residents; Texas Health and Safety Code §§247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and ensure the quality of care and protection of residents' health and safety, respectively; Texas Health and Safety Code §252.008, which provides that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 252; Texas Human Resources Code §32.021, which provides that the Executive Commissioner of HHSC shall adopt rules for the proper and efficient operation of the medical assistance program; Texas Health and Safety Code §260B.0002(b), which requires the Executive Commissioner of HHSC to by rule develop guidelines to assist facilities and program providers in establishing essential caregiver visitation policies and procedures; and Texas Health and Safety Code §260C.002(b), which requires the Executive Commissioner of HHSC to by rule develop guidelines to assist health care facilities in establishing in-person religious counselor visitation policies and procedures.

§570.513. Visitaton.
(a) A nursing facility's visitation policies and procedures may change during a public health emergency or disaster in response to directives issued by the Centers for Medicare and Medicaid Services (CMS), HHSC, or DSHS. Nursing facility (NF) visitation policies and procedures may not be more restrictive than directives issued by CMS, HHSC, DSHS, executive orders, or local orders.

(b) A NF may not prohibit a resident from receiving in-person visitation with a religious counselor during a public health emergency on request from the resident, resident's legally authorized representative (LAR), or resident's family member unless a federal law or a federal agency requires the facility to prohibit in-person visitation during a public health emergency.

(d) A NF must adopt policies and procedures for in-person visitation with a religious counselor during a public health emergency or disaster. These policies and procedures:

(1) must comply with the minimum health and safety requirements for in-person visitation with religious counselors developed by HHSC;

(2) may include reasonable time, place, and manner restrictions on in-person visitation with religious counselors to:
   (A) mitigate the spread of a communicable disease; and
   (B) address the resident's medical condition;

(3) must include special consideration for residents receiving end-of-life care; and

(4) may require religious counselors to comply with a NF's guidelines, policies, and procedures for in-person visitation with a religious counselor.

(e) A NF must permit end-of-life visits and immediately communicate any changes in a resident's condition that would qualify the resident for end-of-life visits to the resident representative.

§570.514. Essential Caregiver Visits.
(a) A resident or the resident's legally authorized representative (LAR), if the resident is unable, has the right to designate at least one essential caregiver.

(b) A nursing facility (NF) must permit essential caregiver visits except as provided by subsection (j) of this section.

(c) A NF must permit essential caregiver visits to occur outdoors, in the resident's bedroom when possible, or in another area upon request by a resident or resident's LAR.

(d) A NF must develop a visitation policy that permits an essential caregiver to visit the resident for at least two hours each day.

(e) A NF must have procedures in place to enable physical contact between the resident and the essential caregiver, if the resident chooses to have physical contact.

(f) A NF must develop safety protocols for essential caregiver visits. The safety protocols may not be more stringent for essential caregivers than safety protocols for staff.

(g) A NF must obtain the signature of the essential caregiver certifying that the essential caregiver will follow the NF's safety protocols for essential caregiver visits.

(h) A NF may revoke an essential caregiver designation if the caregiver violates the NF's safety protocols or rules adopted under this chapter.

(i) If a NF revokes a person's designation as an essential caregiver under subsection (h) of this section:
   (1) the resident or the resident's LAR has the right to immediately designate another person as the essential caregiver;

   (2) within 24 hours after the revocation, the facility must inform the resident or the resident's LAR, in writing, of the right to appeal the revocation and the procedures for filing an appeal with the
Texas Health and Human Services Commission (HHSC) Appeals Division by:

(A) email at OCC_Appeals_Contested-Cases@hhs.texas.gov; or

(B) mail at HHSC Appeals Division, P.O. Box 149030, MC W-613, Austin, TX 78714-9030; and

(3) the NF must comply with a hearing officer's decision regarding an appeal of an essential caregiver revocation.

(j) A NF may petition HHSC to suspend in-person essential caregiver visits for no more than seven consecutive calendar days if in-person visitation poses a serious community health risk. A NF may request an extension from HHSC to suspend in-person essential caregiver visitation beyond the NF's original request, but HHSC may not approve an extension for a period that exceeds seven days and a NF must separately request each extension. HHSC may deny the NF's original request to suspend in-person essential caregiver visitation or the NF's extension request if HHSC determines that in-person visitation does not pose a serious community health risk.

(k) A NF may not suspend in-person essential caregiver visits in a calendar year for a time period that:

(1) is more than 14 consecutive days; or

(2) is more than a total of 45 days.

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

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SUBCHAPTER G. INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH AN INTELLECTUAL DISABILITY OR RELATED CONDITIONS

26 TAC §570.611, §570.613

STATUTORY AUTHORITY

The new sections are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code §142.0011 and §142.012, which provide that the Executive Commissioner of HHSC shall adopt rules protecting the quality of care and quality of life of HCSSA clients and necessary to implement Chapter 142, respectively; Texas Health and Safety Code §242.001, which states that the goal of Chapter 242 is to ensure that nursing facilities in Texas deliver the highest possible quality of care and establish the minimum acceptable levels of care for individuals who are living in a nursing facility, and Texas Health and Safety Code §242.037, which requires the Executive Commissioner of HHSC to make and enforce rules prescribing the minimum standards relating to quality of life, quality of care, and resident rights for nursing facility residents; Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and ensure the quality of care and protection of residents' health and safety, respectively; Texas Health and Safety Code §252.008, which provides that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 252; Texas Human Resources Code §32.021, which provides that the Executive Commissioner of HHSC shall adopt rules for the proper and efficient operation of the medical assistance program; Texas Health and Safety Code §260B.0002(b), which requires the Executive Commissioner of HHSC to by rule develop guidelines to assist facilities and program providers in establishing essential caregiver visitation policies and procedures; and Texas Health and Safety Code §260C.002(b), which requires the Executive Commissioner of HHSC to by rule develop guidelines to assist health care facilities in establishing in-person religious counselor visitation policies and procedures.

§570.611. Visitations.

(a) An intermediate care facility for individuals with an intellectual disability or related conditions (ICF/IID) visitation policies and procedures may change during a public health emergency or disaster. ICF/IID visitation policies and procedures may not be more restrictive than directives issued by HHSC, DSHS, executive orders, or local orders.

(b) An ICF/IID must permit a religious counselor to visit an individual at the request of the individual.

(c) An ICF/IID may prohibit in-person visitation with a religious counselor during a public health emergency if a federal law or federal agency requires the facility to prohibit in-person visitation during that period.

(d) An ICF/IID must permit end-of-life visits and immediately communicate any changes in an individual's condition that would qualify the individual for end-of-life visits to the individual's representative.

§570.613. Essential Caregiver Visits.

(a) An individual, or the individual's legally authorized representative (LAR), if the individual is unable, has the right to designate at least one essential caregiver.

(b) An intermediate care facility for individuals with an intellectual disability or related conditions (ICF/IID) must permit essential caregiver visits except as provided by subsection (i) of this section.

(c) An ICF/IID must develop a visitation policy that permits an essential caregiver to visit the individual for at least two hours each day.

(d) An ICF/IID must have procedures in place to enable physical contact between the individual and the essential caregiver.

(e) An ICF/IID must develop safety protocols for essential caregiver visits. The safety protocols may not be more stringent for essential caregivers than safety protocols for staff.

(f) An ICF/IID must obtain the signature of the essential caregiver certifying that the essential caregiver will follow the ICF/IID's safety protocols for essential caregiver visits.
(g) An ICF/IID may revoke an essential caregiver designation if the caregiver violates the facility's safety protocols or rules adopted under this chapter.

(h) If an ICF/IID revokes a person's designation as an essential caregiver under subsection (g) of this section:

1. the individual or the individual's legally authorized representative has the right to immediately designate another person as the essential caregiver;

2. within 24 hours after the revocation, the ICF/IID must inform the individual or the individual's LAR, in writing, of the right to appeal the revocation and the procedures for filing an appeal with the Texas Health and Human Services Commission (HHSC) Appeals Division by:
   - email at OCC_Appeals_Contested-Cases@hhs.texas.gov; or
   - mail at HHSC Appeals Division, P.O. Box 149030, MC W-613, Austin, TX 78714-9030; and

3. the ICF/IID must comply with a hearing officer's decision regarding an appeal of an essential caregiver revocation.

(i) An ICF/IID may petition HHSC to suspend in-person essential caregiver visits for no more than seven consecutive calendar days if in-person visitation poses a serious community health risk. An ICF/IID may request an extension from HHSC to suspend in-person essential caregiver visitation beyond the ICF/IID's original request, but HHSC may not approve an extension for a period that exceeds seven days and an ICF/IID must separately request each extension. HHSC may deny the ICF/IID's original request to suspend in-person essential caregiver visitation or the ICF/IID's extension request if HHSC determines that in-person visitation does not pose a serious community health risk.

(j) An ICF/IID may not suspend in-person essential caregiver visits in a calendar year for a time period that:

1. is more than 14 consecutive days; or

2. is more than a total of 45 days.

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

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SUBCHAPTER H. HOME AND COMMUNITY-BASED SERVICES

26 TAC §570.711, §570.713

STATUTORY AUTHORITY

The new sections are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code §142.0011 and §142.012, which provide that the Executive Commissioner of HHSC shall adopt rules protecting the quality of care and quality of life of HCSSA clients and necessary to implement Chapter 142, respectively; Texas Health and Safety Code §242.001, which states that the goal of Chapter 242 is to ensure that nursing facilities in Texas deliver the highest possible quality of care and establish the minimum acceptable levels of care for individuals who are living in a nursing facility, and Texas Health and Safety Code §242.037, which requires the Executive Commissioner of HHSC to make and enforce rules prescribing the minimum standards relating to quality of life, quality of care, and resident rights for nursing facility residents; Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and ensure the quality of care and protection of residents' health and safety, respectively; Texas Health and Safety Code §252.008, which provides that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 252; Texas Human Resources Code §32.021, which provides that the Executive Commissioner of HHSC shall adopt rules for the proper and efficient operation of the medical assistance program; Texas Health and Safety Code §260B.0002(b), which requires the Executive Commissioner of HHSC to by rule develop guidelines to assist facilities and program providers in establishing essential caregiver visitation policies and procedures; and Texas Health and Safety Code §260C.002(b), which requires the Executive Commissioner of HHSC to by rule develop guidelines to assist health care facilities in establishing in-person religious counselor visitation policies and procedures.

§570.711. Visitation.

(a) This section does not apply to host home/companion care, unless otherwise specified.

(b) A program provider's visitation policies and procedures may change during a public health emergency or disaster. A program provider's visitation policies and procedures may not be more restrictive than directives issued by HHSC, DSHS, executive orders, or local orders.

(c) A program provider must permit a religious counselor to visit an individual at the request of the individual.

(d) A program provider may prohibit in-person visitation with a religious counselor during a public health emergency if a federal law or federal agency requires the residence to prohibit in-person visitation during that period.

(e) A program provider must permit end-of-life visits and immediately communicate any changes in an individual's condition that would qualify the individual for end-of-life visits to the individual's representative.

§570.713. Essential Caregiver Visits.

(a) An individual, or individual's legally authorized representative (LAR), if the individual is unable, has the right to designate at least one essential caregiver.

(b) A program provider must permit essential caregiver visits except as provided by subsection (i) of this section.

(c) A program provider must develop a visitation policy that permits an essential caregiver to visit the individual for at least two hours each day.

(d) A program provider must have procedures in place to enable physical contact between the individual and the essential caregiver.
PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 21. TRADE PRACTICES

SUBCHAPTER UU. MACHINE-READABLE FILES

28 TAC §§21.5501 - 21.5503


REASONED JUSTIFICATION. The new sections are necessary to implement legislation. New Insurance Code Chapter 1662 requires health benefit plan issuers or administrators to publish to the internet certain information in three machine-readable files. Specifically, Insurance Code §1662.103 requires issuers or administrators to publish rate information for covered health care services and supplies; unique billed charges and allowed amounts for covered services provided by out-of-network providers; and negotiated rates for prescription drugs. Insurance Code §1662.107 requires the department to prescribe by rule the form and manner in which the machine-readable files must be made available.

Section 21.5501. New §21.5501 identifies the types of health benefit plans that are, and are not, subject to the requirements to produce machine-readable files. The section also specifies when issuers must begin publishing machine-readable files, including providing additional time for smaller issuers. In addition, the new section provides that issuers are not required to publish machine-readable files under this proposal's requirements until the federal Departments of Labor, Health and Human Services, and Treasury begin enforcing the corresponding federal Transparency in Coverage rules (26 C.F.R. §§54.9815-2715A1 - .9815-2715A3; 29 C.F.R. §§2590.715-2715A1 - .715-2715A3; and 45 C.F.R. §§147.210 - .212), or January 1, 2024, whichever is earlier.

As of the date of this publication, federal guidance states that the federal departments will defer enforcement of the requirement that plans and issuers publish machine-readable files related to prescription drug pricing pending further federal rulemaking, while enforcement of the requirements related to in-network rates and out-of-network allowed amounts and billed charges will be deferred until July 1, 2022. See FAQs About Affordable Care Act and Consolidated Appropriations Act, 2021, Implementation Part 49 (available at dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/aca-part-49.pdf).

Section 21.5502. New §21.5502 addresses various details concerning the form and manner in which machine-readable files are to be published, including transport mechanisms, nonproprietary data, and file-naming conventions. The new section also provides a safe harbor for issuers that are compliant with federal machine-readable file requirements.

