

ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 7. HOMELESSNESS PROGRAMS SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

10 TAC §§7.1 - 7.3, 7.7, 7.12

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 7, Subchapter A, General Policies and Procedures, §7.1, Purpose and Goals; 10 TAC §7.2, Definitions; 10 TAC §7.3, Construction Activities; 10 TAC §7.7, Subrecipient Contact Information; and 10 TAC §7.12, Waiver of Rule, without changes to the proposed text as published in the March 25, 2022, issue of the *Texas Register* (47 TexReg 1559). The rules will not be republished. The purpose of the repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal would be in effect:

1. The repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity, the overarching policies and procedures of the Emergency Solutions Grants, Emergency Solutions Grants CARES, Homeless Housing and Services, and Ending Homelessness Fund programs.
2. The repeal does not require a change in work that would require the creation of new employee positions, nor is the repeal significant enough to reduce work load to a degree that any existing employee positions are eliminated.
3. The repeal does not require additional future legislative appropriations.
4. The repeal does not result in an increase in fees paid to the Department or in a decrease in fees paid to the Department.
5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.
6. The action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity: the administration of homeless programs.

7. The repeal will not increase or decrease the number of individuals subject to the rule's applicability.

8. The repeal will not negatively or positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated this repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be more clarity on the administration of homeless programs. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENT AND STAFF REASONED RESPONSE. The Department accepted public comment between March 25, 2022, and April 25, 2022. Comments regarding the proposed repeal were accepted in writing and by e-mail with no comments received.

The Board adopted the final order adopting the repeal on June 16, 2022.

STATUTORY AUTHORITY. The adopted repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the adopted repealed sections affect no other code, article, or 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.

Filed with the Office of the Secretary of State on June 17, 2022.

TRD-202202288

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Effective date: July 7, 2022

Proposal publication date: March 25, 2022

For further information, please call: (512) 475-3959



10 TAC §§7.1 - 7.3, 7.7, 7.12

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 7, Homelessness Programs, Subchapter A, General Policies and Procedures, §7.1, Purpose and Goals; 10 TAC §7.3, Construction Activities; and 10 TAC §7.7, Subrecipient Contact Information without changes to the proposed text as published in the March 25, 2022, issue of the *Texas Register* (47 TexReg 1560). The rules will not be republished. The department adopts 10 TAC §7.2, Definitions and 10 TAC §7.12, Waiver of Rule with changes to the proposed text as published in March 25, 2022, issue of *Texas Register* (47 TexReg 1560). These rules will be republished. The purpose of the new sections is to update the rules to clarify definitions and eligible activities, and to better align with the administrative rules for the Department at 10 TAC §1.5 related to rule waivers.

Tex. Gov't Code §2001.0045(b) does not apply to the new rules for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the new rule would be in effect:

1. The rules do not create or eliminate a government program, but relates to the re-adoption of this rule which makes changes to an existing activity, the overarching policies and procedures of the Emergency Solutions Grants, Emergency Solutions Grants CARES, Homeless Housing and Services, and Ending Homelessness Fund programs (homeless programs).
2. The new rules do not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The new rules do not require additional future legislative appropriations.
4. The new rules will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The new rules are not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.

6. The new rules will not expand, limit, or repeal an existing regulation.

7. The new rules will not increase or decrease the number of individuals subject to the rule's applicability.

8. The new rule will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting these rules, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, Ch. 2306.

1. The Department has evaluated these rules and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. There are approximately no small or micro-businesses subject to the rules because these funds are limited to private non-profit organizations and units of local governments per 24 CFR §576.202 for Emergency Solutions Grants funds; limited to counties and municipalities in Tex. Transportation Code §502.415 for the Ending Homeless Fund; and limited to municipalities or designated nonprofits per 10 TAC §7.22 for the Homeless Housing and Services Program.

3. The Department has determined that based on the considerations in item two, above, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The rules do not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the rules as to their possible effects on local economies and has determined that for the first five years the rules will be in effect the new rules have no economic effect on local employment because these rules will channel funds, which may be limited, only to nonprofits, private nonprofits, local governments, and counties and municipalities; it is not anticipated that the amount of funds would be enough to support additional employment opportunities, but would add to the services provided. Alternatively, the rules would also not cause any negative impact on employment. Therefore no local employment impact statement is required to be prepared for the rules.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that no impact is expected, there are no "probable" effects of the new rules on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections will be a rule that has greater clarity into the processes and definitions of the administration of homeless programs. There will not be any economic cost to any individuals required to comply with the new sections because the processes described by the rule have already been in place through the rules found at these sections being repealed.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new sections are in effect, enforcing or administering the new sections does not have any foreseeable implications related to costs or revenues of the state or local governments because the costs for administering the program is included in eligible activities.

SUMMARY OF PUBLIC COMMENT AND STAFF REASONED RESPONSE. The Department accepted public comment between March 25, 2022, and April 25, 2022. Comments regarding the proposed rule were accepted in writing and by e-mail with comments received from: (4) Sarah Eckel of Concho Valley Community Action Agency, (6) Eric Samuels of Texas Homeless Network, and (7) Sylvia Frank, Lesslie Naj, Anitras Robinson, and Sharon Ventimiglia of Tracy Andrus Foundation.

§7.3 HHSP and EH Construction Activities

COMMENT SUMMARY: Commenter (4) stated that the proposed rule will hamper the ability for new shelters to be created, which is a significant capital expense. Commenter (6) asserted that the proposed rule is directly at odds with the expectations set by HUD, citing HUD's ESG Program Basics as support. Additionally, they state that since its inception ESG funds have been a reliable source of funds for the creation of new shelters and that historically these funds have been used for shelter rehabilitation, renovation, and conversion. Commenter (6) asserted that the proposed alternative funding streams such as HOME-ARP and HHSP present significant challenges to the Balance of State (BoS). Most Subrecipients began planning for the use of HOME ARP funds prior to publication of the draft rule, therefore these funds may not be available for new shelters and it is unlikely that communities within the BoS would ever be recipients of HHSP funds. Commenter (6) stated the Department is presenting conflicting information by allowing for a multiyear NOFA while indicating a one year contract creates an impediment to use ESG funds for new shelters. Commenter (7) stated that funds are needed to expand and renovate shelters within their community.

STAFF RESPONSE: While HUD determines the allowable activities for ESG, the State has the ability to determine the allowable activities for its Subrecipients. HUD provides ESG funding for an array of activities and it does not require specific use of funds (such as the use of ESG funds for shelter rehabilitation, renovation, and conversion). Recipients of ESG funding, through the submittal of the Action Plan, provide a list of activities and method of distribution for each Fiscal Year for HUD review and approval.

An analysis of financial reporting from 2018 ESG Contracts to present indicates that no Subrecipients reported having used any funds in renovations or conversion of shelters; only one Subrecipient reported having used funds for rehabilitation in the amount of \$124,602. Historically, this fund source has not often been used for renovation, construction, or conversion of shelters. Additionally, due to the size of the program, ESG Contract maximums are not likely to provide significant funding to contribute to a large capital expense. For clarification purposes, Commenters (4) and (6) referenced various unidentified historical uses of ESG funds for new shelter creation, however property acquisition and new construction are not eligible ESG activities under 24 CFR §576.102 and 10 TAC §7.3.

The Department understands that HOME ARP and HHSP funds may not be available in all communities. Funds for non-congre-

gate shelter development will be available through the HOME-ARP in the balance of state and other CoC regions to address this need and ESG funds may be used to provide essential services and shelter operations. Additionally, maintenance (including minor or routine repairs) is an eligible expense under the emergency shelter operations category.

Using ESG funds for shelter rehabilitation, renovation, and/or conversion is unlikely to be completed within the original 12 month Contract Term. In addition to requirements that must be met prior to the start of the renovation, any unit renovated, rehabilitated, or converted with ESG funds must continue to be operated as an ESG shelter, but there is no guarantee of continued ESG funding. This creates an undue monitoring and potential repayment burden to the Department in the event that the Subrecipient is not able to continue to operate the shelter as an ESG shelter.

The issuance of a NOFA in either an annual or multiyear basis does not affect the Contract Term that will be provided to the Subrecipients. ESG funding will be provided with an original Contract Term of 12 months. A multiyear NOFA does not guarantee funding for longer than the original Contract Term. Even in the case of a continuing award, funding is not guaranteed, requirements for a continuing award must be met every year in order to continue to receive funding. Therefore, the potential of offering a multiyear NOFA would not provide a Subrecipient with the ability or guarantee that costs for the renovation, construction, and/or conversion of emergency shelters would be covered past the original 12 month Contract Term. Staff has carefully reviewed the comments, staff does not recommend any changes based on these comments.

The Board adopted the final order adopting the new rule on June 16, 2022.

STATUTORY AUTHORITY. The new sections are adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the adopted new sections affect no other code, article, or statute.

§7.2. Definitions.

The words and terms in this chapter shall have the meanings described in this subsection unless the context clearly indicates otherwise. Other definitions may be found in Chapters 1, concerning Administration, Chapter 2, concerning Enforcement, of this title, or in federal or state law including, but not limited to, 24 CFR Parts 91, 200, 576, 582, and 583, and UGMS or TXGMS, as applicable.

(1) Affiliate--An entity related to an Applicant that controls by contract or by operation of law the Applicant or has the power to control the Applicant or a third entity that controls, or has the power to control both the Applicant and the entity. Examples include but are not limited to entities submitting under a common application, or instrumentalities of a unit of government. This term also includes any entity that is required to be reported as a component entity under Generally Accepted Accounting Standards, is required to be part of the same Single Audit as the Applicant, is reported on the same IRS Form 990, or is using the same federally approved indirect cost rate.

(2) Allocation Formula--Mathematical relationship among factors, authorized by the Board, that determines, when applicable, how much funding is available in an area or region in Subchapters B, C, and D of this chapter, relating to Homelessness Programs.

(3) Applicant--A unit of local government, nonprofit corporation or other entity, as applicable, who has submitted to the Department an Application for Department funds or other assistance.

(4) Application--A request for a Contract award submitted by an Applicant to the Department, in a form prescribed by the Department, including any exhibits or other supporting material.

(5) At-risk of Homelessness--Defined by 24 CFR §576.2, except as otherwise defined by Contract, the income limits for Program Participants are determined by the Subrecipient but, at a minimum, do not exceed the moderate income level pursuant to Tex. Gov't Code §2306.152.

(6) Code of Federal Regulations (CFR)--The codification of the general and permanent rules and regulations of the federal government as adopted and published in the Federal Register.

(7) Continuum of Care (CoC)--The group composed of representatives of relevant organizations, which generally includes nonprofit homeless providers; victim service providers; faith-based organizations; governments; businesses; advocates; public housing agencies; school districts; social service providers; mental health agencies; hospitals; universities; affordable housing developers; law enforcement; organizations that serve homeless and formerly homeless veterans, and homeless and formerly homeless persons that are organized to plan for and provide, as necessary, a system of outreach, engagement, and assessment; emergency shelter; rapid re-housing; transitional housing; permanent housing; and prevention strategies to address the various needs of homeless persons and persons at risk of homelessness for a specific geographic area. HUD funds a CoC Program designed to assist sheltered and unsheltered homeless people by providing the housing and/or services needed to help individuals move into transitional and permanent housing, with the goal of long-term stability.

(8) CoC Lead Agency--CoC collaborative applicant in the HUD CoC Program per 24 CFR §578.3.

(9) Contract--The executed written agreement between the Department and a Subrecipient performing a program activity that describes performance requirements and responsibilities assigned by the document.

(10) Contract System--The electronic recordkeeping system established by the Department, as required by the program.

(11) Contract Term--Period of time identified in the Contract during which program activities may be conducted.

(12) Cost Reimbursement--A Contract sanction whereby reimbursement of costs incurred by the Subrecipient occurs only after the Department has reviewed all relevant documentation provided by the Subrecipient to support Expenditures. Reimbursement will only be approved by the Department where the documentation clearly supports the eligible use of funds.

(13) Declaration of Income Statement (DIS)--A Department-approved form used only when it is not possible for a Subrecipient to obtain third-party or firsthand verification of income, per 24 CFR §576.500(e)(4).

(14) Dwelling Unit--A residence that meets Habitability Standards that is not an emergency shelter, hotel, jail, institution, or similar temporary lodging. Transitional Housing is included in this definition unless the context clearly states otherwise. Common areas supporting the Dwelling Unit are also included in this definition.

(15) Elderly Person--

(A) For state funds, a person who is 60 years of age or older; and

(B) For ESG, a person who is 62 years of age or older.

(16) Ending Homelessness (EH) Fund--The voluntary-contribution state program established in Texas Transportation Code §502.415.

(17) Emergency Solutions Grants (ESG)--A HUD-funded program which provides funds for services necessary to help persons that are at risk of homelessness or homeless quickly regain stability in permanent housing.

(18) Emergency Solutions Grants CARES (ESG CARES)--A HUD-funded program which provides funds for services necessary to help persons that are risk of homelessness or homeless quickly regain stability in permanent housing authorized by the Coronavirus Aid, Relief, and Economic Security Act (CARES).

(19) ESG Interim Rule--The regulations with amendments promulgated at 24 CFR Part 576 as published by HUD for the ESG Program.

(20) Expenditure--An amount of money accounted for by a Subrecipient as spent.

(21) Finding--A Subrecipient's material failure to comply with rules, regulations, the terms of the Contract or to provide services under each program to meet appropriate standards, goals, and other requirements established by the Department or funding source (including performance objectives). A Finding impacts the organization's ability to achieve the goals of the program and jeopardizes continued operations of the Subrecipient. Findings include the identification of an action or failure to act that results in disallowed costs.

(22) Head of Household--As defined in the most recent Homeless Management Information System (HMIS) Data Dictionary issued by HUD.

(23) HMIS-Comparable Database--Database established and operated by a victim service provider or legal service provider that is comparable to HMIS and collects Program Participant-level data over time.

(24) HMIS Data Dictionary--The Dictionary published by HUD which defines terms for the use of HMIS and comparable databases.

(25) HMIS Data Standards Manual--Manual published by HUD which documents the requirements for the programming and use of all HMIS and comparable databases.

