

# PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to

submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

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

## TITLE 1. ADMINISTRATION

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

#### CHAPTER 354. MEDICAID HEALTH SERVICES

##### SUBCHAPTER A. PURCHASED HEALTH SERVICES

#### DIVISION 25. SCHOOL HEALTH AND RELATED SERVICES

##### 1 TAC §354.1341, §354.1342

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §354.1341, concerning Benefits and Limitations; and §354.1342, concerning Conditions for Participation.

##### BACKGROUND AND PURPOSE

The School Health and Related Services (SHARS) program is jointly administered by HHSC and the Texas Education Agency (TEA). The SHARS program allows independent school districts and public charter schools to obtain Medicaid reimbursement for the provision of certain direct medical and transportation services to Medicaid enrolled students who receive benefits to meet federal and state laws guaranteeing the students a free and appropriate public education. Currently SHARS must be prescribed in a student's individualized education program (IEP) as required by the Texas Education Code, §29.001(7), and implemented through Commissioner of Education rule at Title 19 Texas Administrative Code (TAC) §89.1001.

The proposed rule amendment to §354.1341 adds text to align with the implementation of House Bill (H.B.) 706, 86th Legislature, Regular Session, 2019. H.B. 706 amended the Texas Education Code to permit SHARS providers to bill and receive reimbursement for allowable audiology services provided to Medicaid-eligible children as prescribed in a plan created under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794). H.B. 706 requires HHSC to adopt rules necessary to implement Texas Education Code Section 38.033 (redesignated as Section 38.034 by H.B. 3607, 87th Legislature, Regular Session, 2021) in consultation with the Texas Education Association and as approved by the Centers for Medicare and Medicaid Services.

The proposed amendment to §354.1342 implements H.B. 2658, 87th Legislature, Regular Session, 2021, effective September 1, 2021. H.B. 2658 added Human Resources Code §32.0317. The proposed amendment will restate and clarify the federal requirement to obtain parental consent to access a student's Medicaid

in order to receive Medicaid reimbursement for all SHARS services.

HHSC is also proposing language to align these rules with 1 TAC §355.8443, concerning Reimbursement Methodology for School Health and Related Services (SHARS), and other clarifying language.

##### SECTION-BY-SECTION SUMMARY

The proposed amendment to §354.1341 adds subsection (c) to require SHARS audiology services to be prescribed either in an IEP or in a written Section 504 Plan. The proposed amendment reformats the rule because of the addition of new subsection (c) and makes minor editorial changes.

The proposed amendment to §354.1342 adds a reference to §354.1341 and adds language in paragraphs (1)(B) and (C) to permit school districts to claim for SHARS audiology services prescribed in either an IEP or Section 504 Plan, as required by proposed §354.1341(c). The proposed amendment replaces "school district" with "Local Education Agency (LEA)" to align with 1 TAC §355.8443.

The proposed amendment to §354.1342 also combines current paragraphs (3) and (4) into paragraph (3) and clarifies that LEAs must abide by the rules and regulations of both HHSC and TEA. The proposed amendment adds new paragraph (4) outlining training requirements for LEAs. The proposed amendment moves the requirement to comply with all applicable federal, state, and local laws and regulations regarding the services provided from paragraph (5) to new paragraph (12) and replaces the language in paragraph (5) with the requirement to comply with federal parental consent and notification requirements for accessing a student's Medicaid to pay for SHARS.

The proposed amendment to §354.1342 also reformats the rule as necessary and makes minor editorial changes.

##### FISCAL NOTE

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

##### GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro businesses, or rural communities to comply with the proposed rules because participation in the program is optional and is only offered within the school setting.

#### LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

#### COSTS TO REGULATED PERSONS

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

#### PUBLIC BENEFIT AND COSTS

Victoria Grady, Director of Provider Finance, has determined that for each year of the first five years the rules are in effect, the public benefit will be that LEAs will now be able to obtain reimbursement through the SHARS program for audiology services delivered to students under a Section 504 Plan. LEAs will receive some federal funds for those services which will save them money. Audiology services are already being provided to students under Section 504 Plans in the school setting, but the services are not reimbursable through the SHARS program.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because participation in the SHARS program is optional.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC HEARING

A public hearing is scheduled for August 22, 2022 at 1:00 p.m. and will be held by HHSC via webinar. Persons who wish to attend may register by using this link: <https://attendee.gotowebinar.com/register/6571640685000375054>. American Sign Language (ASL) interpretation will be provided. Persons requiring further information, special assistance, or accommodations aside from ASL interpretation should contact the Medical and Dental Benefits Policy box at MedicaidBenefitRequest@hhsc.state.tx.us or Jennifer Daniels at (512) 438-2935.

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed to SHARS staff in HHSC's Medicaid and CHIP Services Department at (512) 438-2935.

Written comments on the proposal may be submitted to Office of Policy, Medicaid and CHIP Services at 701 West 51st Street, Mail Code H310, Austin, Texas 78751 or via email at MedicaidBenefitRequest@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 22R093" in the subject line.

#### STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules as necessary to carry out the commission's duties; and Human Resources Code §32.021 and Texas Government Code §531.021(a), which authorize HHSC to administer the federal medical assistance (Medicaid) program.

The amendments are specifically authorized by Texas Education Code §38.034 and Human Resources Code §32.0317.

#### §354.1341. *Benefits and Limitations.*

(a) Subject to the specifications, conditions, limitations, and requirements established by HHSC [the Texas Health and Human Service Commission (Commission)], school health and related services (SHARS) are those Medicaid [health and related] services that are determined to be medically necessary and reasonable to ensure a Medicaid-enrolled student, 20 years of age or younger with a disability, [20 years of age or younger] receives the benefits accorded to the student [him or her] by federal and state legislation guaranteeing a free and appropriate public education.

(b) SHARS must be prescribed in the student's approved individualized [individual] education program (IEP) as required by the Texas Education Code, §29.001(7), and implemented through Commissioner of Education rule at 19 TAC §89.1001 (relating to the Scope and Availability).

(c) SHARS audiology services must be prescribed in an IEP as described in subsection (b) of this section or in a written Section 504 Plan as required by Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794).

(d) [(e)] SHARS must [are to] be delivered in the least restrictive environment consistent with the nature of the specific service(s) and the physical and mental condition of the student.