In response to comments, the department makes changes to the proposed text in subsections (a) and (g) to track statutory language. The department also adds a new subsection (h) to
the proposed text to allow an issuer that has multiple plans with the same negotiated rates with the same group of providers for the covered health care services and supplies to group multiple plans together within a single file. This provides flexibility for issuers and will reduce the total number of files that issuers will be required to publish. As adopted, proposed subsections (h) and (i) are redesignated as subsections (i) and (j), respectively. The department also adds new subsection (i)(2) to address the file-naming convention for the Table of Contents File that applies if an issuer chooses to include multiple plans per file. Paragraphs (2) and (3) in subsection (i), originally proposed as subsection (h)(2) and (3), are redesignated as paragraphs (3) and (4). The department also makes changes to Figure: 28 TAC §21.5502(i)(4) to add an example of the Table of Contents File naming convention, update the dates provided in the example, clearly state the naming conventions for single-plan files and multiple plans per file, and delete two instances of an extraneous "and," four extraneous semicolons, two extraneous periods, and one extraneous comma. Finally, the department adds a reference to Insurance Code §1662.107 and changes "re-use" to "reuse" in subsection (d), and the department adds an "and" to §21.5502(i)(1)(C).

Section 21.5503. New §21.5503 describes the data schemas that specify the data fields that must be included in each machine-readable file and the technical parameters associated with each data field. The department has published the data schemas on its website.

The department changes the proposed text to adopt Machine-Readable Files: Data Schemas (version 1.1), rather than the proposed version 1.0. The department also makes grammatical changes in subsections (a) - (c) and adds new subsections (d) and (e) to address new schemas provided in the federal machine-readable file requirements.

New subsection (d) addresses the Table of Contents File Schema, which an issuer must include the Table of Contents File Schema, which an issuer may choose to include multiple plans per file, as permitted by §21.5502(h). New subsection (e) addresses the Provider Reference File Schema, which an issuer may use to map the provider network to the item or service that is being documented within the In-Network File.

The following changes have been made to version 1.0 of the data schemas to produce version 1.1:

- A Table of Contents File Schema has been added and corresponding changes are made to existing objects within the In-Network File and Out-Of-Network Allowed Amount File Schemas. The Reporting Plans Object previously contained within the In-Network File and Out-Of-Network Allowed Amount File Schemas has been moved into the Table of Contents Schema. For single-plan files, new fields for "plan_name," "plan_id_type," "plan_id," and "plan_market_type" are added in the In-Network File and Out-Of-Network Allowed Amount File Schemas. These changes support new subsection (h) added to §21.5502, which allows an issuer to include data for multiple plans in a single file.

- Within the In-Network File Schema, a Provider Reference Object has been added. Within the Negotiated Price Object, new "billing_code_modifier" and "additional_information" fields are added. Additional notes are added concerning "billing_code_type."

- Within the Out-of-Network Allowed Amount File Schema, in the Out-of-Network Payment Object, a new "billing_code_modifier" field has been added.

- A Provider Reference File Schema has been added. With respect to the Negotiated Rate Details Object, a note has been added clarifying that issuers must include either a "provider_groups" or "provider_references" attribute to map the provider network to the item or service that is being documented.

Nonsubstantive updates are also made to the formatting and hyperlinks contained in the schema document.

SUMMARY OF COMMENTS. The department received comments from three commenters on the proposed rule.

SUMMARY OF COMMENTS AND AGENCY RESPONSES.

Commenters: Commenters in support of the proposal with changes were Community Health Choice, the Texas Association of Health Plans, and the Texas Medical Association.

Comment on the proposed rule generally

Comment. One commenter requests that enforcement of phase one of the rule be extended to January 2024. The commenter does not provide their reasoning behind the request.

Agency Response. The department declines to make this change. Under proposed §21.5501(d), issuers with fewer than 1,000 total enrollees in all health benefit plans are not required to publish their machine-readable files until January 1, 2024. Therefore, the commenter's request is only applicable to issuers with 1,000 or more total enrollees in all health benefit plans. And under proposed §21.5501(e), those larger issuers are not required to publish their machine-readable files until the relevant federal agencies begin enforcing the corresponding federal Transparency in Coverage rules (provided that the date of federal enforcement occurs after the 180th day following the effective date of this rule), or January 1, 2024, whichever is earlier. The primary purpose of this delayed enforcement mechanism is to streamline the compliance process for issuers that are subject to both these rules and the federal Transparency in Coverage rules.

The department anticipates that enforcement of the federal rules related to publishing in-network rates and out-of-network allowed amounts and billed charges will only be deferred until July 1, 2022. To further delay enforcement of the corresponding department rules for larger issuers, as suggested by the commenter, would frustrate the legislative intent behind HB 2090, which went into effect on September 1, 2021, without truly alleviating the regulatory burden on those issuers since most of those issuers must also comply with the federal government's enforcement timeline for its rules. Furthermore, the department believes the rule, as proposed, provides sufficient time for larger issuers to begin complying with its requirements.

Comment on §21.5501

Comment. A commenter suggests a change to §21.5501(d) to make the proposed publication delay applicable on an issuer's individual plan level rather than the issuer's total covered lives so that small issuers are not disproportionately impacted by this rule. The commenter suggests replacing "[a] health benefit plan issuer with fewer than one thousand total enrollees in all health benefit plans" with "[a] health benefit plan issuer with fewer than one thousand total enrollees in a health benefit plan..." must begin publishing machine-readable files for that plan to achieve this change.

Agency Response. The department believes §21.5501(d) provides an adequate accommodation for smaller issuers and declines to make the change. However, the department appreci-
ates the challenge created by the requirement to publish a separate file for each plan and adds §21.5502(h) to permit issuers to include multiple plans per file if the plans have the same negotiated rates with the same group of providers for the same items and services.

Comments on §21.5502

Comment. A commenter suggests replacing "all items and services" in §21.5502(a)(1) with language from Insurance Code §1662.107(a)(1) for consistency and clarity.

Agency Response. The department agrees and changes the proposed language in §21.5502(a)(1) and §21.5502(g)(1) to "all covered health care services and supplies" to mirror the language contained in the statute.

Comment. A commenter suggests replacing "containing billed and allowed amounts for" in §21.5502(b) with language from Insurance Code §1662.103(a)(2)(C) to be consistent with the term as defined by statute.

Agency Response. The department believes the commenter is referring to the language in §21.5502(a)(2) and §21.5502(g)(2), as the cited language is not found in §21.5502(b). The department agrees and changes the proposed language to "containing billed charges and allowed amounts for covered health care services or supplies provided by" to mirror the language contained in the statute.

Comment. A commenter suggests replacing "without restrictions that would impede the reuse of that information" in §21.5502(d) with language from Insurance Code §1662.107 to mirror the language contained in the statute.

Agency Response. The department agrees that Insurance Code §1662.107 applies with respect to the availability and accessibility of the files and has added a reference to that statute in §21.5502(d). The department believes this change accomplishes the goal of the commenter without unnecessarily restating the statutory language.


Insurance Code §1662.004 provides that the Commissioner may adopt rules necessary to implement Chapter 1662.

Insurance Code §1662.107 provides that the files described by §1662.103 must be available in a form and manner prescribed by department rule.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.


(a) Required machine-readable files. Issuers must publish the following machine-readable files consistent with Insurance Code Chapter 1662, Subchapter C, concerning Required Public Disclosures, and the rules under this subchapter:

(1) an in-network negotiated rates file, containing in-network provider negotiated rates for all covered health care services and supplies, consistent with Insurance Code §1662.103(a)(1), concerning Required Information, and §1662.104, concerning Network Rate Disclosures;

(2) an out-of-network allowed amounts file, containing billed charges and allowed amounts for covered health care services or supplies provided by out-of-network providers, consistent with Insurance Code §1662.103(a)(2) and §1662.105, concerning Out-of-Network Allowed Amounts; and

(3) an in-network prescription drugs file, containing in-network historical net prices and negotiated rates for prescription drugs, consistent with Insurance Code §1662.103(a)(3) and §1662.106, concerning Historical Net Price.

(b) Transport mechanism. An issuer must make all machine-readable files available via HTTPS.

(c) Content type. An issuer must use a nonproprietary and open format for publishing machine-readable files. Examples of acceptable formats include JSON, XML, and YAML. Examples of proprietary formats that are not acceptable include PDF, XLS, and XLSX.

(d) Public discoverability. An issuer must make machine-readable files available to the public consistent with Insurance Code §1662.107, concerning Required Method and Format for Disclosure, and without restrictions that would impede the reuse of that information. The issuer must provide the location of the URLs for the machine-readable files over HTTPS to ensure the integrity of the data.

(e) Indexing. To allow for search engine discoverability, an issuer may not use a mechanism, such as a robots.txt file or a meta tag on the page where the files are hosted, or other mechanism that gives instructions to web crawlers to not index the page.

(f) Special data types. Dates must be strings in ISO 8601 format (e.g., YYYY-MM-DD).

(g) Different flat files. Issuers must publish three machine-readable files using the following file type names:

(1) "in-network-rates" for the file containing in-network provider negotiated rates for all covered health care services and supplies, consistent with Insurance Code §1662.103(a)(1) and §1662.104;

(2) "allowed-amounts" for the file containing billed charges and allowed amounts for covered health care services or supplies provided by out-of-network providers, consistent with Insurance Code §1662.103(a)(2) and §1662.105; and

(3) "prescription-drugs" for the file containing historical net prices and negotiated rates for prescription drugs, consistent with Insurance Code §1662.103(a)(3) and §1662.106.

(h) Multiple plans per file. An issuer that has multiple plans with the same negotiated rates with the same group of providers for the same covered health care services and supplies may group multiple plans together within a single file. An issuer that groups multiple plans into a single file must create a file with the file type name "table-of-contents" that uses the naming convention and standards required under subsection (i)(2) of this section. The filing convention for single plan files under subsection (i)(1) of this section will not apply to files published as permitted under this subsection.

(i) File-naming convention. An issuer must name each file using the naming convention and standards required under this subsection.

(1) The file naming convention for single plan files includes the elements identified in subparagraphs (A) - (D) of this paragraph, each separated by an underscore, followed by a period and the file extension:
(A) the four-digit year, two-digit month, and two-digit day, each separated by dashes (e.g., "2022-12-01" would be used for a file published December 1, 2022); 

(B) the issuer name, with any spaces replaced with dashes (e.g., "issuer-abc" would be used for an issuer called "issuer abc");

(C) the plan name, with any spaces replaced with dashes (e.g., "healthplan-100" would be used for a plan called "healthplan 100"); and

(D) the file type name (e.g., "in-network-rates").

(2) The file naming convention for the table-of-contents file published by an issuer that includes multiple plans per file, as permitted by subsection (h) of this section, includes the elements identified in subparagraphs (A) - (C) of this paragraph, each separated by an underscore, followed by a period and the file extension:

(A) the four-digit year, two-digit month, and two-digit day, each separated by dashes (e.g., "2022-12-01" would be used for a file published December 1, 2022); 

(B) the issuer name, with any spaces replaced with dashes (e.g., "issuer-abc" would be used for an issuer called "issuer abc"); and

(C) the word "index."

(3) An issuer may include only alphanumeric characters in the file name. An issuer may not include special characters or punctuation other than the dashes, underscores, and periods specified in the naming convention. An issuer must either remove special characters completely or replace the special characters with a dash ("-").

(4) Examples of the file naming conventions are provided in Figure: 28 TAC §21.5502(1)(4).

Figure: 28 TAC §21.5502(1)(4)

(j) Safe harbor. An issuer that publishes machine-readable files in the form and method specified by the federal guidance published on the following website: github.com/CMSgov/price-transparency-guide, and its associated schemas, will be deemed compliant for the purposes of this subchapter.

§21.5503. Data Schemas.

(a) In-network negotiated rate file schema. For the "in-network-rates" file published under this subchapter, an issuer must include data elements consistent with the In-Network File Schema contained in Machine-Readable Files: Data Schemas (version 1.1), published on the department's website.

(b) Out-of-network allowed amount file schema. For the "allowed-amounts" file published under this subchapter, an issuer must include data elements consistent with the Out-of-Network Allowed Amount File Schema contained in Machine-Readable Files: Data Schemas (version 1.1), published on the department's website.

(c) In-network prescription drugs file schema. For the "prescription-drugs" file published under this subchapter, an issuer must include data elements consistent with the Rx File Schema contained in Machine-Readable Files: Data Schemas (version 1.1), published on the department's website.

(d) Table of contents file schema. If an issuer chooses to include multiple plans in a single file, as permitted under §21.5502(h) of this title (relating to Form and Method of Publishing Machine-Readable Files), the issuer must publish a "table-of-contents" file, consistent with the Table of Contents File Schema contained in Machine-Readable Files: Data Schemas (version 1.1), published on the department's website.

(e) Provider reference file schema. If an issuer chooses to include an external file of provider references, the issuer must include a "Provider Reference" file, consistent with the Provider Reference File Schema contained in the Machine-Readable Files: Data Schemas (version 1.1), published on the department's website.

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

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James Person
General Counsel
Texas Department of Insurance
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♦ ♦ ♦
Adopted Rule Reviews
Public Utility Commission of Texas

Title 16, Part 2


Tex. Gov't Code §2001.039 requires that each state agency review its rules every four years and readopt, readapt with amendments, or repeal the rules adopted by that agency under Tex. Gov't Code, Chapter 2001. Such reviews must include, at a minimum, an assessment by the agency as to whether the reason for adopting or readapting the rules continues to exist. The commission has completed the review of the rules in Chapter 25 required by Tex. Gov't Code §2001.039 and finds that the reasons for adopting the rules in Chapter 25 continue to exist.

The commission received comments on the proposed rule from Texas Advanced Energy Business Alliance (TAEBA), Thigbe LLC (Thigbe), and Octopus Energy (Octopus). The commission received reply comments from Retail Electric Provider Coalition (REP Coalition) and Texas Energy Professionals Association (TEPA). All comments, including any not specifically referenced herein, were fully considered by the commission.

Chapter 25

Chapter 25 encompasses all substantive commission rules applicable to electric service providers.