(26) HMIS Lead Agency--The entity designated by the CoC to operate the CoC's HMIS on its behalf.

(27) Homeless or Homeless Individual--An individual as defined by 42 U.S.C. §§11371 - 11378 and 24 CFR §576.2. For state-funded programs, a homeless individual may have right of occupancy because of a signed lease, but still qualify as homeless if his or her primary nighttime residence is an emergency shelter or place not meant for human habitation.

(28) Homeless Housing and Services Program (HHSP)--The state-funded program established under Tex. Gov't Code §2306.2585.

(29) Homeless Management Information System (HMIS)-Information system designated by the CoC to comply with the HUD's data collection, management, and reporting standards and used to collect Program Participant-level data and data on the provision of housing

and services to homeless individuals and families and persons at-risk of homelessness.

(30) Homeless Programs--Reference to programs that have the specific purpose of addressing homelessness administered by the Department, including ESG Program, ESG CARES, HHSP, and EH Fund.

(31) Homeless Subpopulations--Persons experiencing Homelessness who are part of the special population categories as defined by the most recent Point In Time Data Collection guidance issued by HUD.

(32) Household--A Household is a single individual or a group of persons who apply together for assistance and who live together in one Dwelling Unit, or, for persons who are not housed or in a shelter, who would live together in one Dwelling Unit if they were housed, or as defined in the most recent HMIS Data Dictionary issued by HUD.

(33) Households Served--A single individual or a group of persons who apply for Homeless Program assistance, meets a Homeless Program's eligibility requirements, receives a Homeless Program's services, and whose data is entered into an HMIS or comparable database.

(34) Land Use Restriction Agreement (LURA)--An agreement, regardless of its title, between the Department and a property owner, including an emergency shelter, which is a binding covenant upon the property owner and successors in interest, that, when recorded, encumbers the property with respect to the requirements of the programs for which it receives funds.

(35) Match--A contribution to the ESG Program from a non-ESG source governed by 24 CFR §576.201.

(36) Monthly Expenditure Report--Information on Expenditures from Subrecipient to the Department.

(37) Monthly Performance Report--Information on Program Participants and program activities from Subrecipient to the Department.

(38) Notice of Funding Availability (NOFA)--Notice of Funding Availability or announcement of funding published by the Department notifying the public of available funds for a Program with certain requirements.

(39) Outcome--A benefit or change achieved by a Program Participant served by the Department's Homeless Programs.

(40) Performance Target--Number of persons/Households to be served, outcomes to be reached, or construction/rehabilitation/conversion to be performed that the Subrecipient commits to accomplish during the Contract Term.

(41) Private Nonprofit Organization--An organization described in §501(c) of the Internal Revenue Code (the "Code") of 1986 and which is exempt from taxation under subtitle A of the Code, has an accounting system and a voluntary board, and practices nondiscrimination in the provision of assistance. This does not include a governmental organization such as a public housing authority or a housing finance agency.

(42) Project--A group of eligible activities identified in an Application or Contract to the Department, and designated in HMIS or HMIS-comparable database.

(43) Program Participant--An individual or Household that is assisted by a Homeless Program.

(44) Program Year--Contracts with funds from a specific federal allocation (ESG and ESG CARES) or year of a state biennium (HHSP).

(45) Recertification--Required review of a Program Participant's eligibility determination for continuation of assistance.

(46) Service Area--The city(ies), county(ies) and/or place(s) identified in the Application (as applicable), and Contract that the Subrecipient will serve.

(47) State--The State of Texas or the Department, as indicated by context.

(48) Subcontract--A contract made between the Subrecipient and a purveyor of goods or services through a procurement relationship.

(49) Subcontractor--A person or an organization with whom the Subrecipient contracts to provide services.

(50) Subgrant--An award of financial assistance in the form of money made under a grant by a Subrecipient to an eligible Subgrantee. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases.

(51) Subgrantee--The legal entity to which a Subgrant is awarded and which is accountable to the Subrecipient for the use of the funds provided.

(52) Subrecipient--An organization that receives federal or states funds passed through the Department to operate ESG and/or state funded Homeless Programs.

(53) Texas Administrative Code (TAC)--A compilation of all state agency rules in Texas.

(54) United States Department of Housing and Urban Development (HUD)--Federal department that provides funding for ESG.

(55) Unit of General Purpose Local Government--A unit of government which has, among other responsibilities, the authority to assess and collect local taxes and to provide general governmental services.

(56) United States Code (U.S.C.)--A consolidation and codification by subject matter of the general and permanent laws of the United States.

(57) Youth Headed Household--Household that includes unaccompanied youth 24 years of age and younger, parenting youth 24 years of age and younger and children of parenting youth 24 years of age and younger.

§7.12. Waivers.

(a) The Department's Governing Board (the "Board") may waive rules in this chapter for good cause to meet the purpose of the Homeless Programs described further in §7.1 of this title (relating to Purpose and Goals). However, any waiver cannot conflict with the federal statutes or regulations, the Department's Action Plan, or state statutes governing any of the Homeless Programs.

(b) A provision of a closed NOFA may not be waived except in the case of a disaster as described in §1.5 of this title (related to Waiver Applicability in the Case of Federally Declared Disasters) or a change in federal law that makes adherence to the requirements of the NOFA impossible or impracticable as determined by the Board.

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 June 17, 2022.

TRD-202202289

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Effective date: July 7, 2022

Proposal publication date: March 25, 2022

For further information, please call: (512) 475-3959



SUBCHAPTER C. HOMELESSNESS PROGRAMS

10 TAC §§7.31 - 7.44

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 7, Homelessness Programs, Subchapter C, Emergency Solutions Grants (ESG), without changes to the proposed text as published in the March 25, 2022, issue of the *Texas Register* (47 TexReg 1564). The repealed rule will not be republished. The purpose of the repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal would be in effect:

1. The repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous re-adoption making changes to an existing activity, the administration of the Emergency Solutions Grants (ESG) Program.
2. The repeal does not require a change in work that would require the creation of new employee positions, nor is the repeal significant enough to reduce work load to a degree that any existing employee positions are eliminated.
3. The repeal does not require additional future legislative appropriations.
4. The repeal does not result in an increase in fees paid to the Department or in a decrease in fees paid to the Department.
5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.
6. The action will repeal an existing regulation, but is associated with a simultaneous re-adoption making changes to an existing activity, the administration of homeless programs.
7. The repeal will not increase or decrease the number of individuals subject to the rule's applicability.
8. The repeal will not negatively or positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated this repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be more clarity on the administration of the Emergency Solutions Grants Program. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENT AND STAFF REASONED RESPONSE. The Department accepted public comment between March 25, 2022, and April 25, 2022, Comments regarding the proposed rule were accepted in writing and by e-mail with comments received from: (1) Mark Smith of Coalition for the Homeless, (2) Sarah Eckel of Concho Valley Community Action Agency, (3) Sylvia Frank, Lesslie Naj, Anitras Robinson, and Sharon Ventimiglia of Tracy Andrus Foundation.

§7.34 Local Competition for Funds

COMMENT SUMMARY: Commenters (1) and (2) noted concern that having the Department directly administer local funding competitions. It will remove the incentive for collaboration with Continuums of Care and may result in Applications not fully aligned with the goals and priorities of each CoC. They recommend that the Department continue to allow for the CoCs to conduct local competition for funds. Commenter (3) noted that ceasing local competition is an unfair tactic; it leaves no room for any new programs; could lead to an ineffective program; it will decrease the number of clients served and services provide as it will cause programs to cease to exist or reduce the number of clients served.

STAFF RESPONSE: Under the proposed rule to recommend for adoption in the same action as this recommendation for repeal, CoC Lead Agencies continue to have an opportunity to provide input in the determination of which Applicants receive ESG funding. The threshold criteria (10 TAC §7.36(a)(7)) requires each Applicant to consult and obtain evidence from the CoC Lead Agency in the region indicating that the Applicant consulted with the CoC and that the CoC Lead Agency agrees that the Application meets CoC priorities. Staff has carefully reviewed the comments and staff does not recommend any changes based on these comments.

The Board adopted the final order adopting the repeal on June 16, 2022.

STATUTORY AUTHORITY. The adopted repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the adopted repealed sections affect no other code, article, or 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.

Filed with the Office of the Secretary of State on June 17, 2022.

TRD-202202290

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Effective date: July 7, 2022

Proposal publication date: March 25, 2022

For further information, please call: (512) 475-3959



10 TAC §§7.31 - 7.44

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 7, Subchapter C, Emergency Solutions Grants (ESG) Program and the Emergency Solutions Grant CARES (ESG CARES). Sections 7.33, 7.34, and 7.36 - 7.42 are adopted with changes to the proposed text as published in the March 25, 2022, issue of the *Texas Register* (47 TexReg 1565), and will be republished. Sections 7.31, 7.32, 7.35, 7.43, and 7.44 are adopted without changes to the text as proposed and will not be republished.

The purpose of the new subchapter is to adopt a new rule that updates requirements related to the requirements of and the award process for the ESG and ESG CARES Programs, including updating eligible program expenses, establishing a process for continuity of awards to some Subrecipients, and updating scoring processes and award procedures for competitive award cycles.

Tex. Gov't Code §2001.0045(b) does not apply to the rule adoption for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the new rule would be in effect:

1. The rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to an existing activity, administration of the Emergency Solutions Grants or Emergency Solutions Grants CARES programs.
2. The new rule does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.

3. The rule does not require additional future legislative appropriations.

4. The rule will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.

6. The rule will not expand, limit, or repeal an existing regulation.

7. The rule will not increase or decrease the number of individuals subject to the rule's applicability.

8. The rule will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, Ch. 2306.

1. The Department has evaluated this rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. There are no small or micro-businesses subject to the rule because these funds are limited to units of local government or designated nonprofits per 10 TAC §7.35 for the programs.

3. The Department has determined that based on the considerations in item two, above, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The rule does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the new rule has no economic effect on local employment because this rule will channel funds, which may be limited, only to municipalities and nonprofits; it is not anticipated that the amount of funds would be enough to support additional employment opportunities, but would add to the services provided. Alternatively, the rule would also not cause any negative impact on employment. Therefore no local employment impact statement is required to be prepared for the rule.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that no impact is expected, there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new subchapter is in effect, the public benefit anticipated as a result of the new subchapter will be a rule that has greater clarity into the processes and definitions of the administration of homeless programs. There will not be any economic cost to any individuals required to comply with the new subchapter because the processes described by

the rule have already been in place through the rule found at this subchapter being repealed.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new subchapter is in effect, enforcing or administering the new subchapter does not have any foreseeable implications related to costs or revenues of the state or local governments because the costs for administering the program is included in eligible activities.

SUMMARY OF PUBLIC COMMENT AND STAFF REASONED RESPONSE. The Department accepted public comment between March 25, 2022, and April 25, 2022, Comments regarding the proposed rule were accepted in writing and by e-mail with comments received from: (1) Beth Rolingson of Advocacy Outreach, (2) Megan Ball of City of Denton, (3) Mark Smith of Coalition for the Homeless, (4) Sarah Eckel of Concho Valley Community Action Agency, (5) Chelsey Viger of South Alamo Regional Alliance for the Homeless, (6) Eric Samuels of Texas Homeless Network, (7) Sylvia Frank, Lesslie Naj, Anitras Robinson, and Sharon Ventimiglia of Tracy Andrus Foundation.

§7.32 (f)(2) Use of ESG Funds

COMMENT SUMMARY: Commenter (4) stated that the proposed rule will hamper the ability for new shelters to be created, which is a significant capital expense. Commenter (6) asserted that the proposed rule is directly at odds with the expectations set by HUD, citing HUD's ESG Program Basics as support. Additionally, they state that since inception ESG funds have been a reliable source of funds for the creation of new shelters and that historically these funds have been used for shelter rehabilitation, renovation, and conversion. Commenter (6) asserted that the proposed alternative funding streams such as HOME-ARP and HHSP, present significant challenges to the Balance of State (BoS). Most Subrecipients began planning for the use of HOME ARP funds prior to publication of the draft rule, therefore these funds may not be available for new shelter and it is unlikely that communities within the BoS would ever be recipients of HHSP funds. Commenter (6) stated the Department is presenting conflicting information by allowing for a multiyear NOFA while indicating a one year contract creates an impediment to use ESG funds for new shelters. Commenter (7) stated that funds are needed to expand and renovate shelters within their community.

STAFF RESPONSE: This change is a conforming change to 10 TAC §7.3, HHSP Construction Activities. The comments have been considered and response was provided; staff does not recommend any changes in response to these comments.

§7.32(e)(5) Use of ESG Funds

COMMENT SUMMARY: Commenter (6) noted a purchase or lease of a vehicle is important in the rural parts of the state where public transit is nonexistent and community services are geographically distant.

Commenter (7) noted that not allowing vehicle purchase or lease will damage the progress for their organization. The lack of transportation is a disadvantage for their community, it makes it difficult for caseworkers to coordinate transportation access to employment, education, healthcare, and social services.

STAFF RESPONSE: The Department is conscientious of the lack of reliable public transportation throughout the more rural parts of Texas. Providing transportation to the communities we serve is important; ESG funds will remain available in the pro-

posed rule for use in the reimbursement of mileage for any employee transporting Program Participants, costs for the use of public transportation for Program Participants, and for the Subrecipient's employee should they need to accompany the Program Participant. If a Subrecipient has an agency vehicle purchased with other funds, ESG funds may be used for maintenance, insurance costs, and for the reimbursement of mileage to the program used to fund the purchase of the vehicle (while using the vehicle for an ESG activity).

General procurement standards (2 CFR §200.318(d)) require that Subrecipients perform an analysis of leasing versus purchasing a vehicle to determine the most economical approach. If the analysis results indicate that the purchase of a vehicle is the most economical approach, allowing for the lease of the vehicle would be in violation of Federal Cost Principles.

An additional impediment to allowing for the purchase of vehicles with ESG funds is that there is no guarantee of ongoing funding. If ESG funding is not awarded to the same Subrecipient in a subsequent year, the vehicle remains under the responsibility of the Department until it reaches a unit fair market value of \$5,000 or less. If the vehicle remains with the Subrecipient past the period of performance, all requirements for Use, Management, and Disposition will remain without the guarantee of funding.