(e) [(d)] SHARS [may] include[, but are not necessarily limited to]:

(1) audiology, individual and group delivered by licensed/certified therapist or licensed/certified assistant;

(2) counseling, individual and group delivered by licensed/certified therapist;

- (3) physician services;
- (4) occupational therapy, individual and group delivered by licensed/certified therapist or licensed/certified assistant;
- (5) physical therapy, individual and group delivered by licensed/certified therapist or licensed/certified assistant;
- (6) psychological services;
- (7) speech therapy, individual and group delivered by licensed/certified therapist or licensed/certified assistant;
- (8) nursing services, including medication administration and nursing services delegated by a registered nurse (RN) (in compliance with RN delegated nursing tasks criteria as determined by the Texas Board of Nursing) to an employee or health aide;
- (9) special transportation services; and
- (10) personal care services.

*§354.1342. Conditions for Participation.*

To claim for school health and related services (SHARS) as described in §354.1341 of this division (relating to Benefits and Limitations), Local Education Agencies (LEAs) [provided to Medicaid-enrolled students eligible for services provided under the Individuals with Disabilities Education Act (IDEA), school districts] must:

- (1) ensure that services are provided in a manner and environment consistent with:
  - (A) the student's physical and mental condition;
  - (B) the overall goals and objectives of the student's individualized [individual] education program (IEP) or Section 504 Plan; and
  - (C) other services and schedules prescribed in the student's IEP or Section 504 Plan;
- (2) ensure that services are provided by persons licensed, accredited, or certified by the appropriate federal or state agency or recognized professional organization to deliver the specific service(s);
- [(3) meet Texas Education Agency (TEA) standards for the delivery of SHARS;]
- (3) [(4)] abide by the rules and regulations of the Texas Education Agency and HHSC [TEA] related to service delivery, record-keeping, documentation, client confidentiality, and access to client records by other professionals involved in the implementation of the student's IEP or Section 504 Plan;
- (4) ensure that applicable staff complete SHARS trainings as directed by HHSC:
  - (A) Time study and SHARS programmatic training are required for LEA administrative staff and recommended for direct service staff in their first year of participation;
  - (B) SHARS cost report training is required by each primary SHARS financial contact;
  - (C) Required training(s) must be completed each federal fiscal year and is not retroactive to previous federal fiscal years;
- (5) comply with parental consent and notification requirements in 34 CFR §300.154 before accessing a student's Medicaid to pay for SHARS prescribed in the student's Section 504 Plan or IEP;
- [(5) comply with all applicable federal, state, and local laws and regulations regarding the services provided;]

(6) be enrolled and approved for participation in the Texas Medical Assistance Program (Medicaid);

(7) sign a written [provider] agreement with HHSC [the Texas Health and Human Services Commission (the Commission)] or its designee agreeing to comply with the terms of the agreement and all requirements of Medicaid, including regulations, rules, handbooks, standards, and guidelines published by HHSC [the Commission] or its designee;

(8) comply with §355.8443 of this title (relating to Reimbursement Methodology for School Health and Related Services (SHARS));

[(8) bill for services reimbursable by Medicaid in the manner and format prescribed by the Commission or its designee, at the time services are delivered, including billing for each cost category for which the district will seek reimbursement through the annual cost report required by paragraph (11) of this section;]

(9) participate in the HHSC-administered [Commission-administered] time study;

(10) certify each quarter the Total Computable Expenditure (Total Computable Expenditure = amount paid (Federal share) + calculated State/Local share); [and]

(11) submit an annual cost report, as described in §355.8443 of this title; and [(relating to Reimbursement Methodology for School Health and Related Services (SHARS));]

(12) comply with all applicable federal, state, and local laws and regulations regarding the services provided.

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

Filed with the Office of the Secretary of State on July 25, 2022.

TRD-202202779

Karen Ray  
Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: September 4, 2022

For further information, please call: (512) 438-2935



## TITLE 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 105. FOUNDATION SCHOOL PROGRAM

#### SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING OPTIONAL EXTENDED YEAR PROGRAM

##### 19 TAC §105.1001

The Texas Education Agency (TEA) proposes an amendment to §105.1001, concerning optional extended year programs. The proposed amendment would implement House Bill (HB) 3, 86th Texas Legislature, 2019, by removing an outdated provision related to the school finance system.

**BACKGROUND INFORMATION AND JUSTIFICATION:** Texas Education Code (TEC), §29.082, authorizes the commissioner of education to adopt rules for the administration of an extended year program provided by school districts and open-enrollment charter schools for certain eligible students.

The proposed amendment would eliminate subsection (f), which references Option 4 wealth equalization agreements under TEC, Chapter 41. Because of changes to the school finance system by HB 3, 86th Texas Legislature, 2019, districts no longer exercise Option 4 agreements. Removing the outdated provision would align the rule with current practice and eliminate concerns of duplicate funding.

**FISCAL IMPACT:** Kristen Hole, associate commissioner for instructional strategy, has determined that for the first five-year period the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

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

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

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

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

**GOVERNMENT GROWTH IMPACT:** TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would limit an existing regulation by removing an outdated provision.

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

**PUBLIC BENEFIT AND COST TO PERSONS:** Ms. Hole has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be to ensure rule language is based on current law and provide school districts with clarifications by removing outdated provisions in alignment with HB 3, 86th Texas Legislature, 2019. There is no anticipated economic cost to persons who are required to comply with the proposal.

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

**PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS:** TEA has determined that the proposal would not

require a written report or other paperwork to be completed by a principal or classroom teacher.

**PUBLIC COMMENTS:** The public comment period on the proposal begins August 5, 2022, and ends September 5, 2022. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on August 5, 2022. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About\\_TEA/Laws\\_and\\_Rules/Commissioner\\_Rules\\_\(TAC\)/Proposed\\_Commissioner\\_of\\_Education\\_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

**STATUTORY AUTHORITY.** The amendment is proposed under Texas Education Code, §29.082, which authorizes an optional extended year program to allow a school district to apply to the Texas Education Agency for funding of an extended year program for a period not to exceed 30 instructional days for students in Kindergarten-Grade 11 who are identified as likely not to be promoted to the next grade level for the succeeding school year or for students in Grade 12 who are identified as likely not to graduate from high school before the beginning of the succeeding school year. TEC, §29.082(b), authorizes the commissioner of education to adopt rules for the administration of an optional extended year program.

**CROSS REFERENCE TO STATUTE.** The amendment implements Texas Education Code, §29.082.

*§105.1001. Optional Extended Year Program.*

(a) Each school district seeking funding for an optional extended year program under the Texas Education Code, §29.082, must submit an application in a format prescribed by the commissioner of education. Once funded, the program shall comply with the provisions of the Texas Education Code, §29.082.