General Comments

Octopus expressed strong support for the commission’s adoption in project number 51830 of rule revisions to improve the notice a Retail Electric Provider (REP) must provide to customers when terminating a fixed rate product. Octopus recommended further that the commission adopt in the instant project Octopus's other recommendations made in project number 51830 regarding notice and increased price transparency. TAEBA agreed with Octopus's general comments regarding increased price transparency to the extent they concerned an effective and competitive market.

TEPA generally objected to policies and provisions that, in its view, attempt to extend regulatory oversight beyond what is appropriate for customers who have competitive choices for non-essential brokerage services. TEPA also generally expressed opposition to recommendations provided by Thigbe to the extent such recommendations build or center around these proposed policy changes.

TEPA further urged the commission to review the limitations and directives in PURA §39.001 when considering each of Thigbe's suggested changes. TEPA specifically opposed Thigbe's recommendations for new commission rules regulating contracts between REPs and brokers to provide brokers with anti-discrimination rights. Additionally, TEPA opposed Thigbe's request to eliminate distinctions in the treatment of aggregators and brokers.

Commission Response

The commission finds that Chapter 25 continues to be necessary and readopts the Chapter in its entirety. Specific recommendations, including modifications, additions, and deletions of provisions, that have merit will be considered in future projects or rulemakings as resources allow.

§25.4 - Statement of nondiscrimination

Section 25.4 (relating to Statement of Nondiscrimination) enumerates certain criteria, such as race, sex, and marital status that cannot be used to refuse service to customers. Section 25.4(a) lists the prohibited criteria and §25.4(b) prohibits unreasonable discrimination based on geographical location.

§25.4 - General Comments

Thigbe suggested §25.4 be amended to include a definition for discrimination. Thigbe noted that amending §25.4 with this definition would ensure any offer generally available to residential customers would be available to all residential customers by guaranteeing that service offerings and other opportunities given to one customer are afforded to other customers of the same type.

TEPA stated that PURA §17.004 does not extend beyond directing the commission to establish customer service standards applicable to all buyers of retail electric service and that the commission's role is not to provide treatment or terms that benefit a particular business plan or a particular type of provider. Therefore, TEPA opposed Thigbe's recommendations as unwarranted and untimely because previous advocates for similar provisions were unsuccessful in their efforts to include such provisions in the rule.

§25.4(a) - Prohibition on discrimination

Thigbe recommended that §25.4(a) be amended to include "Competitive Service Providers," which includes REPs and brokers, to the list of entities that are not allowed to unreasonably discriminate based upon the prohibited criteria. Thigbe also recommended adding "or the way in which a customer accesses the market" to the list of prohibited criteria.

REP Coalition opposed Thigbe's alternative recommendation to add brokers as one of the entities specifically identified in §25.4(a). REP
Coalition argued that a broker does not provide retail electric service and as such, Thigbe's recommended amendment is unnecessary. REP Coalition further opposed Thigbe's proposed language at the end of the statement of non-discrimination in §25.4(a) because the language is inconsistent with PURA §39.101, and the retail electric service provided to a customer is independent of whether a customer contracts for service with or without a broker. REP Coalition additionally noted the commission has previously considered such a policy and declined to do so.

§25.4(b) - Prohibition on geographic discrimination
Thigbe recommended revising §25.4(b) to state: "No electric utility or competitive service provider (REPs and Brokers) should unreasonably discriminate on the basis of geographic location."

Commission Response
The commission acknowledges that these proposals may have merit and may consider them in future projects or rulemakings to amend or modify the rules of Chapter 25 as commission resources allow. The commission readopts §25.4 with no changes.

§25.5 - Definitions
Section 25.5 (relating to Definitions) provides universally applicable definitions for terms commonly used in Chapter 25. Section 25.5(8) defines the term "aggregator," §25.5(14) defines the term "competition transition charge (CTC)," and §25.5(21) defines the term "critical loads."

§25.5 - General Comments
Thigbe recommended removing references to "non-bypassable charges" to the extent possible within Chapter 25. REP Coalition opposed Thigbe's recommendation as the term is used in several statutes and Thigbe provided no explanation for its recommendation.

§25.5(8) - Aggregator
Thigbe recommended revising the definition of aggregator under §25.5(8) to "a broker that selects the option to join two or more customers into a single purchasing unit to negotiate (sic) the purchase of electricity from retail electric providers."

REP Coalition opposed Thigbe's recommended language because the original definition of "aggregator" under §25.5(8) is consistent with PURA §39.353. TEPA also opposed Thigbe's proposed definition, because eliminating distinctions in the treatment of aggregators and brokers by combining broker and aggregator definitions and removing stand-alone aggregator rules would be inconsistent with the requirements of PURA Chapter 39.

§25.5(14) - Competition transition charge
Thigbe recommended the definition of CTC be removed from §25.5 because there are no currently active CTCs.

§25.5(21) - Critical loads
Thigbe recommended amending the definition of critical loads to include infrastructure loads. REP Coalition opposed Thigbe's recommendation as critical natural gas facility and critical loads are defined separately in commission rules and §25.52(h)(2) (relating to Reliability and Continuity of Service) confirms that a critical natural gas facility is a critical load during a weather emergency.

Commission Response
The commission acknowledges that these proposed modifications may have merit and will consider them in future projects or rulemakings that relate to amending or modifying Chapter 25 rules. The commission readopts §25.5 with no changes.

§25.8 - Classification system for violations of statutes, rules, and orders applicable to electric service providers
Section 25.8 (relating to Classification System for Violations of Statutes, Rules, and Orders Applicable to Electric Service Providers) establishes a classification system for violations of PURA and related commission rules and orders. Section 25.8(b)(1)(B)(ii) classifies the failure by an electric utility, retail electric provider, or aggregator to investigate a customer complaint and appropriately report the results within the timeline required as a Class C violation.

§25.8 - General Comments
Thigbe asked whether §25.8 should include a definition for "electric service provider." REP Coalition opposed Thigbe's recommendation for the addition of such a definition as the term infrequently appears in Chapter 25.

§25.8(b)(1)(B)(ii) - Customer complaint violations
Thigbe requested the removal of the term "aggregator" from §25.8(b)(1)(B)(ii) and replacing it with the term "broker." REP Coalition supported the request to remove aggregator but did not oppose the addition of "broker." REP Coalition noted that the commission considered this issue when adopting the rules regarding brokers and stated that there is no immediate need to reopen the relevant rule at this time.

Commission Response
The commission recognizes that these requested modifications may have merit and may consider them in future projects and rulemakings relating to the rules of Chapter 25. The commission readopts §25.8 with no changes.

§25.21 - General provisions of customer service and protection rules
Section 25.21 (relating to General Provisions of Customer Service and Protection Rules) establishes minimum customer service standards that electric utilities must follow.

§25.21(b) - Purpose
Section 25.21(b) states that the purpose of the section is to establish minimum customer service standards that electric utilities must follow in providing electric service to the public.

REP Coalition neither supported nor opposed Thigbe's recommendations for §25.21(b) because the rule is under Subchapter B of Chapter 25, which is applicable to electric service in the areas of the state open to retail competition. REP Coalition further noted that Subchapter B is not applicable to REPs as they are expressly excluded from the definition of electric utility and that the appropriate subchapter for Thigbe's recommendations is Subchapter R. However, REP Coalition stated that if the commission considers Thigbe's recommendations applicable to the retail customer protection rules, then REP Coalition opposes the recommendations on the basis that they are unnecessary as the existing rules are sufficient to protect customers.

§25.21(c) - Definitions
Section 25.21(c)(1) defines "applicant" as a person who applies for service for the first time or reapplies after disconnection of service. Section 25.21(c)(3) defines the term "customer" as a person who is currently receiving service from an electric utility in the person's own name or the name of the person's spouse.
Thigbe recommended amending the definition of "applicant" under §25.21(1) to include an applicant's representative, because the current process requires brokers to provide "undue proof of their authorization" to act on the customer's behalf. Thigbe further requested that the definition of "customer" under §25.21(3) be updated to address the concern that when suppliers send contract Terms of Service (TOS) and Electricity Facts Label (EFL) renewal notices to a customer's appointed agent, the suppliers are technically not meeting the commission's requirement to send these documents to the customer.

REP Coalition neither supported nor opposed Thigbe's recommendations for §25.21(c) because the rule is under Subchapter B of Chapter 25, which is inapplicable to electric service in the areas of the state open to retail competition. REP Coalition further noted that Subchapter B is not applicable to REPs as they are expressly excluded from the definition of electric utility and that the appropriate subchapter for Thigbe's recommendations is Subchapter R. However, REP Coalition stated that if the commission considers Thigbe's recommendations applicable to the retail customer protection rules, then REP Coalition opposes the recommendations on the basis that they are unnecessary as the existing rules are sufficient to protect customers.

Commission Response

The commission agrees with REP Coalition's analysis that §25.21(b) and §25.21(c) are not the appropriate rules for Thigbe's recommendations. If Thigbe's recommendations are taken up, they will be a part of a different rulemaking project. The commission readopts this section with no changes.

§25.23 - Refusal of service

Section 25.23 (relating to Refusal of Service) specifies proper and improper grounds for an electric utility to refuse service to an applicant and an applicant's recourse. Section 25.23(c) lists instances that are not sufficient cause for refusal of service.

§25.23(c) - Insufficient cause to refuse service

Thigbe proposed adding being represented by a registered broker or other authorized representative to the list of reasons a customer cannot be refused service. Thigbe's proposed language would prohibit the use of IP address filters and other similar technological methods of preventing brokers and other authorized representatives from seeing offers or applying for service.

REP Coalition neither supported nor opposed Thigbe's recommendations for §25.23(c) because the rule is under Subchapter B of Chapter 25, which is inapplicable to electric service in the areas of the state open to retail competition. REP Coalition further noted that Subchapter B is not applicable to REPs as they are expressly excluded from the definition of electric utility and that the appropriate subchapter for Thigbe's recommendations is Subchapter R. However, REP Coalition stated that if the commission considers Thigbe's recommendations applicable to the retail customer protection rules, then REP Coalition opposes the recommendations on the basis that they are unnecessary as the existing rules are sufficient to protect customers.

Commission Response

The commission agrees with REP Coalition's analysis that §25.23(c)(9) is not the appropriate rule for Thigbe's recommendation. If Thigbe's recommendation is taken up, it will be a part of a different rulemaking project. The commission readopts this section with no changes.

§25.24 - Credit requirements and deposits

Section 25.24 (relating to Credit Requirements and Deposits) specifies credit requirements and deposits for residential and non-residential app-licants. Section 25.24(d) indicates circumstances when additional deposits may be necessary.

§25.24(d) - Additional deposits

Thigbe proposed amending §25.24(d) to refer to correct or correctly issued disconnection notices. REP Coalition neither supported nor opposed Thigbe's recommendations for §25.24(d) because the rule is under Subchapter B of Chapter 25, which is inapplicable to electric service in the areas of the state open to retail competition. REP Coalition further noted that Subchapter B is not applicable to REPs as they are expressly excluded from the definition of electric utility and that the appropriate subchapter for Thigbe's recommendations is Subchapter R. However, REP Coalition stated that if the commission considers Thigbe's recommendations applicable to the retail customer protection rules, then REP Coalition opposes the recommendations on the basis that they are unnecessary as the existing rules are sufficient to protect customers.

Commission Response

The commission agrees with REP Coalition's analysis that §25.24(d) is not the appropriate rule for Thigbe's recommendation. If Thigbe's recommendation is taken up, it will be a part of a different rulemaking project. The commission readopts this section with no changes.

§25.25 - Issuance and format of bills

Section 25.25 (relating to Issuance and Format of Bills) governs the issuance and format of bills issued by an electric utility to its customer. Section 25.25(c) lists the content requirements of bills.

Thigbe proposed amending §25.25(c)(9) to provide that any broker's fee paid by a supplier should be included in a bill as a line item. TEPA opposed Thigbe's recommendation as inappropriate due to past commission rulemakings.

REP Coalition neither supported nor opposed Thigbe's recommendations for §25.25(c)(9) because the rule is under Subchapter B of Chapter 25, which is inapplicable to electric service in the areas of the state open to retail competition. REP Coalition further noted that Subchapter B is not applicable to REPs as they are expressly excluded from the definition of electric utility and that the appropriate subchapter for Thigbe's recommendations is Subchapter R. However, REP Coalition stated that if the commission considers Thigbe's recommendations applicable to the retail customer protection rules, then REP Coalition opposes the recommendations on the basis that they are unnecessary as the existing rules are sufficient to protect customers.

Commission Response

The commission agrees with REP Coalition's analysis that §25.25(c)(9) is not the appropriate rule for Thigbe's recommendation. If Thigbe's recommendation is taken up, it will be a part of a different rulemaking project. The commission readopts this section with no changes.

§25.28 - Bill payment and adjustments

Section 25.28 (relating to Bill Payment and Adjustments) lists the requirements and processes for customer bill payments to an electric utility and bill adjustments. Section 25.28(a) prescribes the required timeframe for bill due dates and when bills are deemed to be received.

§25.28(a) - Bill due date

Thigbe requested the due dates under §25.28(a) be extended for customers that receive paper bills. TEPA opposed Thigbe's recommendation as unnecessary.

REP Coalition maintained its previous analysis that Subchapter B, which includes §25.28(a), is not applicable to REPs as they are expressly excluded and the appropriate subchapter for Thigbe's
recommendations is instead Subchapter R. However, REP Coalition stated that if the commission considers Thigbe's recommendations applicable to the retail customer protection rules, then REP Coalition opposes the recommendations on the basis that they are unnecessary as the existing rules are sufficient to protect customers.

Commission Response
The commission agrees with REP Coalition's analysis that §25.28(a) is not the appropriate rule for Thigbe's recommendation. If Thigbe's recommendation is taken up, it will be a part of a different rulemaking project. The commission readopts this section with no changes.