10 TAC §1.404(f) requires that all vehicles considered for purchase with state or federal fund must be pre-approved by the Department. Staff reviewed Subrecipient reporting from prior ESG Contracts and did not find an instance where ESG funds were requested for the purchase of a vehicle, although ESG CARES funds have been used for the lease of vehicles. Staff has carefully reviewed the comments, staff does not recommend any changes based on these comments.

§7.33(e) Apportionment of ESG Funds

COMMENT SUMMARY: Commenter (2) noted concern that the proposed rule change will decrease the number of Subrecipients eligible for a Continuing Award and stated that creation of new programs to address gaps in services as well as funding for such programs are critical. Commenter (4) noted the proposed changes would significantly hamper the ability for new entities to provide services, and recommends for the reduction of the 70% set aside for continuing awards in order to allow for new projects to be competitive. Commenter (6) requested the data used to determine the 70% allocation amount for Continuing Awards, the number of Subrecipients that would qualify, and the percentage of ESG funds those projects would account for. Commenter (6) requested clarification of what would happen if the total of eligible continuing award amount exceeded 70% of the funds available within a specific region and under which circumstance(s) the set-aside amount will exceed 70%. In addition, they remarked that the rule language and the explanation within the Board materials seemed to be contradictory; the rule notes a minimum of 70% of funds will be held for continuing awards while the explanation implies that continuing awards and competitive awards will always have a 70%/30% split.

STAFF RESPONSE: The proposed rules give the Applicant the option to determine which program activity would best suit their communities' needs. A Subrecipient that is eligible for a Continuing Award may decide not to accept the award and instead participate in the Competition for Funds, if that is what would best serve their community. If, due to performance requirements, there are insufficient entities eligible to receive a Continuing Award even after the allowable increase to 115% of

the prior award, adjusted for allocation increases, the formula allocation amount for the CoC Region will remain in the CoC region and made available through the Competition for Funds.

The set-aside amount was presented for discussion and feedback during the roundtables. The feedback received indicated that if we were to use a percentage amount to, at a minimum, consider the percentage amount be sufficiently high enough to meet the prior award. The Department conducted a preliminary analysis, and it appears that 27 of 51 2021 ESG Subrecipients may currently be eligible for an offer of a Continuing Award, pending full review of all eligibility factors, and their total Contract awards were slightly greater than 50% of the total ESG allocation to Subrecipient awards. It is expected that year over year, more Subrecipients will become eligible for an offer of a Continuing Award; therefore, the flexibility to increase the percentage set-aside will provide Subrecipients eligible for a Continuing Award as close to the original amount of their prior Contract Award, while at the same time leaving a meaningful amount of funds available to conduct Competitive Awards. A 70% set aside is a minimum and not a maximum funding level, the actual percentage withheld for Continuing Awards will be published in the NOFA and may fluctuate year to year, with primary focus on funding the Continuing Awards as fully as possible, given any changed in the allocation from HUD.

The rule indicates that the minimum percentage amount to be withheld for continuing awards to be 70%. The Board Action Request is a summary to be presented to the board, the oral presentation and published proposed rule included the minimum percentage rate at least 70% in both cases. For clarification, not less than 70% of ESG funding allocated to the CoC regions shall be initially withheld from competition for use by Subrecipients eligible for Continuing Awards, the remaining percentage will be made available for Competitive Awards. Staff has carefully reviewed the comments, there was no request for a change by Commenter (6), and staff does not recommend any changes based on these comments.

§7.33(f) Apportionment of ESG Funds

COMMENT SUMMARY: Commenters (2) and (3) are in support of the proposed rule. Commenter (4) notes this would reduce the incentive for entities to begin a process of building a holistic program, as they would be required to resubmit a new Application if new components were added. They noted that this is cumbersome and does not provide an incentive for entities to fill in service gaps in their communities. Commenter (4) requests the Department return to biennial programs. Commenter (6) is generally supportive of the reduction in administrative burden on Subrecipients through the introduction of Continuing Awards; however, they noted concerns regarding the specifics of the proposal: namely, that the vagueness of the language governing when a NOFA could be released left the possibility of it being released anywhere from once a year to "once a century, obfuscat[ing] straightforward guidance." They further state that although a multiyear funding cycle would reduce some of the administrative burden on Subrecipients, for underserved communities it means they will have to wait longer to have an opportunity to apply for the funds they need to build out their programs.

STAFF RESPONSE: Staff has carefully reviewed the comments and while there are other opportunities to comment on the distribution method utilized by TDHCA, including the One Year Action Plan, staff recommends a change to the proposed rule to reflect a NOFA will be released on an annual basis.

§7.34(c) Continuing Awards

COMMENT SUMMARY: Commenter (1) is in favor of the updated rule. Commenter (7) stated that providing 70% of ESG funds to support nonprofits that have been in business/funded for the last four years is an unfair tactic; could lead to an ineffective program; it will decrease the number of clients served and services provide as it will cause programs to cease to exist or reduce the number of clients served. Commenters (4) and (7) stated the proposed changes would significantly hamper the ability for new entities to provide services; and Commenter (6) noted a concern that such awards will place smaller communities that lack an established homeless response system at a disadvantage. Commenter (4) stated that eligibility for a continuing award excludes ESG recipients who were awarded funds under ESG CARES and entities who have newer programs under annual ESG. They request that the Department allow for ESG CARES Subrecipients and newer ESG Annual recipients be considered for the continuing award funds

STAFF RESPONSE: The proposed rules do not prohibit any nonprofit or unit of local government from applying for ESG funds. All funds, as with the current rule, will be first made available within each CoC region. One eligibility requirement unique to Continuing Awards is that Subrecipients who were awarded at least three of the last four ESG allocations and have an established partnership with TDHCA that evidences high performance are prioritized for award. However, Subrecipients which do not meet the eligibility requirements to receive an offer of a Continuing Award may submit an Application in the Competitive Awards cycle.

If funds allocated to a CoC region remain available after Continuing Awards and Competition for Funds has been completed, those funds will then be available statewide. If any funds remain after recommendations for all eligible Applications in the regional funding competition, such funds shall collapse and be made available in the statewide competition.

The inclusion of ESG CARES contracts in the determination of Continuing Awards may penalize the annual ESG awards, as they are not comparable to an annual ESG Contract. The available funds and waivers do not allow for an equitable comparison between annual and CARES Subrecipients. Subrecipients and prospective Applicants who do not meet the eligibility requirements to receive an offer of a Continuing Award are may submit an Application in the Competitive Awards cycle. Staff has carefully reviewed the comments, and does not recommend any changes based on these comments.

§7.34(c)(6) Continuing Awards

COMMENT SUMMARY: Commenter (2) is in favor of the rule update. Commenter (6) noted the proposed threshold requirements for continuing awards could disincentive growth by placing a Subrecipient in the position to choose whether to accept a continuing award or expand to a different service and participate in a competition for funds.

STAFF RESPONSE: Staff has evaluated the public comment and is recommending to amend the language to allow for a Subrecipient of a Continuing Award to participate in the Competitive application process so long as it is not for the same Program Participant service(s) in which they are funded for under a Continuing Award.

§7.34(c)(7) Continuing Awards

COMMENT SUMMARY: Commenter (1) noted the unusual barrier providers of Homeless Prevention services faced in expending those funds due to the Eviction Moratorium, availability of other resources such as Texas Rent Relief, making them ineligible to receive ESG assistance. They recommend that an average expenditure rate from the prior 3 or 4 years be used to determine whether the Applicant met a 95% expenditure rate.

STAFF RESPONSE: Staff is empathetic to the challenges Homeless Prevention providers faced with the protections that were in place during the COVID-19 pandemic. However, the goal of a Continuing Award is to fund the Subrecipients for the Program Participant services in which they performed with a high rate of success. Staff has carefully reviewed the comments; staff does not recommend any changes based on these comments.

§7.34(e) Continuing Awards

COMMENT SUMMARY: Commenter (3) is in favor of the update to the rule.

STAFF RESPONSE: Staff appreciates the comment in support of the rule update, no change to the rule was requested.

§7.34(g) Continuing Awards

COMMENT SUMMARY: Commenter (2) is in favor of the update to the rule.

STAFF RESPONSE: Staff appreciates the comment in support of the rule update, no change to the rule was requested.

§7.39(1)(B), (2) Uniform Selection Criteria

COMMENT SUMMARY: Commenter (3) is in favor of the update to the rule.

STAFF RESPONSE: Staff appreciates the comment in support of the rule update, no change to the rule was requested.

§7.40 Competitive Program Participant Services Selection Criteria

COMMENT SUMMARY: Commenter (3) noted that the removal of additional points for Applications that receive support from the local CoC could result in awards to Applications that are not fully aligned with the goals and priorities of the local CoC. Commenter (6) stated that the proposed rules run counter to HUD's expectations that ESG Recipients and Subrecipients collaborate with the CoCs. Commenter (5) and (6) noted that this collaboration is imperative for maintaining high performance standards and facilitating positive outcomes for Program Participants. They propose requiring ESG Applicants obtain a letter of support from their local CoC as a threshold requirement. Commenter (6) proposed the use of a form similar to HUD's requirement for Applicants of CoC funding, "Certification of Consistency with Consolidated Plan."

STAFF RESPONSE: CoC Lead Agencies continue to have an opportunity to provide input in the determination of what Applicants receive ESG funding. It is a threshold criteria (10 TAC 7.36(a)(7)) that each Applicant consult and obtain evidence from the CoC Lead Agency in the region indicating that the Applicant consulted with the CoC and that the CoC Lead Agency agrees that the Application meets CoC priorities. Staff has carefully reviewed the comments; staff does not recommend any changes based on these comments.

§7.40(b)(3),(c)(3),(d)(3),(e)(3) Competitive Program Participant Services Selection Criteria

COMMENT SUMMARY: Commenter (3) is in favor of the update to the rule.

STAFF RESPONSE: Staff appreciates the comment in support of the rule update, no change to the rule was requested.

§7.40(b)(4), (c)(4), (d)(4), (e)(4) Competitive Program Participant Services Selection Criteria

COMMENT SUMMARY: Commenter (2) noted that nonprofits that are not mental health focused agencies may not have additional funding that would be needed to offer competitive salary for individuals who are licensed mental health professionals.

STAFF RESPONSE: Though the Department understands the budgetary constraints nonprofits operate under, the rule update would not prohibit an Applicant from applying for funds as the proposed scoring criterion for staff qualifications regarding a licensed mental health provider is not a threshold requirement. Staff has carefully reviewed the comments, and does not recommend any changes based on these comments.

The Board adopted the final order adopting the new rule on June 16, 2022.

STATUTORY AUTHORITY. The new subchapter is proposed pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed new sections affect no other code, article, or statute.

§7.33. Apportionment of ESG Funds.

(a) The Department will retain funds for Administrative activities. Funds for Administrative or Program Participant services may be retained by TDHCA to Subgrant specific ESG activities, such as legal services or as operating costs for non-congregate emergency shelters funded by the Department's allocation of funds from the HOME American Rescue Plan Act.

(b) If the Department receives ESG funding from HUD that has additional activity or geographic restrictions, the Department may elect not to use the Allocation Formula. Funds retained under subsection (a) of this section are not subject to the Allocation Formula.

(c) ESG funds not retained for the purposes outlined in subsections (a) and (b) of this section will be made available by CoC region based on an Allocation Formula. Allocation Formula factors noted in paragraphs (1) - (4) of this subsection will be used to calculate distribution percentages for each CoC region as follows:

(1) Fifty percent weight will be apportioned to renter cost burden for Households with incomes less than 30% Area Median Family Income (AMFI), as calculated in the U.S. Department of Housing and Urban Development's (HUD) Comprehensive Housing Affordability Strategy;

(2) Fifty percent weight will be apportioned for the number of persons in poverty from the most recent five-year estimate of the American Community Survey released by the U.S. Census Bureau;

(3) Fifty percent weight will be apportioned to point-in-time counts, which are annual counts of sheltered and unsheltered persons experiencing homelessness on one day during the last two weeks of January as required by HUD for CoCs. If a CoC did not conduct a point-in-time count or only completed a partial point-in-time count, the results of the most recent point-in-time count conducted that covered both the sheltered and unsheltered persons experiencing homelessness will be utilized for the purposes of the Allocation Formula; and

(4) Negative 50% weight will be apportioned based on a total of all ESG funding allocated by HUD to local jurisdictions within the CoC region, and ESG funding awarded by the Department within the region from the previous fiscal year.

(d) Each CoC region is allocated a minimum amount of \$100,000. This is accomplished by taking the amounts of all regions with over \$100,000 during the initial allocation and redistributing a proportional share to the regions with less than \$100,000. If the Department distributes by Allocation Formula less than the amount required to provide all regions with \$100,000, then the funds will be split evenly among the CoC regions.

(e) Not less than 70% of ESG funding allocated to the CoC regions shall be initially withheld from competition for use by Subrecipients eligible for continuing awards as described under §7.34 of this subchapter (relating to Continuing Awards).

(f) Those ESG funds allocated based on the formula in subsection (c) of this section will be made available for the provision of Program Participant services; they will be made available through a NOFA for both continuing awards described in subsection (e) of this section and for competitive Applications which will be released on an annual basis.

(1) Not more than 60% of total ESG funds under direct Subgrants, continuing, and competitive awards may be awarded for the provision of street outreach and emergency shelter activities. Funds will first be made available to direct Subgrants, then continuing awards. Remaining funds made available for competitive awards.

(2) Contract funding limits include the funding request for all Program Participant services proposed in the Application, HMIS, and Administrative funds.

(A) Funding request minimums and maximums will be noted in the NOFA.

(B) Funds awarded for HMIS are limited to 12% of the amount of funds awarded for Program Participant services.

(C) Administrative activities are limited to three percent of the amount of funds awarded for Program Participant services.

(g) ESG funds that have been deobligated by the Department or that have been voluntarily returned from an ESG Contract may be reprogrammed at the discretion of the Department, and are not included in the Allocation Formula or award process detailed in subsections (c) - (f) or (h) - (j) of this section.

(h) An ESG Applicant may have the right to appeal funding decisions per §1.7 of this title (relating to Appeals Process).