(b) An optional extended year program may extend the day, the week, or the year to provide additional support and instruction for eligible students. The program shall be conducted beyond the required instructional days, which may include intercessions for year-round programs.

(c) A student is eligible for services in accordance with the Texas Education Code, §29.082(a)(1)-(2). A student who does not demonstrate proficiency in a subject area as determined by the district is also eligible for services.

(d) School districts shall be funded annually based on the most recent district data available to the Texas Education Agency through the Public Education Information Management System (PEIMS). Funding shall be based on the following:

(1) Eligibility. School districts in which at least 40% of the students in Kindergarten through Grade 12 are from economically disadvantaged families will be eligible for funding.

(2) Maximum entitlement. Funding for an eligible school district under this section shall be based on the amount necessary to provide extended year instructional services to at least 5.0% of the at-risk student population in Kindergarten through Grade 12.

(3) Per capita amount. The per capita amount will be determined by dividing the total program allocation by the sum of the maximum entitlement populations in Kindergarten through Grade 12 in eligible school districts.

(4) Reallocation. Program funds not requested by eligible school districts will be reallocated to school districts identified in paragraph (1) of this subsection that requested funding.

(c) At a minimum, school districts will be required to provide services to the number of students identified on the school district's entitlement notice used for funding. School districts that have fewer students participating in the optional extended year program than identified for calculating the school district's maximum entitlement (including reallocation, if applicable) will have their entitlement reduced on a per-capita basis.

~~(f)~~ A school district receiving funds under the Texas Education Code, §29.082, that is also receiving funds for an optional extended year program for students in Kindergarten through Grade 12 under the Option 4 wealth equalization agreement authorized under the Texas Education Code, Chapter 41, must adjust its Option 4 equalization agreement. The district must adjust the agreement to redirect the use of funds to a qualifying activity other than an optional extended year program for students in Kindergarten through Grade 12 to the extent necessary to avoid duplicate funding of optional extended year programs.]

(f) ~~(g)~~ A school district receiving funds for the accelerated reading instruction program authorized under the Texas Education Code, §28.006(g), is eligible to use funds authorized under the Texas Education Code, §29.082, to serve students in Kindergarten through Grade 2. Each optional extended year program must have auditable funding documentation linking direct service expenditures and optional extended year program funds used to identify eligible students.

(g) ~~(h)~~ All costs under the optional extended year program must be necessary and reasonable for carrying out the objectives of the program and for the proper and efficient performance and administration of the program.

(h) ~~(i)~~ Teacher training required under the Texas Education Code, §29.082(d), shall address the provisions set forth in this subsection. Training is to occur prior to the implementation of the program. Additional training may be provided throughout the implementation of the program. The required training shall provide teachers with the following:

(1) knowledge and skills needed to help students in the program meet challenging state content and student performance standards; and

(2) innovative instructional practices suitable for accelerating the academic performance of at-risk students.

(i) ~~(j)~~ A school district shall incorporate effective instructional strategies into the design of the program to ensure students are provided with the skills needed to be successful in the following school year. An extended day program must be implemented beyond the regular seven-hour day and may not include tutorials or extended in-school day-care services. A program with the basic design to complete homework is not an acceptable instructional design for the program. A tutorial program using pre- and post-testing with each student working on a sequenced and focused program over time to enable the student to attain greater academic success is acceptable.

(j) ~~(k)~~ A school district shall submit an annual report evaluating the program in the time and format required by the commissioner. A school district shall also submit, in a manner determined by the commissioner, a complete list of students who participated in the program for at least one day.

(k) ~~(l)~~ For audit purposes, a school district shall maintain documentation to support each of the requirements of this section.

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

Filed with the Office of the Secretary of State on July 25, 2022.

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: September 4, 2022

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

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**TITLE 22. EXAMINING BOARDS**

**PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS**

**CHAPTER 463. APPLICATIONS AND EXAMINATIONS**

**SUBCHAPTER F. PROFESSIONAL DEVELOPMENT**

**22 TAC §463.35**

The Texas Behavioral Health Executive Council proposes the repeal of §463.35, relating to Professional Development.

Overview and Explanation of the Proposed Rule. This rule is proposed to be repealed and replaced by a new §465.35, pertaining to Requirements for Professional Development, which is formatted similarly to the other Boards under the Executive Counsel.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed repeal is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the repeal. Additionally, Mr. Spinks has determined that enforcing or administering the repeal does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect there will be a benefit to licensees, applicants, and the general public because the proposed repeal and replace of the professional development rule will provide greater clarity and consistency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no additional economic costs to persons required to comply with this repeal.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed repeal will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed repeal will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed repeal does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed repeal is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed repeal is in effect, the Executive Council estimates that the proposed repeal will have no effect on government growth. The proposed repeal does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to the agency; it does not require an increase or decrease in fees paid to this agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed repeal. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed repeal may be submitted to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7-300, Austin, Texas 78701, or by email to [rules@bhec.texas.gov](mailto:rules@bhec.texas.gov). The deadline for receipt of comments is 5:00 p.m., Central Time, on September 4, 2022, which is at least 30 days from the date of publication in the *Texas Register*.

Statutory Authority. The repeal is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this repeal pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §501.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Psychologists previously voted and, by a majority, approved to propose this repeal to the Executive Council. The repeal is specifically authorized by §501.1515 of

the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Tex. Occ. Code and may propose this repeal.

Lastly, the Executive Council proposes this repeal under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

#### §463.35. *Professional Development.*

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

Filed with the Office of the Secretary of State on July 20, 2022.

TRD-202202739

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: September 4, 2022

For further information, please call: (512) 305-7706



## 22 TAC §463.35

The Texas Behavioral Health Executive Council proposes new §463.35, relating to Requirements for Professional Development.

Overview and Explanation of the Proposed Rule. This proposed new rule is intended to streamline all the continuing education into a rule formatted similarly to the other Boards under the Executive Council. Additionally, this rule adds and changes some of the requirements for each renewal cycle. For example, licensees will be able to carry forward up to ten hours from the previous cycle if they were not used, licensees can opt to take the jurisprudence examination for one hour of ethics credit, and lastly licensees can now claim up to one hour of self-study continuing education credit.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

**Public Benefit.** Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the proposed rule will provide greater clarity and consistency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

**Probable Economic Costs.** Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

**Small Business, Micro-Business, and Rural Community Impact Statement.** Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

**Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities.** Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

**Local Employment Impact Statement.** Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

**Requirement for Rules Increasing Costs to Regulated Persons.** The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

**Government Growth Impact Statement.** For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

**Takings Impact Assessment.** Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

**Request for Public Comments.** Comments on the proposed rule may be submitted to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7-300, Austin, Texas 78701, or by email to rules@bhec.texas.gov. The deadline for receipt of comments

is 5:00 p.m., Central Time, on September 4, 2022, which is at least 30 days from the date of publication in the *Texas Register*.