§25.41 - Price to beat
Section 25.41 (relating to Price to Beat) promotes competition in the retail electric market through the establishment of the price to beat that affiliated REPs must offer to retail customers.

§25.41 - General Comments
Thigbe proposed §25.41 be deleted in its entirety. REP Coalition did not oppose Thigbe's recommendation as §25.41 implements PURA §39.202, which expired on January 1, 2007.

Commission Response
The commission recognizes that this request has merit and will consider it in a future project.

§25.45 - Low-Income list administrator
Section 25.45 (relating to Low-Income List Administrator) defines the responsibilities of the Low-Income List Administrator (LILA).

§25.45 - General Comments
Thigbe proposed brokers receive access to low-income customer lists because brokers could benefit customers on those lists. REP Coalition opposed Thigbe's recommendation as outside the scope of PURA §17.007. However, should the commission adopt Thigbe's recommendation and broaden access to LILA, REP Coalition requested REPs be granted access to LILA to the same extent as brokers. REP Coalition argued that REPs are integral to assisting low-income customers and must already provide monthly information to access part of LILA.

Commission Response
The commission recognizes that this requested modification may have merit and will consider it in future projects and rulemakings relating to the rules of Chapter 25. The commission readopts §25.45 with no changes.

§25.53 - Electric service emergency operation plans
Section 25.53 (relating to Electric Service Emergency Operations Plans) requires market entities to submit to the commission electric service emergency operations plans and lists the content and filing requirements for such plans.

§25.53 - General Comments
Thigbe proposed amending §25.53 so that emergency load shed plans are enacted at the "meter" level, rather than at the current "feeder" level. Thigbe commented that its recommendation would prevent major load shed incidents, so only non-critical load would be shed. REP Coalition opposed Thigbe's proposal as it would require a comprehensive review of load shedding procedures and requested the opportunity to participate in these discussions should the commission choose to explore such options.

Commission Response
The commission acknowledges that this proposal may have merit and will consider it in future projects or rulemakings to amend or modify the rules of Chapter 25 as commission resources allow. The commission readopts §25.53 with no changes.

§25.80 - Annual report on historically underutilized businesses
Section 25.80 (relating to the Annual Report on Historically Underutilized Businesses) lists the requirements for an electric utility to annually report its use of historically underutilized businesses.

§25.80 - General Comments
Thigbe requested to remove the reference to Lotus 123 from §25.80.

Commission Response
The commission recognizes that the requested modification may have merit and will consider it in future projects and rulemakings relating to the rules of Chapter 25. The commission readopts §25.80 with no changes.

§25.111 - Registration of aggregators
Section 25.111 (relating to the Registration of Aggregators) requires the registration of persons operating as aggregators and includes conditions that the aggregator or a buyer's agent may not be affiliated with a REP or other seller's agent representing the REP. Section 25.111(c)(2) defines the term aggregator and separates aggregators into multiple classes.

Section 25.111(d)(3)(D) prohibits a Class 1 aggregator from taking title to electricity and accepting any money associated with payment or prepayment for electric service, as distinguished from aggregation services, unless it does so under contract with a REP, consistent with any commission rules relating to customer billing as an independent billing agent for a REP.

Section 25.111(g) prescribes the financial requirements and qualifications for persons registering under §25.111 as an aggregator.

§25.111 - General Comments
Thigbe recommended §25.111 be deleted because aggregators should be considered a subset of brokers under §25.112 (relating to Registration of Brokers). Thigbe further requested that all reporting requirements for aggregators be eliminated because aggregators are similar to brokers and brokers do not have any reporting requirements.

REP Coalition opposed Thigbe's recommendation to delete §25.111 and to include aggregators in §25.112 because PURA distinguishes between different types of aggregators under PURA §39.3535, §39.354, and §39.3545. REP Coalition elaborated that the classes of aggregators in §25.111 implement the distinctions between aggregators prescribed by PURA.

REP Coalition also explained that PURA §39.3555 defines brokerage services and cited it as further support for maintaining the separate rules for the registration brokers and aggregators in commission rules to comply with PURA.

§25.111(c) - Definitions
Thigbe recommended eliminating the different classes of aggregators and amending §25.111(c)(2) which defines the term "aggregator" as used within §25.111 to "refer to a consultant" if the commission declined to amend §25.112 to include aggregators.

§25.111(d) - Types of aggregator registrations required
Thigbe recommended revising the language of §25.111(d) so as to not prohibit concierge broker services from managing the utility contracts and utility bills of residential and small commercial customers. In the
alternative, Thigbe recommended deleting the phrases "under contract with a REP" and "for a REP" from the rule language.

§25.111(g) - Financial requirements for certain persons
Thigbe recommended deleting §25.111(g) as inconsistent with common business practice of aggregators and market principles.

Commission Response
The commission acknowledges that these proposals may have merit and will consider them in future projects or rulemakings to amend or modify the rules of Chapter 25 as commission resources allow. The commission readopts §25.112 with no changes.

§25.112 - Registration of brokers
Section 25.112 (relating to Registration of Brokers) prescribes the requirements for registering and operating as a broker.

§25.112 - General Comments
In accordance with its recommendations for §25.111, Thigbe maintained that §25.112 be amended to include a separate classification of brokers that aggregate customers. REP Coalition opposed Thigbe's recommendation as unnecessary.

Commission Response
The commission acknowledges that this proposed modification may have merit and will consider it in future projects or rulemakings that relate to amending or modifying Chapter 25 rules. The commission readopts §25.112 with no changes.

§25.121 through §25.125 - Metering
Subchapter F (relating to Metering) encompasses the commission's electric substantive rules on metering.

§25.121 through §25.125 - General Comments
Thigbe requested that Subchapter F be amended to limit the adjustments that are allowed by utilities and ERCOT to "smart meter" meter-readings, as such adjustments create errors and can add to customer costs if a customer seeks to dispute an adjustment. Additionally, Thigbe expressed that if residential customers are allowed to participate in demand response programs, all market participants need to be confident that their meter readings are accurate to their use, not their predicted use.

REP Coalition expressed that Thigbe provided no support for the assertion that transmission and distribution utilities (TDUs) and ERCOT will "massage" meter data "when it does not correspond to what they think it should be." Additionally, REP Coalition stated that meter data management practices fall within the discretion of TDUs.

Commission Response
The commission acknowledges that this proposal may have merit and will consider it in future projects or rulemakings to amend or modify the rules of Chapter 25 as commission resources allow. The commission readopts §25.121 through §25.125 with no changes.

§25.211 through §25.212 - Interconnection of on-site distributed generation (DG) and technical requirements for interconnection and parallel operation of on-site distributed generation
Section 25.211 (relating to Interconnection of On-Site Distributed Generation (DG)) describes the requirements for interconnection and parallel operation of on-site distributed generation. Section 25.212 (relating to Technical Requirements for Interconnection and Parallel Operation of On-Site Distributed Generation) describes the requirements and procedures for safe and effective connection and operation of distributed generation.

§25.211 through §25.212 - General Comments
TAEBA stated its recommended changes to §25.211 and §25.212 reflect changes in technology and continued market innovation. TAEBA also recommended revising §25.211 and §25.212 to establish streamlined, transparent, and standardized interconnection requirements across all ERCOT TDUs by including the following elements: developing a standard DGR interconnection agreement that can be used by every utility for every DGR and filed by every utility with ERCOT, adopting a standardized engineering interconnection study process and timelines that are applied to all TDUs, with review not to exceed 30 days except in particularly complicated conditions, clarifying guidance on non-discriminatory cost recovery including collateralization and recovery of appropriate costs through TDU rates, consistent with policies for transmission level resources, and including standardization of demand charges, considering cost-sharing policies for system upgrades, such as transfer trip protection, updating technical requirements to conform with IEEE 1547, which is a standard applied across the country, and establishing a preapproved device list for each utility to allow for shorter interconnection times.

Commission Response
The commission recognizes that these requested modifications may have merit and will consider them in future projects and rulemakings relating to the rules of Chapter 25. The commission readopts §25.211 through §25.212 with no changes.

§25.227 - General Comments
Thigbe recommended §25.227 be repealed.

Commission Response
The commission finds Thigbe's comments to be moot as §25.227 has been repealed.

§25.244 - Billing demand for certain utility customers
Section 25.244 (relating to Billing Demand for Certain Utility Customers) lists the requirements of billing demands issued by a TDU to certain customers. Section 25.244(b)(1) defines the term demand ratchet.

§25.244(b)(1) - Demand ratchet
Thigbe requested that this subparagraph be clarified to prohibit TDUs from using "PF" adjusted demand in ratchet calculations.

REP Coalition opposed Thigbe's recommended change because §5.5.5 of the commission's Pro Forma Retail Delivery Tariff addresses power factor adjustments to demand, which REP Coalition assumes Thigbe is referring to, and customers are accustomed to this practice.

Commission Response
The commission recognizes that this requested modification may have merit and will consider it in future projects and rulemakings relating to the rules of Chapter 25. The commission readopts this section with no changes.

§25.245 - Rate-case expenses
Section 25.245 (relating to Rate-Case Expenses) prescribes the requirements and process for a utility to claim rate case expenses for ratemaking proceedings.

§25.245 - General Comments
Thigbe requested that §25.245 be revised to prohibit the inclusion of delivery costs in rate case documents filed with the commission in
rate case expense claims because filings can now be performed and reviewed electronically. Thigbe argued that allowing the utility filing a rate case to include these costs makes this process more challenging and expensive.

REP Coalition did not take a position on Thigbe's recommendation for the recoverability of rate expense costs but noted that whether such costs are recoverable depends on whether such costs are reasonable and necessary after examination in an appropriate commission proceeding.

Commission Response

The commission acknowledges that this proposed modification may have merit and will consider it in future projects or rulemakings that relate to amending or modifying Chapter 25 as Commission readopts this section with no changes.

§25.475 - General retail electric provider requirements and information disclosures to residential and small commercial customers

Section 25.475 (relating to General Retail Electric Provider Requirements and Information Disclosures to Residential and Small Commercial Customers) prescribes the information disclosure requirements of REPs for residential and small commercial customers. Section 25.475(c)(2)(G) imposes general contract requirements for a variable price product. Section 25.475(d)(2) defines the circumstances in which price changes are permitted for each class of product. Section 25.475(e)(2)(A) specifies a REP's responsibilities when a customer takes no action in response to the final notice of contract expiration.

§25.475 - General Comments

Octopus recommended that the commission be more proactive to ensure pricing transparency for customer by requiring all month-to-month rates to be clearly and frequently communicated to customers at the start of each new month. Octopus further clarified that this standard should not only apply prospectively, but also apply to customers who have previously signed up for a variable price product or transitioned to a default month-to-month product from a fixed rate contract.

§25.475(c)(2)(G) - General contracting requirements for variable price products

In conjunction with its general commentary for more pricing transparency, Octopus recommended amending §25.475(c)(2)(G) so REPs are required to provide monthly clear notice of the price applicable to a variable price product before that price goes into effect for a customer each month. Specifically, Octopus requests that REPs be required to provide notice of the price a customer will pay, not a reference formula.

As such, Octopus recommended adding an additional requirement to §25.475(c)(2)(G) that provides, "In addition, not less than five days prior to when a customer will become liable for charges pursuant to a variable price product, the REP must provide the customer notice of the price that will apply to the customer's product for the upcoming month."

REP Coalition opposed Octopus's recommendation for price transparency via notice because commission rules already require REPs to provide customers with sufficient information about the price that applies for variable products. REP Coalition additionally noted that §25.475(c)(2)(G) requires REPs to provide customers with an EFL for a variable price product that must disclose how the customer can obtain the current price.

§25.475(d)(2) - Price changes

Octopus recommended amending §25.475(d)(2) to require a REP to provide customer notice of the price that will apply to the customer's variable price product for the upcoming month no less than five days prior to the bill due date.

§25.475(e)(2)(A) - Contract expiration and renewal offers for fixed rate products

Octopus recommended amending §25.475(d)(2) to require a REP to provide customer notice of the price that will apply to the customer's default renewal product for the upcoming month no less than five days prior to the bill due date. Octopus further noted that a customer should not have to find its EFL to access information on how to find its monthly rate or calculate the price based on information provided by REPs.

REP Coalition opposed Octopus's recommendation for §25.475(e)(2)(A) as unnecessary because commission rules already require REPs to provide customers with sufficient information on this matter.

Commission Response

The commission acknowledges that these proposals may have merit and will consider them in future projects or rulemakings to amend or modify the rules of Chapter 25 as Commission readopts §25.475 with no changes.

The commission has completed the review of Chapter 25 as required by Texas Government Code §2001.039 and has determined that the reason for initially adopting the rules in Chapter 25 continue to exist. Therefore, the commission re-adopts Chapter 25, Substantive Rules Applicable to Electric Service Providers, in its entirety, under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2017) (PURA) which requires the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; PURA §14.052, which requires the commission to adopt and enforce rules governing practice and procedure before the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules governing practice and procedure before the commission; and Texas Government Code §2001.039 (West 2017), which requires each state agency to review and re-adopt its rules every four years.


TRD-202201868
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: May 12, 2022

Texas Alcoholic Beverage Commission

Title 16, Part 3

The Texas Alcoholic Beverage Commission (TABC, agency, or commission) adopts the review of Chapter 37, concerning Legal, in accordance with Texas Government Code §2001.039. The notice of intent to review rules was published in the April 1, 2022, issue of the Texas Register (47 TexReg 1701).

The commission received no comments regarding the proposed rule review.