(i) The Department reserves the right to negotiate the final Contract amount and local Match requirement with an Applicant.

(j) Percentages described in this subchapter will not be rounded up to the nearest whole number.

§7.34. Continuing Awards.

(a) TDHCA will withhold a portion of funds from the competition for funds to be used for continuing awards to prior Subrecipients of its ESG allocation, not including ESG CARES or Contracts for reallocated funds from prior years only, in accordance with §7.33 of this subchapter (related to Apportionment of ESG Funds).

(b) ESG funds withheld for continuing awards by the Department will be allocated in accordance with the Allocation Formula, and are not subject to the award process and requirements outlined in §7.38 of this subchapter (relating to Award and Funding Process for Allocated Funds).

(c) The subsequent years of allocation of ESG funds received by the Department will be offered to eligible Subrecipients of ESG funds (not including ESG CARES) that were awarded funds from at least three of the prior four allocations of ESG. An ESG Subrecipient is eligible for an offer of a continuing award of funds if the Subrecipient meets the following requirements:

(1) Submits an abbreviated Application for funding within 21 days of the request from the Department as promulgated by the Department;

(2) Resolves administrative deficiencies within the timeframe and in the manner outlined in §7.37 of this subchapter (relating to Application Review and Administrative Deficiency Process for Department NOFAs);

(3) Submitted four or fewer delinquent monthly reports for each of their active ESG Contracts (not including ESG CARES) for reports due in the six month period preceding the application submission deadline;

(4) Satisfies the requirements of the Previous Participation Review as provided for in §1.302 of this title (relating to Previous Participation Reviews for Department Program Awards Not Covered by §1.301 of this Subchapter);

(5) Does not have unresolved monitoring findings in any TDHCA funded program after the corrective action period;

(6) Does not apply for funds within the same COC Region under the competitive Application process for Program Participant service(s) in which they are already funded for a Continuing Award;

(7) Expended a minimum of 95% of their contracted award amount, as amended in their most recently closed ESG Contract (not including ESG CARES);

(8) Did not voluntarily deobligate an amount that exceeds 5% of their contracted award amount, as amended for increases due to reallocated funds, on their most recently closed ESG Contract (not including ESG CARES); and

(9) Is approved by the Department's Governing Board.

(d) Any offer of ESG funds made under this section is contingent on retaining similar terms and conditions or agreeing to adjustments reflective of funding amount, including but not limited to performance and match requirements, in the active ESG annual Contract issued under a NOFA.

(e) Offers of funding will be based on the prior year's award, excluding Contracts comprised exclusively of reallocated funds, before amendments, and will be proportionally increased or decreased in proportion to the total amount of ESG funds available subject to the allocation formula.

(f) If additional funds are made available due to reduced continuing awards in the region, awards may be increased proportionate to the increased withheld funds. In any event, an increased award from funds made available from reduced awards may not exceed 115% of the award amount under the allocation or the maximum award amount established in the NOFA.

(g) Funds that remain available after all eligible continuing awards have been accepted will be transferred to the competition for funds for the regional competition in accordance with §7.38 of this subchapter.

§7.36. General Threshold Criteria.

(a) Applications submitted to the Department are subject to general threshold criteria. Applications which do not meet the general

threshold criteria or which cannot resolve an administrative deficiency related to general threshold criteria are subject to termination. Applicants applying directly to the Department to administer the ESG Program must submit an Application on or before the deadlines specified in the NOFA, notification of a direct Subgrant, or notification of availability of a continuing award, and must include items in paragraphs (1) - (13) of this subsection:

(1) Application materials as published by the Department including, but not limited to, program description, budget, and performance statement.

(2) An ESG budget that does not exceed the total amount available within the CoC region, other geographic limitation, Subgrant, or offer of continuing award, as applicable.

(3) A copy of the Applicant's written standards that comply with the requirements of 24 CFR §576.400 and certification of compliance with these standards. Any occupancy standard set by the Subrecipient must not conflict with local regulations or Texas Property Code §92.010.

(4) A copy of the Applicant's policy for termination of assistance that complies with the requirements of 24 CFR §576.402 and certification of compliance with these standards.

(5) A Service Area which consists of at least the entirety of one county or multiple counties within the CoC region under which Application is made, unless a CoC region does not include an entire county. When the CoC region does not encompass at least the entirety of one county, the Service Area must encompass the entire CoC region. The Service Area selected within an Application must be fully contained within one CoC region.

(6) Commitment in the budget to the provision of 100% Match, or request for a Match waiver, as applicable. Match waivers will be considered by the Department based on the rank of the Application. Applicants requesting an award of funds in excess of the minimum award amount as described in the NOFA for Program Participant services are not eligible to request or receive a Match waiver. In the event that the Match waivers requested exceed \$100,000, the waivers will be considered only for the highest scoring eligible Applications, subject to availability of excess Match provided by ESG Applicants. Applicants that do not receive the waiver and are unable to provide a source of Match will be ineligible for an ESG award.

(7) Evidence from the CoC Lead Agency in the region that the Applicant consulted with the CoC in the preparation of their ESG Application and that the CoC Lead Agency agrees that the Application meets CoC priorities for serving persons experiencing homelessness and/or persons At-risk of Homelessness.

(8) Applicant certification of compliance with State and federal laws, rules and guidance governing the ESG Program as provided in the Application.

(9) Evidence of a Unique Entity Identifier (UEI) number for Applicant.

(10) Documentation of existing Section 501(c) tax-exempt status, as applicable.

(11) Completed previous participation review materials, as outlined in Chapter 1, Subchapter C of this title (relating to Previous Participation), for Applicant.

(12) Local government approval per 24 CFR §576.202(a)(2) for an Applicant that will be providing shelter activities with ESG or as ESG Match, as applicable. This documentation must be submitted not later than 30 calendar days after the Application

submission deadline as specified in the NOFA, or prior to execution of a Contract for Subrecipients subject to a direct Subgrant, or continuing award. Receipt of the local government approval is a condition prior to the Department obligating ESG funding.

(13) A resolution or other governing body action from the Applicant's direct governing body which includes:

(A) Authorization of the submission of the Application;

(B) Title of the person authorized to represent the entity and who also has signature authority to execute a Contract; and

(C) Date that the resolution was passed by the governing body, which must be not older than 12 months preceding the date the Application is submitted.

(b) An Application must be substantially complete when received by the Department. An Application may be terminated if the Application is so unclear or incomplete that a thorough review cannot reasonably be performed, as determined by the Department. Such Application will be terminated without being processed as an administrative deficiency. Specific reasons for a Department termination will be included in the notification sent to the Applicant but, because the termination may occur prior to completion of the full review, will not necessarily include a comprehensive list of all deficiencies in the Application. Termination of an Application may be subject to §1.7 of this title (relating to Appeals Process).

§7.37. Application Review and Administrative Deficiency Process.

(a) The Department will accept Applications on an ongoing basis during the Application acceptance period as specified in the NOFA or notification of an offer of a continuing award, as applicable. Applications will be reviewed for threshold criteria and selection criteria, if applicable, administrative deficiencies, and competitive Applications will be ranked based upon the score of the Application as determined by the Department upon completion of the review.

(b) The administrative deficiency process allows the Applicant to provide additional information with regard to an Application after the Application acceptance period has ended, but only if it is requested in writing by Department staff. Staff may request that an Applicant provide clarification, correction, or non-material missing information to resolve inconsistencies in the original Application or to assist staff in evaluating the Application. Staff will request such information via a deficiency notice. Staff will send the deficiency notice via email and responses must be in kind unless otherwise defined in the notice. A review of the Applicant's response may reveal that additional administrative deficiencies are exposed or that issues initially identified as an administrative deficiency are actually determined to be beyond the scope of an administrative deficiency process, meaning that they are in fact matters of a material nature not susceptible to be resolved. For example, a response to an administrative deficiency that causes a new inconsistency which cannot be resolved without reversing or eliminating the need for the first deficiency response would be an example of an issue that is beyond the scope of an administrative deficiency. Department staff will make a good faith effort to provide an Applicant confirmation that an administrative deficiency response has been received and/or that such response is satisfactory. Communication from staff that the response was satisfactory does not establish any entitlement to points, eligibility status, or to any presumption of a final determination that the Applicant has fulfilled any other requirements as such is the sole determination of the Department's Board.

(c) An Applicant may not change or supplement any part of an Application in any manner after submission to the Department, except in response to a direct written request from the Department to remedy an administrative deficiency or by amendment of an Application after

the Board approval of an ESG award. An administrative deficiency may not be cured if it would, in the Department's determination, substantially change an Application including score, or if the Applicant provides any new unrequested information to cure the deficiency.

(d) The time period for responding to a deficiency notice commences on the first day following the deficiency notice date. If an administrative deficiency is not resolved to the satisfaction of the Department by 5:00 p.m. on the seventh calendar day following the date of the deficiency notice, then one point shall be deducted from the selection criteria score for each additional day the deficiency remains unresolved. If administrative deficiencies are not resolved by 5:00 p.m., Austin local time on the fourteenth calendar day following the date of the deficiency notice, then the Application shall be terminated.

§7.38. *Competitive Award and Funding Process.*

(a) An Application may be submitted requesting funds for Program Participant services under street outreach, emergency shelter, homeless prevention, and/or rapid re-housing. Each Application submission will include one uniform Application with information applicable across all Program Participant service types, and then information on each Program Participant service requested. Each Program Participant service reflected in an Application will be treated as a separate Application, assigned a separate Application number per service type, and will be scored and ranked separately for each service type selected. Applicants may be awarded funds for one or more Program Participant services in accordance with this section. Because each Program Participant service is reviewed separately and competes separately, an award of funds for provision of one Program Participant service does not affect an award of funds in any other Program Participant service reflected in that same Application submission.

(b) Applications submitted directly to the Department for under this section will receive points based on experience, program design, budget, previous performance, and performance measures. Applications will be scored and ranked based on selection criteria described in this subchapter.

(c) Applicants for a competitive award will be required to submit a self-score within the Application. In no event will the points awarded to the Applicant exceed the point value of the self-score in any selection criterion.

(d) Tie breakers. Each Application submitted to the Department for a competitive award shall be assigned a number between one and the total number of applications. The number assignment will be determined in a random selection process to occur immediately following the close of the application acceptance period, and Applicants will be notified of said number assignment as soon as possible thereafter. The randomly assigned numbers will be used to resolve ties, with the highest assigned number having the highest priority.

(e) Partial awards. In order to maintain funding within the Allocation Formula amounts designated for each CoC region as determined in this subchapter, an Applicant for a competitive award may be offered a partial award of their requested funds. An Applicant offered a partial award of funds must confirm their acceptance of a partial award, and submit updated information related to the reduction within seven calendar days following the date of notification. Scoring criteria may be updated based on the reduced funding request, but any changes to the scoring criteria must allow the Application to maintain its rank.

(f) Regional Funding Competition. Funding will be recommended first for Applicants within the CoC region up to the Allocation Formula amount designated for the CoC region as determined in this subchapter.

(1) Eligible Applications will be ranked in descending order by score within the CoC region which the Application proposes to serve. Subsection (d) of this section will be used to determine the priority of tied scores.

(2) ESG funds allocated to each CoC region will be awarded starting with the highest ranking Application and continue until the funds allocated for that CoC region are fully utilized, but not exceeded, or until the Applicant for the last Application to be recommended in the region declines an offer of a partial award.

(3) Applications proposing street outreach or emergency shelter will be ranked alongside all Applications in the region, however, a recommendation for a full award of an Application for street outreach or emergency shelter will not be made through the first level of funding if funding recommendations in the CoC region for street outreach and emergency shelter will exceed 60% of the funding remaining in the CoC region after direct Subgrants and acceptance of continuing awards. Applications proposing street outreach and emergency shelter services but causing awards for such services in the region to exceed 60% of the available funding in the region, will be offered a partial award of up to the amount remaining to reach 60% for the region. If no funds remain available that would not exceed 60% at the regional level for a partial award, or if they decline such partial award, the Application will be passed over and recommendation of funding would proceed to the next highest scoring Application(s) in the region in order to fully fund the Formula Allocation amount for the region. Applications that were passed over for funding may be eligible to compete in the statewide funding competition, if no more than 60% of funds have been awarded for street outreach and emergency shelter in the total allocated funds.

(4) A partial award may be offered to the last highest ranking Application which is otherwise eligible for funding within the regional competition to ensure that the amount of funds recommended for a region does not initially exceed the amount identified in the Formula Allocation. Partial awards will be offered under the regional competition only if the funding remaining in the CoC region is more than \$30,000.

(A) The Applicant or Applicants that accept an offer of a partial award may be required to amend the Application if the reduction in funds is expected to impact scored items and to adjust performance deliverables based on the reduced amount of funding. The revised score based on the partial award must still ensure the Application ranking would not be affected. If a partial award or the Applicant's subsequent adjustments results in a reduced score that alters their scoring rank within the regional competition, the opportunity to be funded from the first level of funding recommendations will not be offered to the Application.

(B) The Applicant may decline the partial award of funds and instead request to be included for consideration in the statewide competition.

(g) Statewide Funding Competition. If any funds remain after recommendations for all eligible Applications in the regional funding competition, such funds shall collapse and be made available in the statewide competition.

(1) All eligible Applications not recommended to be awarded under the regional funding competition will be ranked in descending order of score with the highest scoring unfunded Application, regardless of region, having the highest priority rank. Subsection (e) of this section will be used to determine the outcome of tied scores.

(2) Funds will be awarded in the statewide funding competition starting with the highest ranked Application and continuing until

no funds remain available to award or until there are no eligible Applications left to be recommended for funding.

(3) Applications proposing street outreach or emergency shelter will be ranked alongside all Applications. If the 60% of the allocated funds has been awarded to Applications proposing street outreach and emergency shelter, Applications proposing these activities will not be recommended and will be passed over to fund Applications proposing homeless prevention or rapid re-housing.

(4) The final award in the statewide funding competition and the 60% capped street outreach and emergency shelter funding may be a partial award if an Application cannot be fully funded.