**Statutory Authority.** The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §501.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Psychologists previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §501.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Tex. Occ. Code and may propose this rule.

Lastly, the Executive Council proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

§465.35. Requirements for Professional Development.

(a) Minimum Professional Development Hours Required.

(1) A licensee must complete 40 hours of professional development during each renewal period that they hold a license. The 40 hours of professional development must include six (6) hours in ethics and six (6) hours in cultural diversity or competency.

(2) A licensee may carry forward to the next renewal period a maximum of 10 hours accrued during the current renewal period if those hours are not needed for renewal.

(b) Acceptable ethics hours include, but are not limited to, professional development on:

(1) state or federal laws, including agency rules, relevant to the practice of psychology;

(2) practice guidelines established by local, regional, state, national, or international professional organizations;

(3) training or education designed to demonstrate or affirm the ideals and responsibilities of the profession; and

(4) training or education intended to assist licensees in determining appropriate decision-making and behavior, improve consistency in or enhance the professional delivery of services, and provide a minimum acceptable level of practice.

(c) Acceptable cultural diversity or competency hours include, but are not limited to, professional development regarding age, disability, ethnicity, gender, gender identity, language, national origin, race, religion, culture, sexual orientation, and socio-economic status.

(d) Acceptable Professional Development Activities.

(1) All professional development hours must have been received during the renewal period, unless allowed under subsection (a)(2) of this section, and be directly related to the practice of psychology;

(2) The Council shall make the determination as to whether the activity claimed by the licensee is directly related to the practice of psychology;

(3) Except for hours claimed under subsection (g) of this section, all professional development hours obtained must be designated by the provider in a letter, email, certificate, or transcript that displays the licensee's name, topic covered, date(s) of training, and hours of credit earned; and

(4) Multiple instances or occurrences of a professional development activity may not be claimed for the same renewal period.

(e) Licensees must obtain at least fifty percent of their professional development hours from one or more of the following providers:

(1) an international, national, regional, state, or local association of medical, mental, or behavioral health professionals;

(2) public school districts, charter schools, or education service centers;

(3) city, county, state, or federal governmental entities;

(4) an institution of higher education accredited by a regional accrediting organization recognized by the Council for Higher Education Accreditation, the Texas Higher Education Coordinating Board, or the United States Department of Education;

(5) religious or charitable organizations devoted to improving the mental or behavioral health of individuals; or

(6) any provider approved or endorsed by a provider listed herein.

(f) Licensees shall receive credit for professional development activities according to the number of hours designated by the provider, or if no such designation, on a one-for-one basis with one credit hour for each hour spent in the professional development activity.

(g) Licensees may claim professional development credit for each of the following activities:

(1) Passage of the jurisprudence examination. Licensees who pass the jurisprudence examination may claim one (1) hour of professional development in ethics.

(2) Preparing and giving a presentation at a professional development activity. The maximum number of hours that may be claimed for this activity is five (5) hours.

(3) Authoring a book or peer reviewed article. The maximum number of hours that may be claimed for this activity is five (5) hours.

(4) Teaching or attending a graduate level course. The maximum number of hours that may be claimed for this activity is five (5) hours.

(5) Self-study. The maximum number of hours that may be claimed for this activity is one (1) hour.

(6) Successful completion of a training course on human trafficking prevention described by §116.002 of the Occupations Code. Licensees who complete this training may claim one (1) hour of professional development credit.

(7) The Council does not pre-evaluate or pre-approve professional development providers or hours.

(8) Licensees shall maintain proof of professional development compliance for a minimum of three (3) years after the applicable renewal period.

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

Filed with the Office of the Secretary of State on July 20, 2022.

TRD-202202740

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: September 4, 2022

For further information, please call: (512) 305-7706



## PART 34. TEXAS STATE BOARD OF SOCIAL WORKER EXAMINERS

### CHAPTER 781. SOCIAL WORKER LICENSURE

#### SUBCHAPTER B. RULES OF PRACTICE

##### 22 TAC §781.304

The Texas Behavioral Health Executive Council proposes amended §781.304, relating to Relationships with Clients.

Overview and Explanation of the Proposed Rule. The proposed amendment removes duplicative language that is currently stated in §781.310, pertaining to billing and financial relationships.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the proposed rule will provide greater clarity and consistency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rule may be submitted to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7-300, Austin, Texas 78701, or by email to rules@bhec.texas.gov. The deadline for receipt of comments is 5:00 p.m., Central Time, on September 4, 2022, which is at least 30 days from the date of publication in the *Texas Register*.

Statutory Authority. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §505.2015 of the Tex. Occ. Code the Texas State Board of Social Worker Examiners previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §505.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

*§781.304. Relationships with Clients.*

(a) A social worker shall inform in writing a prospective client about the nature of the professional relationship, which can include but is not limited to office procedures, after-hours coverage, services provided, fees, and arrangements for payment.

(b) The social worker shall not give or receive a commission, rebate, or any other form of remuneration for referring clients. [A licensee shall not intentionally or knowingly offer to pay or agree to accept any remuneration directly or indirectly, overtly or covertly, in cash or in kind, to or from any person, firm, association of persons, partnership, corporation, or entity for securing or soliciting clients or patronage for or from any health care professional. In accordance with the provisions of the Act, §505.451, a licensee is subject to disciplinary action if the licensee directly or indirectly offers to pay or agrees to accept remuneration to or from any person for securing or soliciting a client or patronage. Payment of credentialing or other fees to insurance companies or other third party payers to be part of an approved provider list shall not be considered as a violation of this chapter. ]

(c) A social worker shall not enter into a business relationship with a client. This rule does not prohibit a professional social work relationship with a client, as described in this subchapter.

(d) A social worker shall not engage in activities that seek to primarily meet the social worker's personal needs or personal gain instead of the needs of the client.

(e) A social worker shall be responsible for setting and maintaining professional boundaries.

(f) A social worker shall keep accurate records of services to include, but not be limited to, dates of services, types of services,

progress or case notes and billing information for a minimum of seven years after the date of termination of services for an adult client or five years beyond the age of 18 years of age for a minor, whichever is greater.