The Commission has assessed whether the reasons for adopting or readopting the rules continue to exist. The Commission finds that the rules in Chapter 37 are needed, reflect current legal and policy considerations, and reflect current procedures of the Commission. The reasons for initially adopting the rules continue to exist. The Commission,
reasons

The State Board for Educator Certification (SBEC) adopts the review of Title 19, Texas Administrative Code (TAC), Chapter 235, Classroom Teacher Certification Standards, pursuant to the Texas Government Code, §2001.039. The SBEC proposed the review of Chapter 235 in the March 18, 2022 issue of the Texas Register (47 TexReg 1467).

Relating to the review of 19 TAC Chapter 235, the SBEC finds that the reasons for the adoption continue to exist and readopts the rules. No public comments were received on the proposal.

This concludes the review of 19 TAC Chapter 235.

TRD-202201892
Cristina De La Fuente-Valadez
Director, Rulemaking
State Board for Educator Certification
Filed: May 17, 2022

The State Board for Educator Certification (SBEC) adopts the review of Title 19, Texas Administrative Code (TAC), Chapter 241, Certification as Principal, pursuant to the Texas Government Code, §2001.039. The SBEC proposed the review of Chapter 241 in the March 18, 2022 issue of the Texas Register (47 TexReg 1467).

Relating to the review of 19 TAC Chapter 241, the SBEC finds that the reasons for the adoption continue to exist and readopts the rules. No public comments were received on the proposal.

This concludes the review of 19 TAC Chapter 241.

TRD-202201893
Cristina De La Fuente-Valadez
Director, Rulemaking
State Board for Educator Certification
Filed: May 17, 2022

The SBEC proposed the review of Chapter 242 in the March 18, 2022 issue of the Texas Register (47 TexReg 1467).

Relating to the review of 19 TAC Chapter 242, the SBEC finds that the reasons for the adoption continue to exist and readopts the rules. No public comments were received on the proposal.

This concludes the review of 19 TAC Chapter 242.

TRD-202201894
Cristina De La Fuente-Valadez
Director, Rulemaking
State Board for Educator Certification
Filed: May 17, 2022

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

Chapter 279, Contracting to Provide Emergency Response Services
Subchapter A, Introduction
Subchapter B, Contracting Requirements
Subchapter C, Staff Requirements
Subchapter D, Service Delivery
Subchapter E, Claim Payments and Documentation

Notice of the review of this chapter was published in the March 11, 2022, issue of the Texas Register (47 TexReg 1303). HHSC received no comments concerning this chapter.

HHSC has reviewed Chapter 279 in accordance with §2001.039 of the Government Code, 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 279. Any appropriate amendments to Chapter 279 identified by HHSC during the rule review will be proposed in a future issue of the Texas Register.

This concludes HHSC’s review of 26 TAC Chapter 279 as required by the Government Code, §2001.039.

TRD-202201877
Mahan Farman-Farmaian
Director, Rules Coordination Office
Health and Human Services Commission
Filed: May 16, 2022

RULE REVIEW  May 27, 2022  47 TexReg 3165
TABLES & GRAPhICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.
Figure: 28 TAC §21.5502(i)(4)

**Single-Plan Files**

The following is the required naming standard for each file:

<YYYY-MM-DD>_<payer or issuer name>_<plan name>_<file type name>_<file extension>

**Example 1**

If the Centers for Medicare and Medicaid Services (CMS) published a JSON file for the Medicare plan on July 1, 2022, the required file names would be as follows:

a. "2022-07-01_cms_medicare_in-network-rates.json"

b. "2022-07-01_cms_medicare_allowed-amounts.json"

c. "2022-07-01_cms_medicare_prescription-drugs.json"

**Example 2**

If an issuer named "issuer abc" published a JSON file for a plan named "healthcare 100" on July 1, 2022, the required file names would be as follows:

a. "2022-07-01_issuer-abc_healthcare-100_in-network-rates.json"

b. "2022-07-01_issuer-abc_healthcare-100_allowed-amounts.json"

c. "2022-07-01_issuer-abc_healthcare-100_prescription-drugs.json"

**Multiple Plans Per File**

The following is the required naming standard for the table-of-contents file: <YYYY-MM-DD>_<payer or issuer name>_index.<file extension>

**Example 3**
If an issuer named "issuer abc" published data on July 1, 2022, for multiple types of plans in a single JSON file, the required file name for the table-of-contents file would be as follows:

"2022-07-01_issuer-abc_index.json"
Texas State Affordable Housing Corporation

Draft Bond Program Policies and Request for Proposals
Available for Public Comment

The Texas State Affordable Housing Corporation ("Corporation") has posted for public comment amendments to its 2022 Tax-Exempt Bond Program Policies and Request for Proposals. A copy of the proposed amended policies and request for proposals is available on the Corporation's website at https://www.tsahc.org/developers/tax-exempt-bonds.

All public comment or questions about the Draft Policies and RFP may be submitted via email to MFbonds@tsahc.org. The Corporation will include written public comments received before July 12, 2022, in its final recommendations to the Board of Directors at the July Board Meeting.

Comments will also be accepted by USPS at the offices of the Corporation sent to:
Texas State Affordable Housing Corporation
Attn: Development Finance Programs
6701 Shirley Avenue
Austin, Texas 78752
TRD-202201896

David Long
President
Texas State Affordable Housing Corporation
Filed: May 17, 2022

Notice of Request for Proposals for Bank Depository Services

Notice is hereby given by Texas State Affordable Housing Corporation of a Request for Proposals for Bank Depository Services. A copy of the RFP can be found at www.tsahc.org.

To be eligible for consideration, two complete electronic copies (on a thumb drive) must be submitted by 2:00 p.m. CST on June 22, 2022, to the two addresses below. Proposals received after that time at the TSAHC addresses will not be accepted or returned.

Melinda Smith, CFO
Texas State Affordable Housing Corporation
6701 Shirley Avenue
Austin, Texas 78752

Linda T. Patterson
Patterson & Associates

1809 Glenciff Drive
Austin, Texas 78704

For questions about the RFP, please contact Melinda Smith by email at msmith@tsahc.org or by phone at (512) 904-1399.
Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009, and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 05/23/22 - 05/29/22 is 18% for Consumer/Agricultural/Commercial credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 05/23/22 - 05/29/22 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 06/01/22 - 06/30/22 is 5.00% for Consumer/Agricultural/Commercial credit through $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 06/01/22 - 06/30/22 is 5.00% for Commercial over $250,000.

1 Credit for personal, family or household use.

2 Credit for business, commercial, investment or other similar purpose.

Credit Union Department

Application to Amend Articles of Incorporation

Notice is given that the following application has been filed with the Credit Union Department (Department) and is under consideration.

An application for a change to its principal place of business was received from American Baptist Credit Union, Rosharon, Texas. The credit union is proposing to change its domicile to 195 Southbelt Industrial Dr., Houston, Texas 77047.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

Application to Expand Field of Membership

Notice is given that the following application has been filed with the Credit Union Department (Department) and is under consideration.

An application was received from Texas Bay Credit Union, Houston, Texas, to expand its field of membership. The proposal would permit persons who live, work, attend school or worship in and businesses and other legal entities located in Brazoria, Chambers, Liberty and Waller Counties, Texas, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at http://www.cud.texas.gov/page/bylaw-charter-applications. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-202201920
John J. Kolhoff
Commissioner
Credit Union Department
Filed: May 18, 2022

Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final actions taken on the following applications:

Field of Membership - Approved
Texoma Community Credit Union, Wichita Falls, Texas - See Texas Register dated March 25, 2022.

Merger or Consolidation - Approved
Neighborhood Credit Union (Dallas) and Pollock Employees Credit Union (Dallas) - See Texas Register dated November 26, 2021.

TRD-202201919
John J. Kolhoff
Commissioner
Credit Union Department
Filed: May 18, 2022

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code, (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the Texas Register no later than the 30th day before the date on which the public comment period closes, which in this case is June 28, 2022. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is
inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on June 28, 2022. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: BAZE CHEMICAL, INCORPORATED dba Baze Chemical Palestine; DOCKET NUMBER: 2021-0984-MLM-E; IDENTIFIER: RN106952518; LOCATION: Palestine, Anderson County; TYPE OF FACILITY: chemical production facility; RULES VIOLATED: 30 TAC §324.6 and 40 Code of Federal Regulations (CFR) §279.22(c)(1), by failing to label or clearly mark containers used to store used oil with the words "Used Oil"; 30 TAC §335.2(a) and (b), by failing to not cause, suffer, allow, or permit the unauthorized storage of industrial and hazardous waste (IHW); 30 TAC §335.4, by failing to not cause, suffer, allow, or permit the unauthorized disposal of IHW; 30 TAC §335.6(a) and (c), by failing to notify the commission of the generation, storage, and disposal of IHW at least 90 days prior to engaging in such activities; 30 TAC §335.9(a)(2), by failing to submit to the Executive Director a complete and corrective Annual Waste Summary detailing the management of each hazardous and Class I waste generated on-site during the reporting calendar year; 30 TAC §§335.62, 335.503(a), and 335.504, and 40 CFR §262.11, by failing to conduct hazardous waste determinations and waste classifications; 30 TAC §335.69(a)(1)(A) and §335.112(a)(8) and 40 CFR §265.174, by failing to inspect areas where waste containers are stored at least weekly to look for leaking containers or deterioration of containers caused by corrosion or other factors; and 30 TAC §335.69(a)(2) and (3) and 40 CFR §262.34(a)(2) and (3), by failing to label all hazardous waste containers with the date upon which each period of accumulation begins and with the words "Hazardous Waste"; PENALTY: $67,958; ENFORCEMENT COORDINATOR: Hailey Johnson, (512) 239-1756; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734; (903) 535-5100.

(2) COMPANY: CHILDREN'S ASSOCIATION FOR MAXIMUM POTENTIAL, INCORPORATED; DOCKET NUMBER: 2021-1498-PWS-E; IDENTIFIER: RN102327186; LOCATION: Centerpoint, Kerr County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.39(l)(5), by failing to meet the conditions for an issued exception; PENALTY: $500; ENFORCEMENT COORDINATOR: Samantha Salas, (512) 239-1543; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(3) COMPANY: City of Beeville; DOCKET NUMBER: 2021-1036-MWD-E; IDENTIFIER: RN101607711; LOCATION: Beeville, Bee County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010124004, Interim Effluent Limitations and Monitoring Re-