(A) An Applicant that accepts an offer of a partial award may be required to amend the Application if the reduction in funds is expected to impact scored items and to adjust performance deliverables based on the reduced amount of funding. The revised score based on the partial award must still ensure the Application's ranking would not be affected. Partial awards may only be offered if the remaining funding exceeds the minimum award amount as stated in the NOFA.

(B) The Applicant may decline a partial award of funds. Applicants that decline a partial award of funding within the statewide competition will be withdrawn from competition, as there are not sufficient remaining funds to award the Application.

(C) If a partial award or the Applicant's subsequent adjustments result in a reduced score that alters the scoring rank or an Applicant declines a partial award, the next highest ranked Application will be presented with the opportunity to be funded.

(h) If there are still funds available after the statewide funding competition, the Department may offer and recommend award amounts in excess of the funds requested and in excess of the award amount limits identified in §7.33(c) of this subchapter (relating to Apportionment of ESG Funds), starting with the highest scoring Applications already identified to be recommended for an award, not to exceed an award more than 50% greater than their original request. The Department will provide notice of the proposed increase to the impacted Applicants. The budget and Performance targets would increase proportionally to the additional funding received. An Applicant will have the opportunity to accept or reject the recommendation for increased funding prior to final award by the Department.

(i) The Department reserves the right to negotiate the final Contract amount and local Match with a Subrecipient.

§7.39. *Uniform Selection Criteria.*

An Application for funding allocated in accordance with §7.33(b) of this section (relating to Apportionment of ESG Funds) and made to the Department may be awarded points under the following uniform selection criteria. The total of the score under this part will be the uniform Application score. The uniform Application score will be comprised of points awarded under each of the following criteria:

(1) Homeless participation. An Application may receive a maximum of three points for the participation of persons who are Homeless in the Applicant's program design. Points may be earned under subparagraphs (A) and (B) of this paragraph for a total of up to three points.

(A) An Application may receive a maximum of two points when at least one person who is Homeless or formerly Homeless is a member of or consults with the Applicant's policy-making entity for facilities, services, or assistance under ESG; and

(B) An Application may receive a maximum of one point when at least one person who is Homeless or formerly Homeless is employed in a paid position with duties that include constructing,

renovating, maintaining, or operating the Applicant's ESG facilities, or providing services for occupants of its ESG facilities.

(2) Organizational or management experience. An Application may receive a maximum of eight points for an Applicant or its management staff's experience administering federal or State homeless programs.

(A) An Application may receive a maximum of three points for an Applicant or its management staff with at least two but less than four years of experience;

(B) An Application may receive a maximum of five points for an Applicant or its management staff with at least four but less than six years of experience; or

(C) An Application may receive a maximum of eight points for an Applicant or its management staff with six or more years of experience.

(3) Percentage of prior ESG awarded funds expended. An Application may receive a maximum of six points for the Applicant's past expenditure performance of ESG funds proportionate to the award of funds from TDHCA to the Applicant. This will apply to any and all ESG Contract(s), exclusive of ESG CARES Contracts, administered by the Applicant that were closed within 12 months prior to the date of the Application deadline established in the by the Department. Contract Expenditures will be averaged among all ESG Contracts that were closed within 12 months of the Application deadline, without requiring an amendment if the Applicant was awarded multiple Contracts. The percentage of ESG funds expended will be calculated utilizing the amount of the Contract as of its closing as stated in the Contract prior to amendments, except where the Applicant voluntarily return funds in accordance with this subchapter. Expenditure will be defined as the Applicant having reported the funds as expended. Applications may receive:

(A) Two points if the Applicant expended 91-94% of its prior ESG Contract funds as of its closing as stated in the Contract prior to amendments;

(B) Three points if the Applicant expended 95% to less than 100% of its prior ESG Contract funds as of its closing as stated in the Contract prior to amendments; or

(C) Six points if the Applicant expended 100% of its prior ESG Contract funds as of its closing as stated in the Contract prior to amendments.

(4) Contract History on Reporting and percentage of Outcomes. An Applicant may receive a maximum of twelve points for its prior timeliness of reports and performance achieved for previously awarded ESG Contract(s), exclusive of ESG CARES Contracts, that closed within 12 months prior to the date of the Application deadline established by the Department. Points may be requested under subparagraphs (A) - (E) of this paragraph, not to exceed a total of ten points. The Outcome percentages will be averaged among all prior ESG Contracts, exclusive of ESG CARES Contracts, that closed within 12 months prior to the date of the Application deadline to determine the final percentage amount for this scoring criterion. Applications may receive points as follows:

(A) Two points if the Applicant submitted the last three reports on or before the Contract end date within the reports' respective reporting deadlines;

(B) Two points if the Applicant met 100% or more of their street outreach target of persons exiting to temporary or transitional or permanent housing destination;

(C) Two points if the Applicant met 100% or more of their emergency shelter exits to permanent housing;

(D) Two points if the Applicant met 100% or more of their Homeless prevention target for maintaining housing for three months or more;

(E) Two points if the Applicant met 100% or more of their rapid re-housing target for maintaining housing for three months or more; and

(F) Two points if the Applicant met 100% or more of their Match obligation.

(G) Twelve points if the Applicant has not previously been awarded an ESG Contract closed within 12 months prior to the date of the Application deadline.

(5) Monitoring history. Applications may receive a maximum of five points for the Applicant's previous ESG and ESG CARES monitoring history. The Department will consider the monitoring history for three years before the date that Applications are first accepted under the NOFA when determining the points awarded under this criterion. Findings that were subsequently rescinded will not be considered Findings for the purposes of this scoring criterion. Applications may be limited to a maximum of:

(A) Five points if the Applicant has not received any monitoring Findings, including Applicants with no previous monitoring history;

(B) Not more than three points if the monitoring history has a close-out letter that included Findings, but the Findings were not related to Household eligibility or violations of procurement requirements;

(C) Not more than two points if the monitoring history has a close-out letter that included Findings related to Household eligibility;

(D) Not more than one point if the monitoring history has a monitoring close-out letter that included Findings related to violations of procurement requirements; or

(E) Zero points may be requested under this criterion if the Applicant received a Finding resulting in disallowed costs in excess of \$5,000 which required repayment to the Department.

(6) Priority for certain communities. Applications may receive two points if at least one Colonia, as defined in Tex. Gov't Code §2306.083, is included in the Service Area identified in the Application. Applicants awarded points under this criterion will be contractually required to maintain a Service Area that includes at least one Colonia as identified on the Office of Attorney General's website.

(7) Previously unserved areas. Applications may receive a maximum of 10 points for provision of ESG services if at least one county in the Service Area included in the Application has not received ESG funds from the Department or directly from HUD within the previous federal funding year for services. Applications may receive a maximum (of ten points if at least one county within the Service Area as stated in the Application did not receive an award of ESG annual funds from the Department within the previous federal funding year.

§7.40. Competitive Program Participant Services Selection Criteria.

(a) An Application for competitive funding allocated under §7.33(b) of this subchapter (relating to Apportionment of ESG Funds), and made to the Department, may be awarded points for Program Participant services under each category. Points awarded for Program Participant services will be separately tabulated and added to the uniform

Application score to determine a score for each of the Program Participant services Applications submitted. All scoring criteria that are based upon measurable future performance expectations will be measured and expected to be fulfilled by being included as a performance requirement in the Contract should the Application be awarded funds.

(b) Street outreach. An Application proposing street outreach may receive points under the following criteria:

(1) Matching funds for street outreach. An Application may receive a maximum of three points if the Applicant commits Matching funds equal to or greater than 110% of the total ESG funds requested for street outreach.

(2) Street outreach serving Homeless Subpopulations. An Application may receive a maximum of five points by proposing to serve persons who are in a Homeless Subpopulation, as defined in §7.2(b)(34) of this chapter (relating to Definitions). An Applicant providing street outreach may receive a maximum of:

(A) One point based on a minimum target of 70% of persons served who are in one or more Homeless Subpopulation;

(B) Two points based on a minimum target of 80% of persons served who are in one or more Homeless Subpopulation;

(C) Three points based on a minimum target of 90% of persons served who are in one or more Homeless Subpopulation;

(D) Four points based on a minimum target of 95% of persons served who are in one or more Homeless Subpopulation; or

(E) Five points based on a minimum target of 100% of persons served who are in one or more Homeless Subpopulation.

(3) Street outreach exit to a positive housing destination. An Application may receive a maximum of five points based on the percentage of persons served within the 12 months prior to the Application due date who exited homelessness to a positive housing destination per HMIS data standards:

(A) Two points based on 25% of persons served with street outreach who exited to positive housing destinations;

(B) Three points based on 35% of persons served with street outreach who exited to positive housing destinations;

(C) Four points based on 45% of persons served with street outreach who exited to positive housing destinations; or

(D) Five points based on 55% of persons served with street outreach who exited to positive housing destinations.

(4) Street outreach staff qualifications. An Applicant may receive a maximum of six points if a member of the staff interacting with Program Participants in the street outreach component has one or more of the following qualifications:

(A) Two points if a member is a licensed mental health provider through the Texas Behavioral Executive Health Council;

(B) Two points if a member of staff is fluent in more than one language identified in the Language Access Plan; and

(C) Two points if program includes a paid staff member who has formerly experienced homelessness.

(5) Street outreach temporary/transitional/permanent housing target. An Application may receive a maximum of three points based on the percentage of persons targeted to be served with street outreach who will be placed in temporary, transitional or permanent housing. An Application may receive a maximum of:

(A) One point based on a minimum target of 35% of persons served with street outreach who will be placed in temporary housing;

(B) Two points based on a minimum target of 45% of persons served with street outreach who will be placed in temporary housing; or

(C) Three points based on a minimum target of 55% of persons served with street outreach who will be placed in temporary housing.

(6) Street outreach services. An Application may receive a maximum of five points based on the number of street outreach services provided through ESG or other funds including engagement, case management, emergency health services, emergency mental health services, and transportation services. Emergency health services and emergency mental services may only be provided by ESG funds if these services are inaccessible or unavailable within the area. An Application may receive a maximum of:

(A) Two points if the Applicant provides street outreach engagement and case management;

(B) Three points if the Applicant provides street outreach engagement and case management, and one other service;

(C) Four points if the Applicant provides street outreach engagement and case management, and two other services; or

(D) Five points if the Applicant provides street outreach engagement and case management, and three other services.

(7) Experience providing street outreach. An Application may receive a maximum of 10 points based on the Applicant's experience providing street outreach services.

(A) Two points if the Applicant has provided street outreach for up to two years;

(B) Four points if the Applicant has provided street outreach for up to four years;

(C) Six points if the Applicant has provided street outreach for up to six years;

(D) Eight points if the Applicant has provided street outreach for up to eight years; or

(E) Ten points if the Applicant has provided street outreach for 10 or more years.

(c) Emergency shelter. An Application proposing emergency shelter may receive points under the following criteria:

(1) Matching funds for emergency shelter. An Application may receive a maximum of three points if the Applicant commits Matching funds equal to or greater than 110% of the total ESG funds requested for emergency shelter.

(2) Emergency shelter serving Homeless Subpopulations. An Application may receive a maximum of five points by proposing to serve persons who are in a Homeless Subpopulation, as defined in §7.2(b)(34) of this chapter. An Applicant providing emergency shelter may receive a maximum of:

(A) One point based on a minimum target of 70% of persons served who are in one or more Homeless Subpopulation;

(B) Two points based on a minimum target of 80% of persons served who are in one or more Homeless Subpopulation;

(C) Three points based on a minimum target of 90% of persons served who are in one or more Homeless Subpopulation;

(D) Four points based on a minimum target of 95% of persons served who are in one or more Homeless Subpopulation; or

(E) Five points based on a minimum target of 100% of persons served who are in one or more Homeless Subpopulation.

(3) Emergency shelter exit to a positive housing destination. An Application may receive a maximum of five points based on the percentage of persons served within the 12 months prior to the Application due date exited homelessness to a positive housing destination per HMIS data standards:

(A) Two points based on 25% of persons served with emergency shelter who exited to positive housing destinations;

(B) Three points based on 35% of persons served with emergency shelter who exited to positive housing destinations;

(C) Four points based on 45% of persons served with emergency shelter who exited to positive housing destinations; or

(D) Five points based on 55% of persons served with emergency shelter who exited to positive housing destinations.

(4) Emergency shelter staff qualifications. An Applicant may receive a maximum of six points if a member of the staff interacting with Program Participants in the street outreach component has one or more of the following qualifications:

(A) Two points if a member is a licensed mental health provider through the Texas Behavioral Executive Health Council;

(B) Two points if a member of staff is fluent in more than one language identified in the Language Access Plan; and

(C) Two points if program includes a paid staff member who has formerly experienced homelessness.

(5) Emergency shelter permanent housing. An Applicant may receive a maximum of three points based on the percentage of persons served with emergency shelter targeted to be placed in permanent housing. An Application may receive a maximum of:

(A) One point based on a minimum target of 35% of persons served with emergency shelter who will be placed in permanent housing;

(B) Two points based on a minimum target of 45% of persons served with emergency shelter who will be placed in permanent housing; or

(C) Three points based on a minimum target of 55% of persons served with emergency shelter who will be placed in permanent housing.

(6) Emergency shelter services. An Applicant may receive a maximum of five points based on the number of emergency shelter services provided through ESG or other funds, as listed in 24 CFR §576.102. Emergency shelter services include case management, child care, education services, employment assistance and job training, outpatient health services, legal services, life skills training, outpatient mental health services, outpatient substance abuse treatment services, and transportation. Outpatient health services, mental services, and substance abuse treatment services should only be provided by ESG funds if these services are otherwise inaccessible or unavailable within the Service Area. This selection criterion will become a contractual requirement if the Applicant is awarded a Contract. An Application may receive a maximum of:

(A) Two points if the Applicant provides case management and two of the other services;

(B) Three points if the Applicant provides case management and three of the other services;

(C) Four points if the Applicant provides case management and four of the other services; or

(D) Five points if the Applicant provides case management and five of the other services.

(7) Experience providing emergency shelter. An Application may receive a maximum of 10 points based on the Applicant's experience providing emergency shelter services.