(g) A social worker shall bill clients or third parties for only those services actually rendered or as agreed to by mutual written understanding.

(h) A licensee shall not make any false, misleading, deceptive, fraudulent or exaggerated claim or statement about the effectiveness of the licensee's services; the licensee's qualifications, capabilities, background, training, experience, education, professional affiliations, fees, products, or publications; the type, effectiveness, qualifications, and products or services offered by an organization or agency; or the practice or field of social work.

(i) If the licensee learns that false, misleading, deceptive, fraudulent or exaggerated statements about the services, qualifications, or products have been made, the licensee shall take reasonable steps to correct the inappropriate claims, prevent their reoccurrence, and report the incident to the Council.

(j) A licensee shall provide social work intervention only in the context of a professional relationship.

(k) Electronic practice may be used judiciously as part of the social work process and the supervision process. Social workers engaging in electronic practice, providing services to clients located in the State of Texas, must be licensed in Texas and adhere to provisions of this chapter.

(l) The licensee shall not provide social work services or intervention to previous or current family members; personal friends; educational or business associates; or individuals whose welfare might be jeopardized by a dual or multiple relationship.

(m) The licensee shall not accept from or give to a client any gift with a value in excess of \$25. If the licensee's employer prohibits giving or receiving gifts, the licensee shall comply with the employer's policy.

(n) The licensee or relatives to the fourth degree of consanguinity or affinity of the licensee may not intentionally borrow or lend money or items of value to clients or relatives to the fourth degree of consanguinity or affinity of clients.

(o) The licensee shall take reasonable precautions to protect individuals from physical or emotional harm resulting from interaction within individual and group settings.

(p) A licensee shall not promote the licensee's personal or business activities that are unrelated to the current professional relationship.

(q) A licensee shall set and maintain professional boundaries, avoiding dual or multiple relationships with clients. If a dual or multiple relationship develops, the social worker is responsible for ensuring the client is safe.

(r) A licensee may not enter into a non-professional relationship with a client's family member or any person having a personal or professional relationship with the client, if the licensee knows or reasonably should have known such a relationship could be detrimental to the client.

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

Filed with the Office of the Secretary of State on July 20, 2022.

TRD-202202753

Darrel D. Spinks

Executive Director

Texas State Board of Social Worker Examiners

Earliest possible date of adoption: September 4, 2022

For further information, please call: (512) 305-7706



## SUBCHAPTER C. APPLICATION AND LICENSING

### 22 TAC §781.401

The Texas Behavioral Health Executive Council proposes amended §781.401, relating to Qualifications for Licensure.

**Overview and Explanation of the Proposed Rule.** The proposed amendment removes the requirements that supervised experience must be obtained within five years immediately preceding the date of application for specialty recognition.

**Fiscal Note.** Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

**Public Benefit.** Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the proposed rule will provide greater clarity and consistency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

**Probable Economic Costs.** Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

**Small Business, Micro-Business, and Rural Community Impact Statement.** Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

**Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities.** Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

**Local Employment Impact Statement.** Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

**Requirement for Rules Increasing Costs to Regulated Persons.** The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or

amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rule may be submitted to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7-300, Austin, Texas 78701, or by email to rules@bhec.texas.gov. The deadline for receipt of comments is 5:00 p.m., Central Time, on September 4, 2022, which is at least 30 days from the date of publication in the *Texas Register*.

Statutory Authority. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §505.2015 of the Tex. Occ. Code the Texas State Board of Social Worker Examiners previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §505.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied

with Chapters 505 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

*§781.401. Qualifications for Licensure.*

(a) Licensure. The following education and experience is required for licensure as designated. If an applicant for a license has held a substantially equivalent license in good standing in another jurisdiction for one year immediately preceding the date of application, the applicant will be deemed to have met the experience requirement under this chapter.

(1) Licensed Clinical Social Worker (LCSW).

(A) Has been conferred a master's degree in social work from a CSWE-accredited social work program, or a doctoral degree in social work from an accredited institution of higher learning acceptable to the Council, and has documentation in the form of a university transcript of successfully completing a field placement in social work.

(B) Has had 3000 hours of supervised professional clinical experience over a period of 24 to 48 months, or its equivalent if the experience was completed in another jurisdiction. Hours accrued in non-clinical settings may be used to satisfy the requirements of this rule if the applicant works at least 4 hours per week providing clinical social work as defined in §781.102 of this title (relating to Definitions).

(C) Has had a minimum of 100 hours of supervision, over the course of the 3000 hours of supervised experience, with a Council approved supervisor. If the social worker completed supervision in another jurisdiction, the social worker shall have the supervision verified by the regulatory authority in the other jurisdiction. If such verification is impossible, the social worker may request that the Council accept alternate verification of supervision.

(D) Has passed the Clinical examination administered nationally by ASWB.

(2) Licensed Master Social Worker (LMSW).

(A) Has been conferred a master's degree in social work from a CSWE-accredited social work program, or a doctoral degree in social work from an accredited university acceptable to the Council, and has documentation in the form of a university transcript of successfully completing a field placement in social work.

(B) Has passed the Master's examination administered nationally by ASWB.

(3) Licensed Baccalaureate Social Worker (LBSW).

(A) Has been conferred a baccalaureate degree in social work from a CSWE accredited social work program.

(B) Has passed the Bachelors examination administered nationally by ASWB.

(b) Specialty Recognition. The following education and experience is required for Independent Non-clinical Practice specialty recognitions.

(1) Is currently licensed in the State of Texas as an LBSW or LMSW.

(2) While fully licensed as a social worker has had 3000 hours of supervised full-time social work experience over a minimum two-year period, but within a maximum five-year period or its equivalent if the experience was completed in another state. Supervised professional experience must comply with §781.404 of this title and all other applicable laws and rules.

(3) Has had a minimum of 100 hours of supervision, over the course of the 3000 hours of experience, with a Council-approved supervisor. [Supervised experience must have occurred within the 5 calendar years immediately preceding the date of application for IPR specialty recognition.] If supervision was completed in another jurisdiction, the social worker shall have the supervision verified by the regulatory authority in the other jurisdiction. If such verification is impossible, the social worker may request that the Council accept alternate verification.

(c) Applicants for a license must complete the Council's jurisprudence examination and submit proof of completion at the time of application.

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

Filed with the Office of the Secretary of State on July 21, 2022.