(4) COMPANY: City of Burk Burnett; DOCKET NUMBER: 2022-0073-PWS-E; IDENTIFIER: RN102992385; LOCATION: Burk Burnett, Wichita County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(f)(2) and Texas Health and Safety Code, §341.031(a), by failing to comply with the acute maximum contaminant level of ten milligrams per liter for nitrate; PENALTY: $11,000; ENFORCEMENT COORDINATOR: Taylor McKenzie, (512) 239-2511; REGIONAL OFFICE: 1777 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(5) COMPANY: City of Itasca; DOCKET NUMBER: 2021-1441-PWS-E; IDENTIFIER: RN101385711; LOCATION: Itasca, Hill County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(f)(2) and (3)(A)(i) and (ii)(I), and (iv), (B)(iii), (iv), and (v), and (E)(iv), by failing to maintain water works operation and maintenance records and make them readily available for review by the Executive Director upon request; PENALTY: $50; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(6) COMPANY: City of Paint Rock; DOCKET NUMBER: 2021-1602-PWS-E; IDENTIFIER: RN104151730; LOCATION: Paint Rock, Concho County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(e)(3)(A) and Texas Health and Safety Code, §341.033(a), by failing to operate the facility under the direct supervision of a water works operator who holds a Class D or higher license; and 30 TAC §290.110(c)(4)(A), by failing to monitor the disinfectant residual at representative locations throughout the distribution system at least once every seven days; PENALTY: $1,388; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(7) COMPANY: City of Port Lavaca; DOCKET NUMBER: 2021-1304-PWS-E; IDENTIFIER: RN103098992; LOCATION: Port Lavaca, Calhoun County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the locational running annual average; PENALTY: $3,625; ENFORCEMENT COORDINATOR: Ecko Beggs, (915) 834-4968; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(8) COMPANY: City of Rotan; DOCKET NUMBER: 2022-0098-PWS-E; IDENTIFIER: RN101428282; LOCATION: Rotan, Fisher County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the locational running annual average; 30 TAC §290.117(e)(2), (h), and (i)(3), by failing to conduct water quality parameter sampling at each of the facility's entry points and the required distribution sample sites, have the samples analyzed, and report the results to the executive director (ED) for the January 1, 2016 - June 30, 2016, the July 1, 2016 - December 31, 2016, and the January 1, 2017 - June 30, 2017, monitoring periods; and 30 TAC §290.117(i)(6) and (j), by failing to provide a consumer notification of lead tap water monitoring results to persons served at the sites that were tested, and failing to mail a copy of the consumer notification of tap results to the ED along with
certification that the consumer notification has been distributed in a manner consistent with TCEQ requirements for the January 1, 2018 - December 31, 2020, monitoring period; PENALTY: $8,763; ENFORCEMENT COORDINATOR: Taylor McKenzie, (512) 239-2511; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(9) COMPANY: City of Rule; DOCKET NUMBER: 2021-1266-MLM-E; IDENTIFIER: RN101400836; LOCATION: Rule, Haskell County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(f)(2) and (3)(A)(i) and (ii)(III) and (iv), by failing to maintain water works operation and maintenance records and make them readily available for review by the Executive Director upon request; 30 TAC §290.46(n)(1), by failing to maintain at the facility accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank until the facility is decommissioned; 30 TAC §290.46(n)(3), by failing to keep on file copies of well completion data as defined in 30 TAC §290.41(c)(3)(A) for as long as the well remains in service; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; 30 TAC §290.46(v), by failing to ensure that the electrical wiring is securely installed in compliance with a local or national electrical code; and 30 TAC §290.41(c)(5)(O) and §290.42(m), by failing to protect the facility's well unit and water treatment plant and all appurtenances with an intruder-resistant fence with a lockable gate or enclose the well units in a locked and ventilated well house with lockable gate; PENALTY: $2,942; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(10) COMPANY: City of Spearman; DOCKET NUMBER: 2022-0011-PST-E; IDENTIFIER: RN102788759; LOCATION: Spearman, Hansford County; TYPE OF FACILITY: aviation refueling facility; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; and 30 TAC §334.602(a), by failing to designate, train, and certify at least one named individual as a Class A and Class B operator for the facility; PENALTY: $6,750; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $5,400; ENFORCEMENT COORDINATOR: Courtney Gooris, (817) 588-5863; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(11) COMPANY: Gregory Donnell, Administrator for the Estate of Catherine Odom Murray dba Shady Oaks Mobile Home Park; DOCKET NUMBER: 2021-1382-PWS-E; IDENTIFIER: RN101226710; LOCATION: Angleton, Brazoria County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(f)(2) and (3)(A)(i) and (ii)(III) and (iv), by failing to maintain water works operation and maintenance records and make them readily available for review by the Executive Director upon request; 30 TAC §290.46(n)(1), by failing to maintain at the facility accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank until the facility is decommissioned; 30 TAC §290.46(n)(3), by failing to keep on file copies of well completion data as defined in 30 TAC §290.41(c)(3)(A) for as long as the well remains in service; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; 30 TAC §290.46(v), by failing to ensure that the electrical wiring is securely installed in compliance with a local or national electrical code; and 30 TAC §290.41(c)(5)(O) and §290.42(m), by failing to protect the facility's well unit and water treatment plant and all appurtenances with an intruder-resistant fence with a lockable gate or enclose the well units in a locked and ventilated well house with lockable gate; PENALTY: $2,942; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(12) COMPANY: HFOTCO LLC; DOCKET NUMBER: 2022-0047-AIR-E; IDENTIFIER: RN100223445; LOCATION: Houston, Harris County; TYPE OF FACILITY: bulk petroleum liquid storage and distribution terminal; RULES VIOLATED: 30 TAC §117.340(a) and §122.143(4), Federal Operating Permit (FOP) Number O1093, General Terms and Conditions (GTC) and Special Terms and Conditions Number 1.A, and Texas Health and Safety Code (THSC), §382.085(b), by failing to install a totalizing fuel flow meter to measure the gas and liquid fuel usage; and 30 TAC §122.143(4) and §122.145(2)(A), FOP Number O1093, GTC, and THSC, §382.085(b), by failing to report all instances of deviations; PENALTY: $3,563; ENFORCEMENT COORDINATOR: Toni Red, (512) 239-1704; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(13) COMPANY: John Robin Moody; DOCKET NUMBER: 2022-0025-PST-E; IDENTIFIER: RN102254315; LOCATION: Sabine Pass, Jefferson County; TYPE OF FACILITY: out-of-service underground storage tank (UST) system; RULE VIOLATED: 30 TAC §334.54(e)(5), by failing to empty and perform a site check and any necessary corrective actions for a temporarily out-of-service UST system in order to meet financial assurance exemption requirements; PENALTY: $3,375; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(14) COMPANY: Marisol Mgt. LLC dba Marisol's Convenience Store; DOCKET NUMBER: 2021-1428-PST-E; IDENTIFIER: RN104891338; LOCATION: Laredo, Webb County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: $2,813; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(15) COMPANY: PERMIAN LODGING MIDLAND LLC; DOCKET NUMBER: 2021-1385-PWS-E; IDENTIFIER: RN107150658; LO-
CATION: Midland, Midland County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(c)(3)(O), by failing to protect all well units with an intruder-resistant fence with a lockable gate or enclose the well in a locked and ventilated well house to exclude possible contamination or damage to the facilities by trespassers; 30 TAC §290.46(d)(2)(A) and §290.110(b)(4) and Texas Health and Safety Code, §341.0315(c), by failing to maintain a disinfectant residual of at least 0.2 milligrams per liter of free chlorine throughout the distribution system at all times; and 30 TAC §290.110(c)(4)(B), by failing to monitor the disinfectant residual at representative locations in the distribution system at least once per day; PENALTY: $1,386; ENFORCEMENT COORDINATOR: Ronica Rodriguez, (361) 825-3425; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(16) COMPANY: RINZIM INVESTMENTS, INC dba Stop N Shop; DOCKET NUMBER: 2022-0033-PST-E; IDENTIFIER: RN102479508; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks in which which will detect a release at a frequency of at least once every 30 days; and 30 TAC §334.605(d), by failing to re-train a certified Class A and Class B Operator by January 1, 2020 with a course submitted to and approved by the TCEQ after April 1, 2018; PENALTY: $3,863; ENFORCEMENT COORDINATOR: Courtney Gooris, (817) 588-5863; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(17) COMPANY: Slocum Water Supply Corporation; DOCKET NUMBER: 2021-1338-PWS-E; IDENTIFIER: RN101280196; LOCATION: Elkhart, Anderson County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.43(c)(8), by failing to ensure that the facility's clearwells, ground storage tanks, standpipes, and elevated tanks are painted, disinfected, and maintained in strict accordance with current American Water Works Association standards; 30 TAC §290.46(d) and §290.110(b)(2) and (4) and Texas Health and Safety Code, §341.0315(c), by failing to maintain a disinfectant residual of at least 0.2 milligrams per liter of free chlorine throughout the distribution system and in the water entering the distribution system at all times; 30 TAC §290.46(f)(2) and (3)(A)(i)(II), and (iii), by failing to maintain water works operation and maintenance records and make them readily available for review by the Executive Director upon request; 30 TAC §290.46(m)(4), by failing to maintain all water treatment units, storage and pressure maintenance facilities, distribution system lines, and related appurtenances in a watertight condition and free of excess solids; and 30 TAC §290.121(a) and (b), by failing to maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; PENALTY: $1,292; ENFORCEMENT COORDINATOR: Julienne Matthews, (817) 588-5861; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(18) COMPANY: Smalliey Drilling & Trucking Corp; DOCKET NUMBER: 2022-0051-WR-E; IDENTIFIER: RN111377487; LOCATION: Rule, Haskell County; TYPE OF FACILITY: operator; RULES VIOLATED: TWC, §11.081 and §11.121, by failing to obtain authorization prior to impounding, diverting, or using state water without a required permit; PENALTY: $350; ENFORCEMENT COORDINATOR: Ellen Ojeda, (512) 239-2581; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(19) COMPANY: Smyrna Ready Mix Concrete, LLC; DOCKET NUMBER: 2021-1427-PST-E; IDENTIFIER: RN100249036; LOCA-

TION: Hurst, Tarrant County; TYPE OF FACILITY: fleet refueling facility; RULES VIOLATED: 30 TAC §334.10(b)(2), by failing to assure that all underground storage tank (UST) recordkeeping requirements are met; and 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the UST for releases at a frequency of at least once every 30 days; PENALTY: $3,600; ENFORCEMENT COORDINATOR: Stephanie McCurley, (512) 239-2607; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(20) COMPANY: Undine Texas, LLC; DOCKET NUMBER: 2021-1258-PWS-E; IDENTIFIER: RN105232078; LOCATION: Baytown, Chambers County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the locational running annual average; PENALTY: $2,875; ENFORCEMENT COORDINATOR: America Ruiz, (512) 239-2601; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD:202201882
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: May 17, 2022

Enforcement Orders

An agreed order was adopted regarding Star Container Company Inc., Docket No. 2019-0679-IHW-E on May 18, 2022, assessing $76,500 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Clayton Smith, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default and shutdown order was adopted regarding Naveen Bains and Rozy Bains dba Lucky Stop & Go, Docket No. 2019-1355-PST-E on May 18, 2022, assessing $6,809 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Megan Grace, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Roscoe, Docket No. 2019-1550-PWS-E on May 18, 2022, assessing $2,285 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Jess Robinson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding IMMANUEL ENTERPRISE, INC. dba Fast Trac Food Mart, Docket No. 2020-0230-PST-E on May 18, 2022, assessing $42,067 in administrative penalties with $38,467 deferred. Information concerning any aspect of this order may be obtained by contacting Jess Robinson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Henderson, Docket No. 2020-0397-MWD-E on May 18, 2022, assessing $23,437 in administrative penalties with $4,687 deferred. Information concerning any aspect of this order may be obtained by contacting Katelyn Tubbs, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of San Augustine, Docket No. 2020-0818-MLM-E on May 18, 2022, assessing $16,302
An agreed order was adopted regarding WINKLER ENTERPRISES TX LLC dba Winkler Kountry Store, Docket No. 2020-1293-PST-E on May 18, 2022, assessing $7,875 in administrative penalties with $1,575 deferred. Information concerning any aspect of this order may be obtained by contacting Hailey Johnson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Grand Mission Municipal Utility District No. 1, Docket No. 2020-1595-MWD-E on May 18, 2022, assessing $30,187 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Katelyn Tubbs, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Wallis, Docket No. 2021-0014-MWD-E on May 18, 2022, assessing $14,375 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Katelyn Tubbs, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Beaumont, Docket No. 2021-0039-MWD-E on May 18, 2022, assessing $11,250 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Katelyn Tubbs, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Undine Texas Environmental, LLC, Docket No. 2021-0134-MWD-E on May 18, 2022, assessing $14,737 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ellen Ojeda, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding William G. Wyatt, Docket No. 2021-0174-WQ-E on May 18, 2022, assessing $15,000 in administrative penalties with $3,000 deferred. Information concerning any aspect of this order may be obtained by contacting Caleb Olson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Hi-Pro Feeds LLC, Docket No. 2021-0204-AIR-E on May 18, 2022, assessing $3,750 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Toni Red, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Horeb Family, LLC dba Joe's Cleaners, Docket No. 2021-0480-DCL-E on May 18, 2022, assessing $1,846 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting William Hogan, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding ExxonMobil Oil Corporation, Docket No. 2021-0503-AIR-E on May 18, 2022, assessing $40,000 in administrative penalties with $8,000 deferred. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Stephen P. Krebs dba Timber Ridge Section 2, Docket No. 2021-0587-PWS-E on May 18, 2022, assessing $1,687 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Steven Hall, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding LOVE'S TRAVEL STOPS & COUNTRY STORES, INC., Docket No. 2021-0834-MWD-E on May 18, 2022, assessing $36,250 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202201928
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: May 18, 2022

Enforcement Orders

An agreed order was adopted regarding NEUTZE PROPERTIES, LTD. dba Mr. Cartender Minin Mart #112, Docket No. 2021-0080-PST-E on May 17, 2022, assessing $4,875 in administrative penalties with $975 deferred. Information concerning any aspect of this order may be obtained by contacting Ken Moller, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding THOMAS TRACTOR WORKS, INC, Docket No. 2021-0115-AIR-E on May 17, 2022, assessing $2,500 in administrative penalties with $500 deferred. Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Motiva Chemicals LLC, Docket No. 2021-0279-AIR-E on May 17, 2022, assessing $7,125 in administrative penalties with $1,425 deferred. Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Patton Springs Independent School District, Docket No. 2021-0292-PWS-E on May 17, 2022, assessing $2,000 in administrative penalties with $400 deferred. Information concerning any aspect of this order may be obtained by contacting Julianne Matthews, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding American Acryl L.P., Docket No. 2021-0344-AIR-E on May 17, 2022, assessing $0 in administrative penalties with $0 deferred. Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Greenville Electric Utility System, Docket No. 2021-0358-IWD-E on May 17, 2022, assessing $4,875 in administrative penalties with $975 deferred. Information concerning any aspect of this order may be obtained by contacting Mark Gamble, Enforcement Coordinator at (512) 239-2545, Texas
Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Stamford, Docket No. 2021-0423-PWS-E on May 17, 2022, assessing $6,240 in administrative penalties with $1,248 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Hall, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding T & W WATER SERVICE COMPANY, Docket No. 2021-0466-PWS-E on May 17, 2022, assessing $90 in administrative penalties with $18 deferred. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding RCI HOLDINGS, INC., Docket No. 2021-0501-PWS-E on May 17, 2022, assessing $7,304 in administrative penalties with $585 deferred. Information concerning any aspect of this order may be obtained by contacting Amanda Conner, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Milos Bednar, Docket No. 2021-0531-QE-E on May 17, 2022, assessing $2,500 in administrative penalties with $500 deferred. Information concerning any aspect of this order may be obtained by contacting Caleb Olson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Lackland Land Developer, Ltd., Docket No. 2021-0559-QE-E on May 17, 2022, assessing $5,625 in administrative penalties with $1,125 deferred. Information concerning any aspect of this order may be obtained by contacting Ellen Ojeda, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Petra Firma Development Group, Inc., Docket No. 2021-0566-PWS-E on May 17, 2022, assessing $1,145 in administrative penalties with $229 deferred. Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Wills Investments Texas, LLC dba Texaco Popeyes, Docket No. 2021-0603-PST-E on May 17, 2022, assessing $0 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Hailey Johnson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding K & K Group, L.L.C., Docket No. 2021-0667-PWS-E on May 17, 2022, assessing $1,063 in administrative penalties with $212 deferred. Information concerning any aspect of this order may be obtained by contacting Aaron Vincent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding TCS #1 MANAGEMENT COMPANY, L.L.C. dba Texas Country Store 1, Docket No. 2021-0689-PST-E on May 17, 2022, assessing $4,602 in administrative penalties with $920 deferred. Information concerning any aspect of this order may be obtained by contacting Courtney Atkins, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding LIVINGSTON M&R, LLC, Docket No. 2021-0698-PST-E on May 17, 2022, assessing $3,000 in administrative penalties with $600 deferred. Information concerning any aspect of this order may be obtained by contacting Stephanie Frederick, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Zavalla in Angelina, Docket No. 2021-0756-PWS-E on May 17, 2022, assessing $394 in administrative penalties with $78 deferred. Information concerning any aspect of this order may be obtained by contacting Samantha Duncan, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding AB Mini Mart, Inc. dba A B Food & Gas, Docket No. 2021-0793-PST-E on May 17, 2022, assessing $4,775 in administrative penalties with $955 deferred. Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Cityview Carwash LLC dba Cityview Car Wash & Oil Change, Docket No. 2021-0954-PST-E on May 17, 2022, assessing $4,500 in administrative penalties with $1,000 deferred. Information concerning any aspect of this order may be obtained by contacting Karolyn Kent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding TAMKO Building Products LLC, Docket No. 2021-1019-AR-E on May 17, 2022, assessing $2,601 in administrative penalties with $520 deferred. Information concerning any aspect of this order may be obtained by contacting Michaele Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202201929
Laurie Gharris
Chief Clerk
Texas Commission on Environmental Quality
Filed: May 18, 2022

Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the opportunity to comment must be published in the Texas Register no later than the 30th day before the date on which the public comment period closes, which in this case is June 28, 2022. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may
withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on June 28, 2022. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on an AO shall be submitted to the commission in writing.