(A) Two points if the Applicant has provided emergency shelter for up to two years;

(B) Four points if the Applicant has provided emergency shelter for up to four years;

(C) Six points if the Applicant has provided emergency shelter for up to six years;

(D) Eight points if the Applicant has provided emergency shelter for up to eight years; or

(E) Ten points if the Applicant has provided emergency shelter for 10 or more years.

(d) Homeless prevention. An Application proposing homeless prevention may receive points under the following criteria:

(1) Matching funds for homeless prevention. An Application may receive a maximum of three points if the Applicant commits Matching funds equal to or greater than 110% of the total ESG funds requested for homelessness prevention.

(2) Homelessness prevention serving Homeless Subpopulations. An Application may receive a maximum of five points by proposing to serve persons who are in a Homeless Subpopulation, as defined in §7.2(b)(34) of this chapter. An Applicant providing homelessness prevention may receive a maximum of:

(A) One point based on a minimum target of 70% of persons served who have one or more special needs;

(B) Two points based on a minimum target of 80% of persons served who have one or more special needs;

(C) Three points based on a minimum target of 90% of persons served who have one or more special needs;

(D) Four points based on a minimum target of 95% of persons served who have one or more special needs; or

(E) Five points based on a minimum target of 100% of persons served who have one or more special needs.

(3) Homelessness prevention exit to a positive housing destination. An Application may receive a maximum of five points based on the percentage of persons served within the 12 months prior to the Application due date exited homelessness to a positive housing destination per HMIS data standards:

(A) Two points based on 25% of persons served with homelessness prevention who exited to positive housing destinations;

(B) Three points based on 35% of persons served with homelessness prevention who exited to positive housing destinations;

(C) Four points based on 45% of persons served with homelessness prevention who exited to positive housing destinations; or

(D) Five points based on 55% of persons served with homelessness prevention who exited to positive housing destinations.

(4) Homeless prevention staff qualifications. An Applicant may receive a maximum of six points if a member of the staff interacting with Program Participants in the homeless prevention component has one or more of the following qualifications:

(A) Two points if a member is a licensed mental health provider through the Texas Behavioral Executive Health Council;

(B) Two points if a member of staff is fluent in more than one language identified in the Language Access Plan; and

(C) Two points if program includes a paid staff member who has formerly experienced homelessness.

(5) Homeless prevention maintaining housing. An Application may receive a maximum of three points based on the percentage of persons served with Homelessness prevention who are targeted to maintain their housing for three months or more after program exit. Applications may receive a maximum of:

(A) One point based on a minimum target of 50% of persons served with homelessness prevention maintaining housing for three months;

(B) Two points based on a minimum target of (60% of persons served with homelessness prevention maintaining housing for three months; or

(C) Three points based on a minimum target of 70% of persons served with homelessness prevention maintaining housing for three months.

(6) Homeless prevention services and rental assistance. An Application may receive a maximum of five points based on the number of homeless prevention services and type of rental assistance provided through ESG or other funds. Homeless prevention services and rental assistance include rental application fees, security deposits and last month's rent, utility payments/deposits, moving costs, housing search and placement, housing stability case management, mediation, legal services, credit repair, short-term rental assistance, and medium-term rental assistance. An Application may receive a maximum of:

(A) Two points if the Applicant provides housing stability case management and three of the other services or rental assistance;

(B) Three points if the Applicant provides housing stability case management and four of the other services or rental assistance;

(C) Four points if the Applicant provides housing stability case management and five of the other services or rental assistance; or

(D) Five points if the Applicant provides housing stability case management and six of the other services or rental assistance.

(7) Experience providing homeless prevention or rental assistance services. An Application may receive a maximum of 10 points based on the Applicant's experience providing homeless prevention or tenant-based rental assistance services.

(A) Two points if the Applicant has provided homeless prevention or tenant-based rental assistance services for up to two years;

(B) Four points if the Applicant has provided homeless prevention or tenant-based rental assistance services for up to four years;

(C) Six points if the Applicant has provided homeless prevention or tenant-based rental assistance services for up to six years;

(D) Eight points if the Applicant has provided homeless prevention or tenant-based rental assistance services for up to eight years; or

(E) Ten points if the Applicant has provided homeless prevention or tenant-based rental assistance services for 10 or more years.

(e) Rapid re-housing. An Application proposing rapid re-housing may receive points under the following criteria:

(1) Matching funds for rapid re-housing. Applications may receive a maximum of three points if the Applicant commits Matching funds equal to or greater than 110% of the total ESG funds requested for rapid re-housing.

(2) Rapid re-housing serving Homeless Subpopulations. An Application may receive a maximum of five points by proposing to serve persons who are in a Homeless Subpopulation, as defined in §7.2(b)(34) of this chapter. Applicants providing rapid re-housing may receive a maximum of:

(A) One point based on a minimum target of 70% of persons served who are in one or more Homeless Subpopulation;

(B) Two points based on a minimum target of 80% of persons served who are in one or more Homeless Subpopulation;

(C) Three points based on a minimum target of 90% of persons served who are in one or more Homeless Subpopulation;

(D) Four points based on a minimum target of 95% of persons served who are in one or more Homeless Subpopulation; or

(E) Five points based on a minimum target of 100% of persons served who are in one or more Homeless Subpopulation.

(3) Rapid re-housing exit to a positive housing destination. An Application may receive a maximum of five points based on the percentage of persons served within the 12 months prior to the Application due date exited homelessness to a positive housing destination per HMIS data standards:

(A) Two points based on 25% of persons served with rapid re-housing exited to positive housing destinations;

(B) Three points based on 35% of persons served with rapid re-housing who exited to positive housing destinations;

(C) Four points based on 45% of persons served with rapid re-housing who exited to positive housing destinations; or

(D) Five points based on 55% of persons served with rapid re-housing who exited to positive housing destinations.

(4) Rapid re-housing staff qualifications. An Applicant may receive a maximum of six points if a member of the staff interacting with Program Participants in the rapid re-housing component has one or more of the following qualifications:

(A) Two points if a member is a licensed mental health provider through the Texas Behavioral Executive Health Council;

(B) Two points if a member of staff is fluent in more than one language identified in the Language Access Plan; and

(C) Two points if program includes a paid staff member who has formerly experienced homelessness.

(5) Rapid re-housing maintaining housing. Applicants may receive a maximum of three points based on the percentage of persons served with rapid re-housing targeted to maintain their housing for three months or more after program exit. Applications may receive a maximum of:

(A) One point based on a minimum target of 50% of persons served with rapid re-housing maintaining housing for three months;

(B) Two points based on a minimum target of 60% of persons served with rapid re-housing maintaining housing for three months; or

(C) Three points based on a minimum target of 70% of persons served with rapid re-housing maintaining housing for three months.

(6) Rapid re-housing services and rental assistance. Applicants may receive a maximum of five points based on the number of rapid re-housing services and type of rental assistance provided through ESG or other funds. Rapid re-housing services and rental assistance include rental application fees, security deposits/last month's rent, utility payments/deposits, moving costs, housing search and placement, housing stability case management, mediation, legal services, credit repair, short-term rental assistance, medium-term rental assistance. Applications may receive a maximum of:

(A) Two points if the Applicant provides housing stability case management and three of the other services or rental assistance;

(B) Three points if the Applicant provides housing stability case management and four of the other components;

(C) Four points if the Applicant provides housing stability case management and five of the other components; or

(D) Five points if the Applicant provides housing stability case management and six of the other components.

(7) Experience providing rapid re-housing or tenant-based rental assistance services. Applications may receive a maximum of 10 points based on the Applicant's experience providing homeless prevention or tenant-based rental assistance services.

(A) Two points if the Applicant has provided rapid re-housing or tenant-based rental assistance services for up to two years;

(B) Four points if the Applicant has provided rapid re-housing or tenant-based rental assistance services for up to four years;

(C) Six points if the Applicant has provided rapid re-housing or tenant-based rental assistance services for up to six years;

(D) Eight points if the Applicant has provided rapid re-housing or tenant-based rental assistance services for up to eight years; or

(E) Ten points if the Applicant has provided rapid re-housing or tenant-based rental assistance services for 10 or more years.

§7.41. *Contract Term, Expenditure Benchmark, Return of Funds, and Performance Targets.*

(a) The Contract Term for ESG funds may not exceed 12 months. All funds awarded under the Contract must be expended by the Subrecipient on or before the expiration of the Contract, unless an extension has been granted in accordance with this section. A request to extend the Contract Term must show evidence that the extension is necessary to provide services required under the Contract, and provide good cause for failure to timely expend the funds. Extensions of Contract Terms are considered on a case-by-case basis, but are subject

to §7.4(e) of this title (relating to Amendments and Extensions of Contracts).

(1) The Executive Director or his or her designee may approve an extension to the ESG Contract Term of up to six months from the original Contract Term; and may approve an extension to the Expenditure deadline for ESG CARES.

(2) Board approval is required if the Subrecipient requests to extend an ESG Contract Term for more than six months from the original Contract Term.

(3) Amendments of Expenditure requirements will not be granted by the Executive Director or the Board when such action would cause the Department to miss a federal Expenditure deadline.

(b) Subrecipient is required to have reported Expenditures in its Monthly Expenditure Reports reflecting at least 50% of the Contracted funds by month nine of the original Contract Term. A Subrecipient that has not met this Expenditure benchmark must submit a plan to the Department evidencing the ability of the Subrecipient to expend the remaining funds by month 12 of the original Contract Term. This Expenditure benchmark may not be extended through amendment.

(c) Not later than 60 days prior to the end of the Contract Term, a Subrecipient may submit a written request to voluntarily return some or all of its funds to the Department. Voluntary return of funds prior to the Expenditure benchmark constitutes a reduction in the awarded amount, and returned funds at or prior to the Expenditure benchmark will not be considered deobligated funds for the purpose of future funding recommendations. Subrecipient must return any funds that would result in a violation of the administrative and HMIS expenditure limits of the Contract, as outlined in §7.33(f) of this subchapter prior to approval of a request to voluntarily deobligate funds for any Program Participant services.

(d) Funds remaining at the end of Contract which are not reflected in the last Monthly Expenditure Report will be automatically deobligated. Deobligation of funds may affect future funding recommendations.

(e) The Department may request information regarding the performance or status of a Contract prior to the Expenditure benchmark, at various times during the Contract, or during the record retention period. Subrecipient must respond within the time limit stated in the request. Prolonged or repeated failure to respond may result in suspension of funds, termination of the Contract by the Department, and could impact future funding recommendations.

(f) If additional funds become available through returned or deobligated amounts from an award made under the allocation formula or program income generated from an award made under the allocation formula, the funds may be offered to ESG Subrecipients with active Contracts that have not been amended to extend the Contract Term. Returned or deobligated funds will be offered with priority given to ESG Subrecipients with the highest Expenditure rate as of the most recent Monthly Expenditure Report. However, funds may not be offered to any Subrecipient that returned funds, or from whom funds were deobligated. The Executive Director or designee may increase the Contract of an ESG Subrecipient or authorize a new Contract with a Subrecipient by up to 25% of the original Contract amount.

(g) Funds that have been returned more than once or returned less than three months before the federal Expenditure deadline may be retained by the Department.

(h) The Contract will reflect the Performance Targets that were utilized as selection criteria for the award of funds. Requests to amend Performance Targets may not be submitted less than 60 days prior to

the end of the Contract Term. Requests to amend Performance Targets will not be granted if such an amendment would have precluded the award to the Subrecipient.

§7.42. General Administrative Requirements.

(a) Subrecipient must have written policies and procedures to ensure that sufficient records are established and maintained to enable a determination that applicable federal and state requirements are met. The written standards must be applied consistently for all Program Participants. Written policies must include, but not be limited to, Inclusive Marketing outlined in §7.10 of this chapter (relating to Inclusive Marketing).

(b) Subrecipient must obtain the correct level of environmental clearance prior to expenditure of funds. Activities for which the Subrecipient does not properly complete the Department's environmental review process are ineligible, and funds will not be reimbursed or will be required to be repaid.

(c) Subrecipient is prohibited from charging occupancy fees for emergency shelter activities supported by funds covered by this subchapter.

(d) If a Private Nonprofit Organization Subrecipient wishes to expand the geographic scope of its emergency shelter activities after Contract execution, an updated certification of approval from the Unit of General Purpose Local Government with jurisdiction over the updated Service Area must be submitted to the Department before funds are spent on emergency shelter in those areas.

(e) Subrecipient must document compliance with the shelter and housing standards per 24 CFR §576.500(j) and (k), including but not limited to, maintaining sufficient construction and shelter inspection reports.

(f) Rental developments must comply with all construction or operational requirements governing the development or program to which funds are comingled, and must comply with local health and safety codes.

(g) Subrecipient may be required to complete Contract orientation training prior to submission of the first Monthly Expenditure Report. Subrecipient must also complete training as requested by the Department in response to Findings or other issues identified while managing the Contract.

(h) Subrecipient must develop and establish written procurement procedures that comply with federal, State, and local procurement requirements. A conflict of interest related to procurement is prohibited by 2 CFR §200.317-318 or Chapter 171 of the Local Government Code, as applicable.

(i) In instances where a potential conflict of interest exists related to a beneficiary of assistance to a Program Participant, Subrecipient must submit a request to the Department to grant an exception to any conflicts prohibited using the procedures at 24 CFR §576.404. The request submitted to the Department must include a disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict, a description of how the public disclosure was made, and an attorney's opinion that the conflict does not violate State or local law. No funds will be committed to assist a Household until HUD has granted an exception.

(j) Subrecipient will comply with the requirements under 24 CFR §576.409, "Protection for victims of domestic violence, dating violence, sexual assault, or stalking."

(1) Compliance with 24 CFR §576.409 includes, but is not limited to, providing two Departmental forms called "Notice of Occupancy Rights under the Violence Against Women Act" based on HUD

form 5380 and "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking," HUD form 5382, to each of the following:

(A) All applicants for short- and medium-term rental assistance at the time of admittance or denial;

(B) Program Participants of short- and medium-term rental assistance prior to execution of a Rental Assistance Agreement;

(C) Program Participants of short- and medium-term rental assistance with any notification of eviction or notification of termination of assistance; and

(D) Program Participants of short- and medium-term rental assistance either during an annual Recertification or lease renewal process, whichever is applicable.