TRD-202202754

Darrel D. Spinks

Executive Director

Texas State Board of Social Worker Examiners

Earliest possible date of adoption: September 4, 2022

For further information, please call: (512) 305-7706



## 22 TAC §781.405

The Texas Behavioral Health Executive Council proposes amendments to §781.405, relating to Application for Licensure.

Overview and Explanation of the Proposed Rule. This proposed amendment is made to correct a typographical error.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the proposed rule will provide greater clarity and consistency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year pe-

riod the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rule may be submitted to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7-300, Austin, Texas 78701, or by email to [rules@bhec.texas.gov](mailto:rules@bhec.texas.gov). The deadline for receipt of comments is 5:00 p.m., Central Time, on September 4, 2022, which is at least 30 days from the date of publication in the *Texas Register*.

Statutory Authority. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §505.2015 of the Tex. Occ. Code the Texas State Board of Social Worker Examiners previously voted and,

by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §505.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board previously proposed this rule to the Executive Council. Pursuant to 22 Texas Administrative Code §881.20, the Executive Council has the authority to make non-substantive editorial changes to rules, and the sole reason for the proposed change is to correct a typographical error. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

*§781.405. Application for Licensure.*

A licensure or specialty application must be submitted in accordance with Council rules ~~§882.1~~ [882.1] of this title (relating to Application Process) and ~~§882.2~~ [882.1] of this title (relating to General Application File Requirements).

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

Filed with the Office of the Secretary of State on July 21, 2022.

TRD-202202755

Darrel D. Spinks

Executive Director

Texas State Board of Social Worker Examiners

Earliest possible date of adoption: September 4, 2022

For further information, please call: (512) 305-7706



**22 TAC §781.406**

The Texas Behavioral Health Executive Council proposes amended §781.406, relating to Required Documentation of Qualifications for Licensure.

**Overview and Explanation of the Proposed Rule.** The proposed amendment removes the requirements that supervised experience must be obtained within five years immediately preceding the date of application.

**Fiscal Note.** Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the

rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

**Public Benefit.** Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the proposed rule will provide greater clarity and consistency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

**Probable Economic Costs.** Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

**Small Business, Micro-Business, and Rural Community Impact Statement.** Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

**Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities.** Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

**Local Employment Impact Statement.** Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

**Requirement for Rules Increasing Costs to Regulated Persons.** The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

**Government Growth Impact Statement.** For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

**Takings Impact Assessment.** Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

**Request for Public Comments.** Comments on the proposed rule may be submitted to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 1801 Congress

Ave., Ste. 7-300, Austin, Texas 78701, or by email to rules@bhec.texas.gov. The deadline for receipt of comments is 5:00 p.m., Central Time, on September 4, 2022, which is at least 30 days from the date of publication in the *Texas Register*.

Statutory Authority. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §505.2015 of the Tex. Occ. Code the Texas State Board of Social Worker Examiners previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §505.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

§781.406. *Required Documentation of Qualifications for Licensure.*

(a) Application form. An applicant for licensure must submit a completed official application form with all requested information.

(b) Education verification.

(1) The applicant's education must be documented by official college transcripts from social work educational units accredited by CSWE.

(2) Degrees for licensure as an LBSW or LMSW must be from programs accredited or in candidacy for accreditation by CSWE.

(c) Experience verification.

(1) An applicant's experience for licensure or for specialty recognition must meet the requirements of §781.401 of this title (relating to Qualifications for Licensure), §781.402 of this title (relating to Clinical Supervision for LCSW and Non-Clinical Supervision for Independent Practice Recognition), and §781.404 of this title (relating to Recognition as a Council-approved Supervisor and the Supervision Process). The applicant must document the names and addresses of su-

pervisors; beginning and ending dates of supervision; job description; and average number of hours of social work activity per week. The applicant must further document the appropriate supervision plan and verification form for each practice location.

(2) The applicant's experience must have been in a position providing social work services, under the supervision of a qualified supervisor, with written evaluations to demonstrate satisfactory performance.

~~[(3) Supervised experience must have occurred within the five calendar years immediately preceding the date of an initial or upgrade application.]~~

(3) [(4)] The applicant must maintain and upon request, provide to the Council documentation of employment status, pay vouchers, or supervisory evaluations.

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

Filed with the Office of the Secretary of State on July 21, 2022.

TRD-202202756

Darrel D. Spinks

Executive Director

Texas State Board of Social Worker Examiners

Earliest possible date of adoption: September 4, 2022

For further information, please call: (512) 305-7706



## SUBCHAPTER D. SCHEDULE OF SANCTIONS

### 22 TAC §781.803

The Texas Behavioral Health Executive Council proposes amendments to §781.803, relating to Severity Levels.

Overview and Explanation of the Proposed Rule. This amended rule is proposed to make the rule clearer and simplifying the guide by combining levels 2 and 3 into a suspension for any amount of time. Additionally, the maximum penalty amount for each level is raised to \$5,000 to align with Occupations Code Section 507.352.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the proposed rule will provide greater clarity and consistency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be

no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rule may be submitted to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7-300, Austin, Texas 78701, or by email to rules@bhec.texas.gov. The deadline for receipt of comments is 5:00 p.m., Central Time, on September 4, 2022, which is at least 30 days from the date of publication in the *Texas Register*.

Statutory Authority. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules nec-

essary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §505.2015 of the Tex. Occ. Code the Texas State Board of Social Worker Examiners previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §505.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

*§781.803. Severity Levels.*

The following are severity levels for the schedule of sanctions.

(1) Level One--Revocation of license. These violations evidence the licensee's intentional or gross misconduct, cause or pose a high degree of harm to the public, and/or require severe punishment to deter the licensee, or other licensees. The fact that a license is ordered revoked does not necessarily mean the licensee can never regain licensure. The Council may also impose an administrative penalty of not less than \$250 or more than \$5,000 for each Level One violation. Each day a violation continues or occurs is a separate violation for the purpose of imposing a financial penalty.

(2) Level Two--Suspension[Extended suspension] of license. These violations involve less misconduct, harm, or need for deterrence than Level One violations, but require suspension of licensure for a period of time [not less than one year]. The Council may also impose an administrative penalty of not less than \$250 or more than \$5,000 [\$4,000] for each Level Two violation. Each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty.