(1) COMPANY: ALTO BUSINESS LLC dba Stop & Shop 4; DOCKET NUMBER: 2021-0266-PST-E; TCEQ ID NUMBER: RN102870326; LOCATION: 105 South Marcus Street, Alto, Cherokee County; TYPE OF FACILITY; underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(a) and 30 TAC §334.50(b)(2)(A)(i)(III), by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: $2,517; STAFF ATTORNEY: Lora Naismith, Litigation, MC 175, (512) 239-3321; REGIONAL OFFICE: Tyler Regional Office, 2916 Taegue Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(2) COMPANY: Lakeview Water Supply & Sewer Service Corporation; DOCKET NUMBER: 2020-1330-PWS-E; TCEQ ID NUMBER: RN101278307; LOCATION: approximately 0.17 miles north of the intersection of County Road 14 and Farm-to-Market Road 3517 near Lakeview, Hill Country; TYPE OF FACILITY; public water system; RULES VIOLATED: Texas Health and Safety Code §341.031(a) and 30 TAC §290.106(f)(2), by failing to comply with the maximum contaminant level of ten milligrams per liter for nitrate; 30 TAC §290.110(c)(4)(A) and (f)(3), by failing to submit a Disinfection Level Quarterly Operating Report to the executive director (ED) by the end of the tenth day of the month following the end of each quarter for the first quarter of 2020; and 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification, accompanied with a signed Certificate of Delivery, to the ED regarding the failure to collect lead and copper tap samples at the required sample sites, have the samples analyzed, and report the results to the ED for the January 1, 2018, through December 31, 2018, monitoring period; PENALTY: $2,300; STAFF ATTORNEY: Benjamin Pence, Litigation, MC 175, (512) 239-2157; REGIONAL OFFICE: Amarillo Regional Office, 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

TRD-202201891
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: May 17, 2022

Notice of Proposed Renewal of the Underground Injection Control General Permit Reauthorizing the use of a Class I Injection Well to Inject Nonhazardous Brine from a Desalination Operation or Nonhazardous Drinking Water Treatment Residuals

The Texas Commission on Environmental Quality (TCEQ) proposes to renew the Class I Underground Injection Control (UIC) General Permit Number WDWG010000 reauthorizing the use of a Class I injection well to dispose of nonhazardous brine from a desalination operation or nonhazardous drinking water treatment residuals (DWTR). The proposed renewed general permit (GP) applies to operations across the state of Texas. This GP is authorized by Texas Water Code, § 27.025.

PROPOSED RENEWED GENERAL PERMIT. The executive director (ED) has prepared a proposed renewal GP that reauthorizes the use of a Class I injection well to dispose of nonhazardous brine from a desalination operation or nonhazardous DWTR. The ED proposes to require regulated facilities to submit a Notice of Intent to obtain authorization for injection. A Radioactive Materials License is required for disposal of DWTR containing naturally occurring radioactive material (NORM) that does not meet an exempted level for its radiological content.

The ED has reviewed this action for consistency with the goals and policies of the Texas Coastal Management Program (CMP) according to Coastal Coordination Council (CCC) regulations and has determined that the action is consistent with applicable CMP goals and policies.

A copy of the proposed renewal GP and fact sheet are available for viewing and copying at the TCEQ Office of the Chief Clerk (OCC) located at the TCEQ’s Austin office, at 12100 Park 35 Circle, Building F. These documents are also available at the TCEQ’s 16 regional offices and on the TCEQ web site at https://www.tceq.texas.gov/downloads/permitting/radioactive-materials/uic/uic-class-i-general-permit-2022-proposed-renewal.docx.

PUBLIC COMMENT. Written public comments must be received by the end of the public comment period on June 27, 2022, by the OCC, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at https://www.tceq.texas.gov/agency/decisions/cc/comments.html.

APPROVAL PROCESS. After the comment period, the ED will consider all the public comments and prepare a written response. The response will be filed with the TCEQ OCC at least ten days before the scheduled commission meeting when the commission will consider approval of the GP. The commission will consider all public comments in making its decision and will either adopt the ED’s response or prepare its own response to the comments at the same time the commission issues or denies the GP. A copy of any issued GP and response to comments will be made available to the public for inspection at the agency’s Austin and regional offices. A notice of the commission’s action on the proposed GP and a copy of its response to comments will be mailed to each person who made a comment. A notice of the commission’s action on the proposed renewal GP and the text of its response to comments will be published in the Texas Register.

MAILING LIST. In addition to submitting public comments, you may ask to be placed on a mailing list to receive future public notices mailed by the OCC. You may request to be added to: (1) the mailing list for this specific GP, (2) the permanent mailing list for a specific county; or both. Clearly specify which list(s) to which you wish to be added and send your request to the TCEQ Office of the Chief Clerk at the address listed previously. Unless you otherwise specify, you will be included only on the mailing list for this specific GP.

INFORMATION. If you need more information about the proposed permit or the permitting process, please call the TCEQ Public Education Program, toll free, at 1-800-687-4040. General information about
the TCEQ can be found at our Web site at https://www.tceq.texas.gov. Further information may also be obtained by calling Tamara Young at (512) 239-6582.

Si desea información en español, puede llamar al 1-800-687-4040. TRD-202201917 Charmaine Backens Deputy Director, Environmental Law Division Texas Commission on Environmental Quality Filed: May 17, 2022

Notice of Public Meeting for an Air Quality Permit Proposed Permit Number: 165848 APPLICATION. Exflur Research Corporation has applied to the Texas Commission on Environmental Quality (TCEQ) for issuance of Proposed Air Quality Permit Number 165848, which would authorize construction of the Exflur Research facility located at 1100 County Road 236, Florence, Williamson County, Texas 76527. This application was processed in an expedited manner, as allowed by the commission's rules in 30 Texas Administrative Code, Chapter 101, Subchapter J. This application was submitted to the TCEQ on July 9, 2021. The proposed facility will emit the following contaminants: hydrogen fluorides, carbon monoxide, hazardous air pollutants, nitrogen oxides, organic compounds, and particulate matter with diameters of 10 microns or less and 2.5 microns or less.

The executive director has completed the technical review of the application and prepared a draft permit which, if approved, would establish the conditions under which the facility must operate. The executive director has made a preliminary decision to issue the permit because it meets all rules and regulations.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments to the Office of the Chief Clerk at the address below. The TCEQ will consider all public comments in developing a final decision on the application. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application, and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. At the conclusion of the comment period, all formal comments will be considered before a decision is reached on the permit application. A written response to all formal comments will be prepared by the executive director and will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:
Thursday, June 16 at 7:00 p.m.
Florence High School (Cafeteria)
401 FM 970
Florence, Texas 76527

IN ADDITION May 27, 2022 47 TexReg 3179

INFORMATION. Members of the public are encouraged to submit written comments anytime during the public meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at https://www14.tceq.texas.gov/epic/eComment/. If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, toll free, at (800) 687-4040. General information can be found at our website at www.tceq.texas.gov. Si desea información en español, puede llamar al (800) 687-4040.

The permit application, executive director's preliminary decision, and draft permit will be available for viewing and copying at the TCEQ central office, the TCEQ Austin regional office, and at the Eula Hunt Beck Florence Public Library, 207 East Main Street, Williamson County, Texas. The facility's compliance file, if any exists, is available for public review at the TCEQ Austin Regional Office, 12100 Park 35 Circle Building A, Room 179, Austin, Texas. Further information may also be obtained from Exflur Research Corporation by calling Dr. Thomas Bierschenk, PhD, Vice President at (512) 310-9044 or at Exflur Research Corporation, 2350 Double Creek Drive, Round Rock, Texas 78664.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least five business days prior to the meeting.

Notice Issuance Date: May 17, 2022 TRD-202201889 Laurie Gharis Chief Clerk Texas Commission on Environmental Quality Filed: May 17, 2022

Notice of Public Meeting for Municipal Solid Waste Permit Amendment Proposed Permit No. 2185A APPLICATION. USA Waste of Texas Landfills, Inc., 24275 Katy Freeway, Suite 450, Katy, Texas 77494, has applied to the Texas Commission on Environmental Quality (TCEQ) for a permit major amendment to authorize the name change of the facility to Hawthorn Park Recycling and Disposal Facility and the lateral and vertical expansion of the facility. The facility is a Type IV municipal solid waste (MSW) landfill. The facility is located at 10550 Tanner Road, Houston, 77041 in Harris County, Texas. The TCEQ received this application on February 23, 2021. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: https://arcg.is/DLTvn. For exact location, refer to application.

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements.

Public Comment/Public Meeting. A public meeting was previously held virtually this year. A second public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and
questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Discussion Period on the permit application, members of the public may state their formal comments orally into the official record. A written response to all formal comments will be prepared by the Executive Director. All formal comments will be considered before a decision is reached on the permit application. A copy of the written response will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:
Tuesday, June 28, 2022 at 7:00 p.m.
Sterling Banquet Hall
5475 W Sam Houston Parkway N
Houston, Texas 77041

Information. Citizens are encouraged to submit written comments anytime during the public meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at https://www14.tceq.texas.gov/epic/eComment/. If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, toll free, at (800) 687-4040. General information can be found at our website at www.tceq.texas.gov. Si desea información en español, puede llamar al (800) 687-4040.

The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at the Hillendale Neighborhood Library, 2436 Gessner Rd, Houston, Texas 77080. The permit application may be viewed online at https://www.wm.com/wm/permits-texas/permits.jsp. Further information may also be obtained from USA Waste of Texas Landfills, Inc. at the address stated above or by calling Mr. Charles A. Rivette, Director, Planning and Development at (713) 253-4497.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least five business days prior to the meeting.

Issued Date: May 17, 2022
TRD-202201888
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: May 17, 2022

Notice of Public Meeting for TPDES Permit for Municipal Wastewater Amendment Permit No. WQ0015032001

APPLICATION. Grimes Co. Water Reclamation, LLC, 7063 Clark Road, Plantersville, Texas 77363, has applied to the Texas Commission on Environmental Quality (TCEQ) for a major amendment to Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0015032001, which authorizes changing the method of disposal of treated wastewater effluent from land disposal to discharge into the waters of the State and an increase in the daily average flow from 80,000 gallons per day to 120,000 gallons per day. The current permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 80,000 gallons per day via surface irrigation of 57 acres of non-public access agricultural land. TCEQ received this application on October 13, 2021.

The facility is located at 7063 Clark Road, in the City of Plantersville, Grimes County, Texas 77363. The treated effluent will be discharged to an unnamed drainage ditch, thence to an unnamed tributary of Walnut Creek, thence to Walnut Creek, thence to Spring Creek in Segment No. 1008 of the San Jacinto River Basin. The unclassified receiving water uses are minimal aquatic life use for the unnamed drainage ditch, the unnamed tributary of Walnut Creek, and Walnut Creek. The designated uses for Segment No. 1008 are primary contact recreation, public water supply, and high aquatic life use. In accordance with Texas Administrative Code §307.5 and the TCEQ's Procedures to Implement the Texas Surface Water Quality Standards (June 2010), an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. This review has preliminarily determined that no water bodies with exceptional, high, or intermediate aquatic life uses are present within the stream reach assessed; therefore, no Tier 2 degradation determination is required. No significant degradation of water quality is expected in water bodies with exceptional, high, or intermediate aquatic life uses downstream, and existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received. This link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice. For the exact location, refer to the application.

https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bbddd360f8168250fa&markert=95.892777%2C30.252222&level=12

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements.

PUBLIC COMMENT / PUBLIC MEETING. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. A written response to all timely, relevant and material, or significant comments will be prepared by the Executive Director. All formal comments will be considered before a decision is reached on the permit application. A copy of the written response will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:
Monday, June 20, 2022 at 7:00 p.m.

Whitehall Community Center

14536 FM 362

Navasota, Texas 77868

INFORMATION. Members of the public are encouraged to submit written comments anytime during the meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at https://www14.tceq.texas.gov/epic/eComment/. If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. Si desea información en español, puede llamar (800) 687-4040. General information about the TCEQ can be found at our website at https://www.tceq.texas.gov.

The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at Navasota Public Library, 1411 East Washington Avenue, Navasota, Texas. Further information may also be obtained from Grimes Co. Water Reclamation, LLC by calling Ms. Shelley Young, P.E., WaterEngineers, Inc., at (281) 373-0500.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least five business days prior to the meeting.

Issuance Date: May 13, 2022

TRD-202201890

Laurie Gharis
Chief Clerk

Texas Commission on Environmental Quality

Filed: May 17, 2022

Texas Health and Human Services Commission

Public Notice: Value-Based Agreements for Home Health Supplies, Equipment, and Appliances Through the Pharmacy Benefit

The Texas Health and Human Services Commission (HHSC) announces its intent to submit transmittal number 22-0007 to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act.