(2) Subrecipient will adopt and follow an Emergency Transfer Plan based on HUD's model Emergency Transfer Plan, pursuant to 24 CFR §5.2005(e). Within three calendar days after Program Participants request transfers, Subrecipient will inform Program Participants of their eligibility under their Emergency Transfer Plan and keep records of all outcomes.

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 June 17, 2022.

TRD-202202291

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Effective date: July 7, 2022

Proposal publication date: March 25, 2022

For further information, please call: (512) 475-3959



SUBCHAPTER D. ENDING HOMELESSNESS FUND

10 TAC §§7.61 - 7.65

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 7 Homelessness Programs, Subchapter D, Ending Homelessness Fund, §§7.61 - 7.65, without changes to the proposed text as published in the March 25, 2022, issue of the *Texas Register* (47 TexReg 1577). The rules will not be republished. The purpose of the repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal would be in effect:

1. The repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity, the administration of the Ending Homelessness Fund.

2. The repeal does not require a change in work that would require the creation of new employee positions, nor is the proposed

repeal significant enough to reduce work load to a degree that any existing employee positions are eliminated.

3. The repeal does not require additional future legislative appropriations.

4. The repeal does not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, the administration of homeless programs.

7. The repeal will not increase or decrease the number of individuals subject to the rule's applicability.

8. The repeal will not negatively or positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department has evaluated this repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6). The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be more clarity on the administration of the Ending Homelessness Fund. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENT AND STAFF REASONED RESPONSE. The Department accepted public comment between March 25, 2022, and April 25, 2022. Comments regarding the proposed repeal were accepted in writing and by e-mail with no comments received.

The Board adopted the final order adopting the repeal on June 16, 2022.

STATUTORY AUTHORITY. The adopted repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the adopted repealed sections affect no other code, article, or 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.

Filed with the Office of the Secretary of State on June 17, 2022.

TRD-202202292

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Effective date: July 7, 2022

Proposal publication date: March 25, 2022

For further information, please call: (512) 475-3959



10 TAC §§7.61 - 7.65

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 7 Homelessness Programs, Subchapter D, Ending Homelessness Fund, §§7.61 - 7.65, without changes to the proposed text as published in the March 25, 2022, issue of the *Texas Register* (47 TexReg 1578). The rules will not be republished. The purpose of the new subchapter is to update the rule to reflect new definitions, provide greater flexibility for Subrecipients, and to update the minimum amount of unobligated funds that require a competitive process.

Tex. Gov't Code §2001.0045(b) does not apply to the rules proposed for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the new subchapter would be in effect:

1. The rules do not create or eliminate a government program, but relates to the readoption of these rules which makes changes to an existing activity, administration of the Ending Homelessness Fund.
2. The new rules do not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The rules do not require additional future legislative appropriations.
4. The rules will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The rules are not creating a new regulation, except that they are replacing a rule being repealed simultaneously to provide for revisions.
6. The rules will not expand, limit, or repeal an existing regulation.
7. The rules will not increase or decrease the number of individuals subject to the rule's applicability.

8. The rules will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this rules, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, Ch. 2306.

1. The Department has evaluated these rules and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. There are approximately no small or micro-businesses subject to the rule because these funds are limited to counties and municipalities in Tex. Transportation Code §502.415 for the Ending Homeless Fund.

3. The Department has determined that based on the considerations in item two above, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The rules do not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the rules as to their possible effects on local economies and has determined that for the first five years the rules will be in effect the new rules have no economic effect on local employment because these rules will channel funds, which may be limited, only to municipalities and nonprofits; it is not anticipated that the amount of funds would be enough to support additional employment opportunities, but would add to the services provided. Alternatively, the rules would also not cause any negative impact on employment. Therefore no local employment impact statement is required to be prepared for the rules.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that no impact is expected, there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new subchapter will be a rule that has greater clarity into the processes and definitions of the administration of homeless programs. There will not be any economic cost to any individuals required to comply with the new sections because the processes described by the rule have already been in place through the rule found at this section being repealed.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new subchapter is in effect, enforcing or administering the new subchapter does not have any foreseeable implications related to costs or revenues of the state or local governments because the costs for administering the program is included in eligible activities.

SUMMARY OF PUBLIC COMMENT AND STAFF REASONED RESPONSE. The Department accepted public comment between March 25, 2022, and April 25, 2022, Comments regarding the proposed repeal were accepted in writing and by e-mail with no comments received.

The Board adopted the final order adopting the repeal on June 16, 2022.

STATUTORY AUTHORITY. The new sections are adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the adopted new sections affect no other code, article, or 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.

Filed with the Office of the Secretary of State on June 17, 2022.

TRD-202202293

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Effective date: July 7, 2022

Proposal publication date: March 25, 2022

For further information, please call: (512) 475-3959



TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 173. PHYSICIAN PROFILES

22 TAC §173.3

The Texas Medical Board (Board) adopts amendments to §173.3 concerning Physician-Initiated Updates. The amendments to §173.3 are being adopted with non-substantive changes to the proposed text as published in the March 18, 2022, issue of the *Texas Register* (47 TexReg 1412). The adopted amendments to §173.3 will be republished.

The amendments to §173.3 specify events that must be reported by a licensed physician to the Board within 30 days after the event. Specifically, the proposed amendments add events required to be contained in the physician's profile in accordance with §154.006 of the Act.

The Board received one comment from the Texas Medical Association (TMA) regarding the proposed amendments to §173.3. No one appeared to testify regarding the amendments to §173.3 at the public hearing on June 10, 2022. A summary of the comments relating to §173.3, and the Board responses, are as follows:

Comment No. 1: TMA generally supports the amendments. TMA also requests that TMB provide educational FAQs or bulletins to its licensees on the change, if adopted, so they are aware of the new reporting requirements. Also, TMA suggests the inclusion of potential disciplinary actions TMB is authorized to and might take if a licensee fails to timely report this information.

Board Response: The Board believes that the language as proposed is sufficient and appropriate. Accordingly, the Board declines this suggested change.

The amendments are adopted under the authority of Texas Occupations Code §153.001, which provides authority for the Board to adopt rules necessary to administer and enforce the Medical Practice Act and to adopt rules necessary to regulate and license physicians. The amendments are also adopted pursuant to Texas Occupations Code §154.006, which provides authority for the Board to adopt rules necessary to ensure required information is placed on the physician's profile.

§173.3. *Physician-Initiated Updates.*

(a) Physicians are required to attest as to whether or not the physician's profile information is correct at the time of the physician's registration and to initiate correction of any incorrect information.

(b) Physicians should maintain current profile information by submitting updates and corrections as changes occur.

(c) The physician shall make necessary corrections and updates by submitting a profile update and correction form or by submitting it online if completing the registration via the internet.

(d) A physician shall report the following to the Board within 30 days after the event:

(1) Any change of mailing or practice address;

(2) Incarceration in a state or federal penitentiary;

(3) A description of any conviction for a felony, a Class A or Class B misdemeanor, or a Class C misdemeanor involving moral turpitude;

(4) A description of any charges reported to the board to which the physician has pleaded no contest, for which the physician is the subject of deferred adjudication or pretrial diversion, or in which sufficient facts of guilt were found and the matter was continued by a court;

(5) An initial finding by the trier of fact of guilt of a felony under:

(A) Chapter 481 or 483, Health and Safety Code (relating to offenses involving controlled substances and dangerous drugs);

(B) Section 485.033, Health and Safety Code (relating to offenses involving inhalant paraphernalia); or

(C) the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. §801 *et seq.*);

(6) Any disciplinary action issued by another state, territory, or nation against the physician's medical license; or

(7) Any medical malpractice claim against the physician for which the physician was found liable, a jury awarded monetary damages to the claimant, and the award has been determined to be final and not subject to further appeal. This does not include any offers by the physician to settle the claim.

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 June 17, 2022.

TRD-202202284

Scott Freshour
General Counsel
Texas Medical Board
Effective date: July 7, 2022
Proposal publication date: March 18, 2022
For further information, please call: (512) 567-7502



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 157. EMERGENCY MEDICAL CARE

SUBCHAPTER C. EMERGENCY MEDICAL SERVICES TRAINING AND COURSE APPROVAL

25 TAC §157.41

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), adopts the repeal of §157.41, concerning Automated External Defibrillators for Public Access Defibrillation. The repeal of §157.41 is adopted without changes to the proposed text as published in the March 11, 2022, issue of the *Texas Register* (47 TexReg 1209), and therefore will not be republished.

BACKGROUND AND JUSTIFICATION

The repeal is necessary to comply with Senate Bill (S.B.) 199, 87th Legislature, Regular Session, 2021, related to the usage and education requirement for automated external defibrillators for public access defibrillation. S.B. 199 repealed Texas Health and Safety Code §779.002, Training - ensuring each user of an automated external defibrillator received training given or approved by DSHS. The repeal of §779.002 also removed all rule-making authority from the Executive Commissioner concerning training requirements. S.B. 199 reassigned the training obligation under the Texas Education Code by amending Title 2, Public Education, Subtitle D, Educators and School District Employees and Volunteers, Chapter 21, Educators, §21.0541 to revise the requirement for the State Board for Educator Certification to adopt rules for automated external defibrillator training.

COMMENTS

The 31-day comment period ended on April 11, 2022.

During this period, DSHS received a comment regarding the proposed rule repeal from one commenter. A summary of the comment relating to §157.41 and DSHS's response follows.

Comment: The commenter voiced support for the effort to reduce the burden and education responsibilities on the owner of a public access automated external defibrillator through the repeal of §157.41.

Response: DSHS appreciates the supportive comment.

STATUTORY AUTHORITY

The repeal is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall

adopt rules for the operation and provision of services by the health and human services by DSHS, and for the administration of Texas Health and Safety Code, Chapter 1001; Texas Health and Safety Code, Chapter 773, Emergency Medical Services; and S.B. 199, 87th Legislature, Regular Session, 2021, which repealed Texas Health and Safety Code §779.002, Training, related to automated external defibrillators removing the rulemaking authority from the Executive Commissioner and amending the Texas Education Code §21.0541 requiring the State Board for Educator Certification to adopt rules for automated external defibrillator training.

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 June 16, 2022.

TRD-202202277

Cynthia Hernandez

General Counsel

Department of State Health Services

Effective date: July 6, 2022

Proposal publication date: March 11, 2022

For further information, please call: (512) 484-5470



PART 7. TEXAS MEDICAL DISCLOSURE PANEL

CHAPTER 601. INFORMED CONSENT

25 TAC §§601.2, 601.7, 601.8

The Texas Medical Disclosure Panel (Panel) adopts amendments to §601.2, concerning Procedures Requiring Full Disclosure of Specific Risks and Hazards--List A; §601.7, concerning Informed Consent for Electroconvulsive Therapy; and §601.8, concerning Disclosure and Consent for Hysterectomy. Sections 601.2, 601.7, and 601.8 are adopted without changes to the proposed text as published in the April 1, 2022, issue of the *Texas Register* (47 TexReg 1670) and will not be republished.

BACKGROUND AND PURPOSE

These amendments are adopted in accordance with Texas Civil Practice and Remedies Code §74.102, which created the Panel to determine which risks and hazards related to medical care and surgical procedures must be disclosed by health care providers or physicians to their patients or persons authorized to consent for their patients and to establish the general form and substance of such disclosure.

SECTION-BY-SECTION SUMMARY

Amendments to §601.2 modify the list of procedures and risks and hazards in subsection (b) regarding the cardiovascular system; subsection (c) regarding digestive system treatments and procedures; (d) regarding the ear system treatments and procedures; (g) regarding the female genital system treatment and procedures; (o) regarding the respiratory system treatments and procedures; and (s) regarding laparoscopic, thoracoscopic and robotic.

Amendments to §601.7 incorporate recommendations regarding informed consent for the use of List A anesthesia/analgesia in connection with the administration of electroconvulsive therapy.

Amendments to §601.8 modify the form regarding the risks and hazards of a hysterectomy. In accordance with Texas Civil Practice and Remedies Code §74.107(e), the Panel provided the proposed amendments to the consent form for hysterectomy to the Texas Medical Board. The Texas Medical Board did not provide any feedback regarding the form.

PUBLIC COMMENT

The 31-day comment period ended May 2, 2022.

During this period, the Panel received no comments regarding the proposed amendments to §601.2 concerning Procedures Requiring Full Disclosure of Specific Risks and Hazards--List A, §601.7 concerning Informed Consent for Electroconvulsive Therapy, or §601.8 concerning Disclosure and Consent for Hysterectomy.

STATUTORY AUTHORITY

The amendments are authorized under Texas Civil Practice and Remedies Code §74.102, which created the Panel in order to prepare lists of medical treatments and surgical procedures that do and do not require disclosure by physicians and health care providers of the possible risks and hazards, and to prepare the forms for the treatments and procedures which do require disclosure; and §74.107, which requires the Panel to develop and prepare written materials to inform a patient or person authorized to consent for a patient of the risks and hazards of a hysterectomy.

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 June 17, 2022.

TRD-202202296

Dr. Noah Appel

Panel Chairman

Texas Medical Disclosure Panel

Effective date: July 7, 2022

Proposal publication date: April 1, 2022

For further information, please call: (512) 497-1339



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 9. TEXAS COMMISSION ON JAIL STANDARDS

CHAPTER 263. LIFE SAFETY RULES SUBCHAPTER D. PLANS AND DRILLS FOR EMERGENCIES

37 TAC §263.42

The Texas Commission on Jail Standards adopts amendments to Texas Administrative Code, Title 37, §263.42. concerning Fire Prevention Plan, without changes to the proposed language as published in the March 25, 2022, issue of the *Texas Register* (47 TexReg 1608). The rule will not be republished.

The proposed amendments add language to 37 TAC §263.42 to require that the local fire official who performs fire inspec-

tions in jails shall either be certified by the Texas Commission on Fire Protection or shall meet the alternative criteria provided in Government Code § 419.909. The amendments would also require that jails shall pass the fire inspection. The Commission also clarifies with this adopted language that it is TCJS and not the Commission on Fire Prevention that approves the written plan for fire prevention and a fire hazard inspection checklist. Since 2009, Government Code § 419.909 (originally § 419.908 but changed in 2011 to § 419.909) has required that "Only an individual certified by (The Commission on Fire Protection) as a fire inspector may conduct a fire safety inspection required by a state or local law, rule, regulation, or ordinance." In a memo on November 20, 2009, the Commission on Jail Standards informed county jails of this requirement as a condition of compliance certification; however, TCJS did not add this requirement to its minimum jail standards. It does so now with this amendment.