[(3) Level Three--Moderate suspension of license. These violations involve less misconduct, harm, or need for deterrence than Level Two violations, but require suspension of licensure for some period of time. The Council may also impose an administrative penalty of not less than \$250 or more than \$3,000 for each Level Three violation. Each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty. ]

(3) [(4) ] Level Three [ Four ]--Probated suspension of license. These violations do not involve enough harm, misconduct, or need for deterrence to warrant suspension of licensure, yet are severe enough to warrant monitoring of the licensee to ensure future compliance. The Council may also impose an administrative penalty of not less than \$250 or more than \$5,000 [\$2,000] for each Level Three

[~~Four~~] violation. Each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty.

(4) [~~(5)~~] Level ~~Four~~ [~~Five~~]-Reprimand. These violations involve minor misconduct not directly involving the health, safety or welfare of the particular member of the public at issue. The Council may also impose an administrative penalty of not less than \$250 or more than \$5,000 [~~\$1,000~~] for each Level ~~Four~~ [~~Five~~] violation. Each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty.

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

Filed with the Office of the Secretary of State on July 20, 2022.

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Darrel D. Spinks

Executive Director

Texas State Board of Social Worker Examiners

Earliest possible date of adoption: September 4, 2022

For further information, please call: (512) 305-7706



## 22 TAC §781.805

The Texas Behavioral Health Executive Council proposes the repeal of §781.805, relating to Schedule of Sanctions.

**Overview and Explanation of the Proposed Rule.** This rule is proposed to be repealed and replaced with a new schedule of sanctions that is proposed elsewhere in the edition of the *Texas Register*.

**Fiscal Note.** Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed repeal is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the repeal. Additionally, Mr. Spinks has determined that enforcing or administering the repeal does not have foreseeable implications relating to the costs or revenues of state or local government.

**Public Benefit.** Mr. Spinks has determined for the first five-year period the proposed repeal is in effect there will be a benefit to licensees, applicants, and the general public because the proposed repeal and replace of the schedule of sanctions rule will provide greater clarity and consistency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be to help the Executive Council protect the public.

**Probable Economic Costs.** Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no additional economic costs to persons required to comply with this repeal.

**Small Business, Micro-Business, and Rural Community Impact Statement.** Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

**Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities.** Mr. Spinks has determined that the proposed repeal will have no adverse economic effect on small

businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

**Local Employment Impact Statement.** Mr. Spinks has determined that the proposed repeal will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

**Requirement for Rules Increasing Costs to Regulated Persons.** The proposed repeal does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed repeal is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

**Government Growth Impact Statement.** For the first five-year period the proposed repeal is in effect, the Executive Council estimates that the proposed repeal will have no effect on government growth. The proposed repeal does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to the agency; it does not require an increase or decrease in fees paid to this agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

**Takings Impact Assessment.** Mr. Spinks has determined that there are no private real property interests affected by the proposed repeal. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

**Request for Public Comments.** Comments on the proposed repeal may be submitted to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7-300, Austin, Texas 78701, or by email to [rules@bhec.texas.gov](mailto:rules@bhec.texas.gov). The deadline for receipt of comments is 5:00 p.m., Central Time, on September 4, 2022, which is at least 30 days from the date of publication in the *Texas Register*.

**Statutory Authority.** The repeal is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this repeal pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §505.2015 of the Tex. Occ. Code the Texas State Board of Social Worker Examiners previously voted and, by a majority, approved to propose this repeal to the Executive Council. The repeal is specifically authorized by §505.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and

ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may propose this repeal.

Lastly, the Executive Council proposes this repeal under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

*§781.805. Schedule of Sanctions.*

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

Filed with the Office of the Secretary of State on July 21, 2022.

TRD-202202758

Darrel D. Spinks

Executive Director

Texas State Board of Social Worker Examiners

Earliest possible date of adoption: September 4, 2022

For further information, please call: (512) 305-7706



## 22 TAC §781.805

The Texas Behavioral Health Executive Council proposes new §781.805, relating to Schedule of Sanctions.

**Overview and Explanation of the Proposed Rule.** This new rule has been proposed to replace the current schedule of sanctions and make it easier to use. While the format of the schedule has changed the substance is the same except with regards to two other proposed rule amendments. Amendments to §781.803 are being proposed in this edition of the *Texas Register*, so corresponding amendments have been made to this new schedule of sanctions to align with those proposed changes. Additionally, proposed changes to §781.404 were published in the April 22, 2022, edition of the *Texas Register*. Proposed changes to this schedule were also published in that same edition of the *Texas Register*, but those have now been withdrawn and are re-proposed in this new rule. There are no additional substantive changes being proposed to this new schedule of sanctions when compared to the current schedule of sanctions.

**Fiscal Note.** Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

**Public Benefit.** Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the proposed rule will provide greater clarity and consistency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

**Probable Economic Costs.** Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

**Small Business, Micro-Business, and Rural Community Impact Statement.** Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

**Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities.** Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

**Local Employment Impact Statement.** Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

**Requirement for Rules Increasing Costs to Regulated Persons.** The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

**Government Growth Impact Statement.** For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

**Takings Impact Assessment.** Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

**Request for Public Comments.** Comments on the proposed rule may be submitted to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7-300, Austin, Texas 78701, or by email to rules@bhcec.texas.gov. The deadline for receipt of comments

is 5:00 p.m., Central Time, on September 4, 2022, which is at least 30 days from the date of publication in the *Texas Register*.

Statutory Authority. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §505.2015 of the Tex. Occ. Code the Texas State Board of Social Worker Examiners previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §505.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

§781.805. Schedule of Sanctions.

The following standard sanctions shall apply to violations of the Act and these rules.

Figure: 22 TAC §781.805

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

Filed with the Office of the Secretary of State on July 21, 2022.

TRD-202202759

Darrel D. Spinks

Executive Director

Texas State Board of Social Worker Examiners

Earliest possible date of adoption: September 4, 2022

For further information, please call: (512) 305-7706



## PART 35. TEXAS STATE BOARD OF EXAMINERS OF MARRIAGE AND FAMILY THERAPISTS

### CHAPTER 801. LICENSURE AND REGULATION OF MARRIAGE AND FAMILY THERAPISTS

#### SUBCHAPTER A. GENERAL PROVISIONS

##### 22 TAC §801.2

The Texas Behavioral Health Executive Council proposes amended §801.2, relating to Definitions.

Overview and Explanation of the Proposed Rule. The proposed amendment adds a definition for direct clinical services to couples or family for the purpose of providing greater clarity in the rules.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the proposed rule will provide greater clarity and consistency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed

rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rule may be submitted to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7-300, Austin, Texas 78701, or by email to rules@bhec.texas.gov. The deadline for receipt of comments is 5:00 p.m., Central Time, on September 4, 2022, which is at least 30 days from the date of publication in the *Texas Register*.