The purpose of this amendment is to add a reimbursement methodology for home health supplies, equipment, and appliances covered under the pharmacy benefit that do not have a corresponding rate under the medical benefit, improving cost-effectiveness with the goal of improving health outcomes for Medicaid beneficiaries. The amendment also incorporates language authorizing the state to negotiate value-based purchasing arrangements with manufacturers of these home health supplies. The requested effective date for the proposed amendment is June 1, 2022.

To obtain copies of the proposed amendment, interested parties may contact Shae James, State Plan Coordinator, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; by telephone at (512) 438-2264; by facsimile at (512) 730-7472; or by email at Medicaid_Chip_SPA_Inquiries@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Health and Human Services Commission.

TRD-202201918

Karen Ray
Chief Counsel

Texas Health and Human Services Commission

Filed: May 17, 2022

Department of State Health Services

Licensing Actions for Radioactive Materials
During the second half of March 2022, the Department of State Health Services (Department) has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables (in alphabetical order by location). The subheading “Location” indicates the city in which the radioactive material may be possessed and/or used. The location listing “Throughout TX [Texas]” indicates that the radioactive material may be used on a temporary basis at locations throughout the state.

In issuing new licenses and amending and renewing existing licenses, the Department’s Radiation Section has determined that the applicant has complied with the licensing requirements in Title 25 Texas Administrative Code (TAC), Chapter 289, for the noted action. In granting termination of licenses, the Department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In granting exemptions to the licensing requirements of Chapter 289, the Department has determined that the exemption is not prohibited by law and will not result in a significant risk to public health and safety and the environment.

A person affected by the actions published in this notice may request a hearing within 30 days of the publication date. A “person affected” is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. 25 TAC §289.205(b)(15); Health and Safety Code §401.003(15). Requests must be made in writing and should contain the words “hearing request,” the name and address of the person affected by the agency action, the name and license number of the entity that is the subject of the hearing request, a brief statement of how the person is affected by the action what the requestor seeks as the outcome of the hearing, and the name and address of the attorney if the requestor is represented by an attorney. Send hearing requests by mail to: Hearing Request, Radioactive Material Licensing, MC 2835, PO Box 149347, Austin, Texas 78714-9347, or by fax to: (512) 206-3760, or by e-mail to: RAMlicensing@dshs.texas.gov.
AMENDMENTS TO EXISTING LICENSES ISSUED:

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<th>Name of Licensed Entity</th>
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| THROUGHOUT TX | TOLUNAY-WONG ENGINEERS INCORPORATED | L04848 | HOUSTON | 28 | 03/24/22 |
| THROUGHOUT TX | RADIOGRAPHIC SPECIALISTS INC | L02742 | HOUSTON | 71 | 03/25/22 |
| THROUGHOUT TX | XCEL NDT LLC | L07039 | LONGVIEW | 03 | 03/31/22 |
| THROUGHOUT TX | INTERTEK ASSET INTEGRITY MANAGEMENT INC | L06801 | LONGVIEW | 19 | 03/24/22 |
| THROUGHOUT TX | LUDLUM MEASUREMENTS INC | L01963 | SWEETWATER | 114 | 03/28/22 |

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TRD-202201880
Cynthia Hernandez
General Counsel
Department of State Health Services
Filed: May 16, 2022

 Licensing Actions for Radioactive Materials
During the first half of April 2022, the Department of State Health Services (Department) has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables (in alphabetical order by location). The subheading “Location” indicates the city in which the radioactive material may be possessed and/or used. The location listing “Throughout TX [Texas]” indicates that the radioactive material may be used on a temporary basis at locations throughout the state.

In issuing new licenses and amending and renewing existing licenses, the Department’s Radiation Section has determined that the applicant has complied with the licensing requirements in Title 25 Texas Administrative Code (TAC), Chapter 289, for the noted action. In granting termination of licenses, the Department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In granting exemptions to the licensing requirements of Chapter 289, the Department has determined that the exemption is not prohibited by law and will not result in a significant risk to public health and safety and the environment.

A person affected by the actions published in this notice may request a hearing within 30 days of the publication date. A “person affected” is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. 25 TAC §289.205(b)(15); Health and Safety Code §401.003(15). Requests must be made in writing and should contain the words “hearing request,” the name and address of the person affected by the agency action, the name and license number of the entity that is the subject of the hearing request, a brief statement of how the person is affected by the action what the requestor seeks as the outcome of the hearing, and the name and address of the attorney if the requestor is represented by an attorney. Send hearing requests by mail to: Hearing Request, Radioactive Material Licensing, MC 2835, PO Box 149347, Austin, Texas 78714-9347, or by fax to: (512) 206-3760, or by e-mail to: RAMlicensing@dshs.texas.gov.
NEW LICENSES ISSUED:

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<th>Location of Use/Possession of Material</th>
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AMENDMENTS TO EXISTING LICENSES ISSUED:

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AMENDMENTS TO EXISTING LICENSES ISSUED: (continued)

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TRD-202201881
Cynthia Hernandez
General Counsel
Department of State Health Services
Filed: May 16, 2022

Texas Department of Housing and Community Affairs

Second Amendment to the 2022-1 Multifamily Direct Loan Annual Notice of Funding Availability

Texas Department of Housing and Community Affairs has posted to its website the Second Amendment to the 2022-1 MFDL Annual NOFA.

This second amendment suspends the assignment of Application Acceptance Dates as of 5 p.m. on May 13, 2022, establishes an Application Acceptance Date for certain Applications proposing to be layered with Federal Housing Administration (FHA) insured senior debt, and includes a new waiver applicable to Developments subject to the requirements of 36 CFR Part 67, implementing Section 47 of the Internal Revenue Code. It also reflects a new amount available in the General/Soft-Repayment Set-Aside for HOME.

The 2022-1 Multifamily Direct Loan Annual NOFA and Amendments are posted on the Department's website at http://www.tdhca.state.tx.us/multifamily/nofas-rules.htm. Subscribers to the Department's Listserv will receive notification that the NOFA is posted. Subscription to the Department's Listserv is available at http://mail-list.tdhca.state.tx.us/list/subscribe.html?lui=f9mu0g2g&nContainter=2&nOwner=G382s2w2r2p.

Questions regarding the 2022-1 Multifamily Direct Loan Annual NOFA may be addressed to LaTisha Turner at (512) 475-0538 or latisha.turner@tdhca.state.tx.us.

TRD-202201887
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Filed: May 17, 2022

Texas Parks and Wildlife Department

Notice of a Public Comment Hearing on an Application for a Sand and Gravel Permit

The Lower Colorado River Authority has applied for a sand and gravel General Permit pursuant to Parks and Wildlife Code, Chapter 86, to remove or disturb up to 338 cubic yards of sedimentary material within Johnson Creek in Kerr County. The purpose is to construct a low water crossing that will serve as access to a power transmission line. The location is approximately 1.1 miles downstream of Byas Springs Road crossing and 4.5 miles upstream of the Hoot Owl Hollow Road crossing. Notice is being published and mailed pursuant to 31 TAC §69.105(d).

TPWD will hold a public comment hearing regarding the application at 11:00 a.m. on Friday, June 24, 2022, at TPWD headquarters, located at 4200 Smith School Road, Austin, Texas 78744. A remote participation option will be available upon request. Potential remote attendees should contact Tom Heger at (512) 389-4583 or at tom.heger@tpwd.texas.gov for information on how to participate in the hearing remotely. The hearing is not a contested case hearing under the Texas Administrative Procedure Act. Oral and written public comment will be accepted during the hearing.

Written comments may be submitted directly to TPWD and must be received no later than 30 days after the date of publication of this notice in the Texas Register or a newspaper, whichever is later. A written request for a contested case hearing from an applicant or a person with a justiciable interest may also be submitted and must be received by TPWD prior to the close of the public comment period. Timely hearing requests shall be referred to the State Office of Administrative Hearings. Submit written comments, questions, requests to review the application, or requests for a contested case hearing to: Tom Heger, TPWD, by mail: 4200 Smith School Road, Austin, Texas 78744; fax (512) 389-4405; or e-mail tom.heger@tpwd.texas.gov.

TRD-202201883
James Murphy
General Counsel
Texas Parks and Wildlife Department
Filed: May 17, 2022

Public Utility Commission of Texas

Notice of Application for Approval of the Provision of Non-Emergency 311 Service

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) for approval to provide non-emergency 311 services.

Docket Style and Number: Application of Southwestern Bell Telephone Company dba AT&T Texas for Administrative Approval to Provide Non-Emergency 311 Service for the City of Burleson, Docket Number 53612.

The Application: On May 16, 2022, Southwestern Bell Telephone Company dba AT&T Texas filed an application with the commission under 16 Texas Administrative Code §26.127, for approval to provide non-emergency 311 service for the City of Burleson. As a certified telecommunications utility (CTU), AT&T seeks approval on behalf of Burleson to provide Non-Emergency 311 services to Burleson's residents within the city limits of Burleson, Texas, and to portions of surrounding communities in AT&T Texas' certificated service area.
Non-emergency 311 service is available to local governmental entities to provide to their residents an easy-to-remember number to call for access to non-emergency services. By implementing 311 service, communities can improve 911 response times for those callers with true emergencies. Each local government entity that elects to implement 311 service will determine the types of non-emergency calls their 311-call center will handle.

Persons who wish to comment on this application should notify the commission by June 17, 2011. Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Customer Protection Division at (512) 936-7120 or toll free at (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All comments or motions to intervene should reference Docket Number 53612.

TRD-202201922
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: May 18, 2022

Texas Workforce Commission

Request for Comment Regarding the Management Fee Rate Charged by WorkQuest, formerly TIBH, Inc.

Notice is hereby given that the Texas Workforce Commission (Commission) will review and make a decision on the management fee rate charged by the central nonprofit agency, WorkQuest, for its services to the community rehabilitation programs and operation of the State Use Program for Fiscal Year 2023 as required by Texas Human Resources Code, §122.019(e). This review will be considered by the Commission no earlier than Tuesday, August 30, 2022, in a duly posted Open Meeting. WorkQuest has requested that the Commission set the Fiscal Year 2023 management fee rate at 6% of the sales price for products, 6% of the contract price for services, and 5% of the contract price for temporary staffing services. The Commission seeks public comment on WorkQuest's management fee rate request as required by Texas Human Resources Code, §122.030.

Comments should be submitted in writing on or before Wednesday, July 27, 2022, to Kelvin Moore at Texas Workforce Commission, 1117 Trinity, Room 214T, Austin, Texas 78711, or via email to purchasingfrompeoplewithdisabilities@twc.texas.gov.

For all other questions, contact the Commission at (512) 463-3244. In addition, persons with disabilities who plan to attend this meeting and who may need auxiliary aids, services, or special accommodations should contact Conference and Media Services at (512) 463-6389 or conferenceplanning.media@twc.texas.gov two working days prior to the meeting, so that appropriate arrangements can be made. Hearing and speech-impaired individuals with text telephones (TTY) may also contact the Commission meeting liaison for assistance at (512) 936-3671.

TRD-202201878
Kelvin Moore
Program Specialist
Texas Workforce Commission
Filed: May 16, 2022
How to Use the Texas Register

Information Available: The sections of the Texas Register represent various facets of state government. Documents contained within them include:

- **Governor** - Appointments, executive orders, and proclamations.
- **Attorney General** - summaries of requests for opinions, opinions, and open records decisions.
- **Texas Ethics Commission** - summaries of requests for opinions and opinions.
- **Emergency Rules** - sections adopted by state agencies on an emergency basis.
- **Proposed Rules** - sections proposed for adoption.
- **Withdrawn Rules** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.
- **Adopted Rules** - sections adopted following public comment period.

**Texas Department of Insurance Exempt Filings** - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.


**Tables and Graphics** - graphic material from the proposed, emergency and adopted sections.

**Transferred Rules** - notice that the Legislature has transferred rules within the Texas Administrative Code from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the Texas Register is referenced by citing the volume in which the document appears, the words “TexReg” and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 47 (2022) is cited as follows: 47 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written “47 TexReg 2 issue date,” while on the opposite page, page 3, in the lower right-hand corner, would be written “issue date 47 TexReg 3.”

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the Texas Register office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using Texas Register indexes, the Texas Administrative Code section numbers, or TRD number.

Both the Texas Register and the Texas Administrative Code are available online at: http://www.sos.state.tx.us. The Texas Register is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The Texas Administrative Code (TAC) is the compilation of all final state agency rules published in the Texas Register. Following its effective date, a rule is entered into the Texas Administrative Code. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the TAC.

The TAC volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State’s website at http://www.sos.state.tx.us/tac.

The Titles of the TAC, and their respective Title numbers are:

1. Administration
2. Agriculture
3. Banking and Securities
4. Agriculture
5. Community Development
6. Cultural Resources
7. Economic Regulation
8. Education
9. Examining Boards
10. Health Services
11. Health and Human Services
12. Insurance
13. Environmental Quality
14. Natural Resources and Conservation
15. Public Finance
16. Public Safety and Corrections
17. Social Services and Assistance
18. Transportation

How to Cite: Under the TAC scheme, each section is designated by a TAC number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the Texas Administrative Code; TAC stands for the Texas Administrative Code; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to Update: To find out if a rule has changed since the publication of the current supplement to the Texas Administrative Code, please look at the Index of Rules.

The Index of Rules is published cumulatively in the blue-cover quarterly indexes to the Texas Register.

If a rule has changed during the time period covered by the table, the rule’s TAC number will be printed with the Texas Register page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

**TITLE 1. ADMINISTRATION**

**Part 4. Office of the Secretary of State**

**Chapter 91. Texas Register**

1 TAC §91.1...............................................950 (P)
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