No public comments were received.

The amendment is adopted under the authority of Government Code, Chapter 511, which authorizes the Texas Commission on Jail Standards to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

This adoption does not affect other rules or statutes.

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 June 15, 2022.

TRD-202202263

Brandon Wood

Executive Director

Texas Commission on Jail Standards

Effective date: July 5, 2022

Proposal publication date: March 25, 2022

For further information, please call: (512) 463-2690



PART 15. TEXAS FORENSIC SCIENCE COMMISSION

CHAPTER 651. DNA, CODIS, FORENSIC ANALYSIS, AND CRIME LABORATORIES SUBCHAPTER C. FORENSIC ANALYST LICENSING PROGRAM

37 TAC §651.222

The Texas Forensic Science Commission ("Commission") adopts a new rule to 37 Texas Administrative Code §651 without changes to the text as published in the April 29, 2022, issue of the *Texas Register* (47 TexReg 2461) to establish a voluntary forensic analyst licensing program for document examination analysts and forensic anthropologists. The rule will not be republished. The new rules are necessary to reflect adoptions made by the Commission at its January 21, 2022 quarterly meeting. The adoption is made in accordance with the Commission's forensic analyst licensing authority under Tex. Code. Crim. Proc. art. 38.01 §4-a(c) to establish voluntary

licensing programs for forensic examinations or tests not subject to accreditation requirements.

Summary of Comments. No comments were received regarding the adoptions.

Statutory Authority. The amendment is proposed under Tex. Code Crim. Proc. art 38.01 §4-a(c).

Cross reference to statute. The proposal establishes new rule 37 Texas Administrative Code §651.222.

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 June 20, 2022.

TRD-202202297

Leigh Tomlin

Associate General Counsel

Texas Forensic Science Commission

Effective date: July 10, 2022

Proposal publication date: April 29, 2022

For further information, please call: (512) 936-0661



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 854. BUSINESS ENTERPRISES OF TEXAS

The Texas Workforce Commission (TWC) adopts amendments to the following sections of Chapter 854, relating to Business Enterprises of Texas:

Subchapter A. General Provisions and Program Operations, §§854.10 and §854.11

Subchapter B. License and Assignments, §§854.20 - 854.23

Subchapter C. Expectations of TWC and Managers, §§854.40 - 854.43

Subchapter D. BET Elected Committee of Managers, §854.60

Subchapter E. Action Against a License, §§854.80 - 854.83

TWC adopts the repeal of the following section of Chapter 854, relating to Business Enterprises of Texas:

Subchapter A. General Provisions and Program Operations, §854.12

The amendments to §§854.10, 854.11, 854.20 - 854.23, 854.40 - 854.43, 854.60, and 854.80 - 854.83 and the repeal of §854.12 are adopted without changes to the proposal as published in the April 8, 2022, issue of the *Texas Register* (47 TexReg 1870), and, therefore, the adopted rule text will not be republished.

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

On May 21, 2019, TWC adopted rules in 40 TAC Chapter 854, relating to the Business Enterprises of Texas (BET).

On May 23, 2019, TWC submitted revised BET Program rules to the Rehabilitation Services Administration (RSA) for approval.

The Randolph Sheppard Act (20 United States Code §107) requires rules governing the BET Program first be reviewed and approved by RSA before becoming effective. The federally mandated BET Elected Committee of Managers (ECM) agreed with the revisions and communicated its support to RSA via email on May 24, 2019. The revised program rules included changes requested by the ECM and conforming changes to incorporate the BET rules into TWC administrative rules in 40 TAC Part 20 following transfer of the program to TWC from legacy Texas Department of Assistive and Rehabilitative Services.

The BET Program rules adopted by TWC went into effect on September 1, 2019; however, RSA had not returned approval of the rules by that date.

On April 22, 2020, RSA responded to TWC's May 2019 submission, offering comments, questions, and required changes related to the revised BET Program rules. The required changes included provisions that were not revised by TWC in the 2019 submission and that were previously approved by RSA. The information presented by RSA was supplied to the ECM.

TWC sought clarification from RSA about the specific adjustments required to obtain approval of the revised rules as submitted. Upon gaining a better understanding of the requirements and making adjustments to comply, RSA approved the revised rules on November 16, 2020. The ECM was notified that RSA approved the rules with some required adjustments. The ECM agreed with the RSA adjustments in writing on May 6, 2021.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. GENERAL PROVISIONS AND PROGRAM OPERATIONS

TWC adopts the following amendments to Subchapter A:

§854.10. Definitions

Section 854.10 is amended to add the definitions for "Agency" and "VRD director."

New §854.10(2) defines "Agency" as TWC, which is the state licensing agency for the Randolph-Sheppard program titled the Business Enterprises of Texas. Subsequent definitions are renumbered accordingly.

New §854.10(28) defines "VRD director" as the director of TWC's designated state unit titled the Vocational Rehabilitation Division.

§854.11. General Policies

Section 854.11(b) is amended to change "citizens of Texas" to "reside or are physically present in Texas" to clarify that legally blind individuals who reside or are physically present in Texas can operate BET facilities.

Section 854.11(c) is amended to clarify that the term "Management" includes "being physically present to perform" the supervision duties.

Section 854.11(h) is amended to add "race" to the nondiscrimination clause and §854.11(i) is amended to include "declared emergencies" in the description of emergencies.

§854.12. Consultants

Section 854.12 is repealed because the section relating to consultants is no longer needed.

SUBCHAPTER B. LICENSE AND ASSIGNMENTS

TWC adopts the following amendments to Subchapter B:

§854.20. Eligibility and Application Process

Section 854.20(a) is amended to clarify prerequisites for training. In §854.20(a)(2) "residing" in Texas is changed to "physically present" in Texas, and in §854.20(a)(5), "health and stamina" is changed to "physical capability."

Section 854.20(b) is amended to include in the application process that notification of the interview results may be provided by mail if the applicant does not have access to email.

§854.21. BET Licenses and Continuing Education Requirement

Section 854.21 is amended to clarify the property right statement. Section 854.21(a)(4) is amended to read that a license shall not create any property right for the licensee to state or federal property including state- or federally-owned equipment.

§854.22. Initial Assignment Procedures

Section 854.22(b)(6), which states "any other circumstances on a case-by-case basis," is removed from the factors that the BET director will consider when determining the manager's initial assignment.

§854.23. Career Advancement Assignment Procedures

Section 854.23(b)(4) is amended to correct a reference. Section 854.81 relates to Administrative Action Based on Unsatisfactory Performance, not §854.41.

SUBCHAPTER C. EXPECTATIONS OF TWC AND MANAGERS

TWC adopts the following amendments to Subchapter C:

§854.40. Fixtures, Furnishings, and Equipment; Initial Inventory; and Expendables

Section 854.40(c) is amended to clarify that TWC's purchase of necessary equipment for placement away from the facility and remove the sentence regarding the manager's responsibilities relating to the off-site equipment.

Section 854.40(f) is amended to add paragraph (3) to state that TWC has the right to perform required maintenance and require the manager to reimburse the Agency for that maintenance.

Section 854.40(g) is amended to remove the language stating that the vendors will be informed by TWC staff of the procedures regarding payment for services.

§854.41. Set-Aside Fees

Section 854.41(a)(4) is amended to replace "Texans" with "individuals physically present in Texas." Section 854.41(b)(5) is amended to clarify that the use of funds for retirement, health insurance, or paid sick and vacation leave will be determined by the majority vote of licensed managers.

§854.42. Duties and Responsibilities of Managers

Section 854.42(d) is amended to state that managers shall dress and act in an appropriate manner and §854.42(o) is amended to state that copies of evidence that needs to be preserved for an audit or review will be supplied to the manager within 90 business days.

§854.43. Responsibilities of the Texas Workforce Commission

Section 854.43(c) is amended to state the ECM will actively participate in the setting of price ranges charged in facilities.

SUBCHAPTER D. BET Elected Committee of Managers

TWC adopts the following amendments to Subchapter D:

§854.60. BET Elected Committee of Managers' Duties and Responsibilities

Section 854.60(c)(2) is amended to replace "Texans" with "individuals physically present in Texas."

SUBCHAPTER E. Action Against a License

TWC adopts the following amendments to Subchapter E:

§854.80. Termination of License for Reasons Other Than Unsatisfactory Performance

Section 854.80(a)(2) is amended to add "with or without reasonable accommodations" to the cause for termination for a licensee who becomes permanently disabled and is unable to perform the essential functions to operate and maintain the facility.

§854.81. Administrative Action Based on Unsatisfactory Performance

Section 854.81(a) is amended to clarify the causes for administrative action based on unsatisfactory performance.

Section 854.81(b) is deleted to remove the administrative action pending an appeal and the subsequent subsections are relettered accordingly.

Relettered §854.81(b)(5)(D) and (c)(2)(A) are amended to include "via mail or electronically via email" for notifications between the manager and TWC.

Relettered §854.81(d) is amended to include the reference to §854.82(e) regarding full evidentiary hearings.

§854.82. Procedures for Resolution of Manager's Dissatisfaction

Section 854.82 is amended to remove subsection (b)(2) and (3) from actions not subject to appeal and the statement of agency sovereign immunity in subsection (c). The subsequent subsections have been relettered accordingly.

Relettered §854.82(d) is amended to clarify the informal procedures in paragraphs (1), (3), and (4), and paragraph (6) is amended to clarify that upon conclusion of mediation, the mediator would share in writing the results of mediation.

Relettered §854.82(e)(3) is amended to clarify the time that a manager needs to request an evidentiary hearing, and paragraph (4) is amended to clarify the request for the hearing must be in writing and transmitted to the VRD director by mail or email.

§854.83. Establishing and Closing Facilities

Section 854.83(a) is amended to remove paragraph (2), which is the description of action required if it is determined that a blind individual cannot properly operate a vending facility.

TWC hereby certifies that the adoption has been reviewed by legal counsel and found to be within TWC's legal authority to adopt.

PART III. PUBLIC COMMENTS

The public comment period closed on May 9, 2022. No comments were received.

SUBCHAPTER A. GENERAL PROVISIONS AND PROGRAM OPERATIONS

40 TAC §854.10, §854.11

STATUTORY AUTHORITY

The rules are adopted under Texas Labor Code, §355.012(a), authorizing TWC to promulgate rules necessary to implement Texas Labor Code, Chapter 355, and under Texas Labor Code, §301.0015(a)(6), which provides TWC with the authority to adopt rules as necessary.

The adopted rules affect Texas Labor Code, particularly Chapter 355.

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 June 14, 2022.

TRD-202202245

Les Trobman

General Counsel

Texas Workforce Commission

Effective date: July 4, 2022

Proposal publication date: April 8, 2022

For further information, please call: (512) 689-9855



40 TAC §854.12

The repeal is adopted under Texas Labor Code, §355.012(a), authorizing TWC to promulgate rules necessary to implement Texas Labor Code, Chapter 355, and under Texas Labor Code, §301.0015(a)(6), which provides TWC with the authority to adopt rules as necessary.

The adopted repeal affects Texas Labor Code, particularly Chapter 355.

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 June 14, 2022.

TRD-202202246

Les Trobman

General Counsel

Texas Workforce Commission

Effective date: July 4, 2022

Proposal publication date: April 8, 2022

For further information, please call: (512) 689-9855



SUBCHAPTER B. LICENSE AND ASSIGNMENTS

40 TAC §§854.20 - 854.23

The rules are adopted under Texas Labor Code, §355.012(a), authorizing TWC to promulgate rules necessary to implement Texas Labor Code, Chapter 355, and under Texas Labor Code, §301.0015(a)(6), which provides TWC with the authority to adopt rules as necessary.

The adopted rules affect Texas Labor Code, particularly Chapter 355.

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 June 14, 2022.

TRD-202202247

Les Trobman

General Counsel

Texas Workforce Commission

Effective date: July 4, 2022

Proposal publication date: April 8, 2022

For further information, please call: (512) 689-9855



SUBCHAPTER C. EXPECTATIONS OF TWC AND MANAGERS

40 TAC §§854.40 - 854.43

The rules are adopted under Texas Labor Code, §355.012(a), authorizing TWC to promulgate rules necessary to implement Texas Labor Code, Chapter 355, and under Texas Labor Code, §301.0015(a)(6), which provides TWC with the authority to adopt rules as necessary.

The adopted rules affect Texas Labor Code, particularly Chapter 355.

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 June 14, 2022.

TRD-202202248

Les Trobman

General Counsel

Texas Workforce Commission

Effective date: July 4, 2022

Proposal publication date: April 8, 2022

For further information, please call: (512) 689-9855



SUBCHAPTER D. BET ELECTED COMMITTEE OF MANAGERS

40 TAC §854.60

The rule is adopted under Texas Labor Code, §355.012(a), authorizing TWC to promulgate rules necessary to implement Texas Labor Code, Chapter 355, and under Texas Labor Code, §301.0015(a)(6), which provides TWC with the authority to adopt rules as necessary.

The adopted rule affects Texas Labor Code, particularly Chapter 355.

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 June 14, 2022.

TRD-202202249

Les Trobman
General Counsel
Texas Workforce Commission
Effective date: July 4, 2022
Proposal publication date: April 8, 2022
For further information, please call: (512) 689-9855



SUBCHAPTER E. ACTION AGAINST A LICENSE

40 TAC §§854.80 - 854.83

The rules are adopted under Texas Labor Code, §355.012(a), authorizing TWC to promulgate rules necessary to implement Texas Labor Code, Chapter 355, and under Texas Labor Code, §301.0015(a)(6), which provides TWC with the authority to adopt rules as necessary.

The adopted rules affect Texas Labor Code, particularly Chapter 355.

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 June 14, 2022.

TRD-202202250

Les Trobman

General Counsel

Texas Workforce Commission

Effective date: July 4, 2022

Proposal publication date: April 8, 2022

For further information, please call: (512) 689-9855