Statutory Authority. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

§801.2. *Definitions.*

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

(1) Accredited institutions or programs--An institution of higher education accredited by a regionally accrediting agency recognized by the Council for Higher Education Accreditation, the Texas Higher Education Coordinating Board, or the United States Department of Education.

(2) Act--Texas Occupations Code, Chapter 502, the Licensed Marriage and Family Therapist Act.

(3) Board--The Texas State Board of Examiners of Marriage and Family Therapists.

(4) Client--An individual, family, couple, group, or organization who receives or has received services from a person identified as a marriage and family therapist who is either licensed by the council or unlicensed.

(5) Council--The Texas Behavioral Health Executive Council.

(6) Council Act--Texas Occupations Code, Chapter 507, concerning the Texas Behavioral Health Executive Council.

(7) Council rules--22 Texas Administrative Code, Chapters 801 and 881 to 885.

(8) Direct clinical services to couples or family--professional services provided to couples or families in which a clinician delivers therapeutic services with two or more individuals simultaneously or two or more individuals from the same family system within the same therapeutic session. Individuals must share an ongoing relationship beyond that which occurs in the therapeutic experience itself. Examples of ongoing relationships include family systems, couple systems, enduring friendship/community support systems, and residential, treatment or situationally connected systems.

(9) [(8)] Endorsement--The process whereby the council reviews licensing requirements that a license applicant completed while under the jurisdiction of an out-of-state marriage and family therapy regulatory board. The council may accept, deny or grant partial credit for requirements completed in a different jurisdiction.

(10) [(9)] Executive director--the executive director for the Texas Behavioral Health Executive Council.

(11) [(10)] Family system--An open, on-going, goal-seeking, self-regulating, social system which shares features of all such systems. Certain features such as its unique structuring of gender, race, nationality and generation set it apart from other social systems. Each individual family system is shaped by its own particular structural features (size, complexity, composition, and life stage), the psychobiological characteristics of its individual members (age, race, nationality, gender, fertility, health and temperament) and its socio-cultural and historic position in its larger environment.

(12) [(11)] Group supervision--Supervision that involves a minimum of three and no more than six marriage and family therapy supervisees or LMFT Associates in a clinical setting during the supervision hour.

(13) [(12)] Individual supervision--Supervision of no more than two marriage and family therapy supervisees or LMFT Associates in a clinical setting during the supervision hour.

(14) [(13)] Jurisprudence exam--An online learning experience based on the Act, the Council Act, and council rules, and other state laws and rules relating to the practice of marriage and family therapy.

(15) [(14)] License--A marriage and family therapist license, a marriage and family therapist associate license, a provisional marriage and family therapist license, or a provisional marriage and family therapist associate license.

(16) [(15)] Licensed marriage and family therapist (LMFT)--As defined in §502.002 of the Occupations Code, a person who offers marriage and family therapy for compensation.

(17) [(16)] Licensed marriage and family therapist associate (LMFT Associate)--As defined in §502.002 of the Occupations Code, an individual who offers to provide marriage and family therapy for compensation under the supervision of a supervisor approved by the executive council. The appropriate council-approved terms to refer to an LMFT Associate are: "Licensed Marriage and Family Therapist Associate" or "LMFT Associate." Other terminology or abbreviations like "LMFT A" are not council-approved and may not be used.

(18) [(17)] Licensee--Any person licensed by the council.

(19) [(18)] Licensure examination--The national licensure examination administered by the Association of Marital and Family Therapy Regulatory Boards (AMFTRB) or the State of California marriage and family therapy licensure examination.

(20) [(19)] Marriage and family therapy--The rendering of professional therapeutic services to clients, singly or in groups, and involves the professional application of family systems theories and techniques in the delivery of therapeutic services to those persons. The term includes the evaluation and remediation of cognitive, affective, behavioral, or relational dysfunction or processes.

(21) [(20)] Month--A calendar month.

(22) [(21)] Person--An individual, corporation, partnership, or other legal entity.

(23) [(22)] Recognized religious practitioner--A rabbi, clergyman, or person of similar status who is a member in good standing of and accountable to a legally recognized denomination or legally recognizable religious denomination or legally recognizable religious organization and other individuals participating with them in pastoral counseling if:

(A) the therapy activities are within the scope of the performance of regular or specialized ministerial duties and are performed under the auspices of sponsorship of an established and legally recognized church, denomination or sect, or an integrated auxiliary of a church as defined in 26 CFR §1.6033-2(h) (relating to Returns by exempt organizations (taxable years beginning after December 31, 1969) and returns by certain nonexempt organizations (taxable years beginning after December 31, 1980));

(B) the individual providing the service remains accountable to the established authority of that church, denomination, sect, or integrated auxiliary; and

(C) the person does not use the title of or hold himself or herself out as a licensed marriage and family therapist.

(24) [(23)] Supervision--

(A) Supervision for licensure--The guidance or management in the provision of clinical services by a marriage and family therapy supervisee or LMFT Associate, which must be conducted for at least one supervision hour each week, except for good cause shown.

(B) Supervision, Council-ordered--For the oversight and rehabilitation in the provision of clinical services by a licensee under a Council Order, defined by the Order and the Council-Ordered Supervision Plan, and must be conducted as specified in the Council Order and Supervision Plan (generally in face-to-face, one-on-one sessions).

(25) [(24)] Supervision hour--50 minutes.

(26) [(25)] Supervisor--An LMFT with supervisor status meeting the requirements set out in §801.143 of this title (relating to Supervisor Requirements). The appropriate council-approved terminology to use in reference to a Supervisor is: "Supervisor," "Licensed Marriage and Family Therapist Supervisor," "LMFT-S" or "LMFT Supervisor." Other terminology or abbreviations may not be used.

(27) [(26)] Technology-assisted services--Providing therapy or supervision with technologies and devices for electronic communication and information exchange between a licensee in one location and a client or supervisee in another location.

(28) [(27)] Therapist--A person who holds a license issued by the council.

(29) [(28)] Waiver--The suspension of educational, professional, or examination requirements for an applicant who meets licensing requirements under special conditions.

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

Filed with the Office of the Secretary of State on July 20, 2022.

TRD-202202741

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Marriage and Family Therapists

Earliest possible date of adoption: September 4, 2022

For further information, please call: (512) 305-7706



## SUBCHAPTER B. RULES OF PRACTICE

### 22 TAC §801.43

The Texas Behavioral Health Executive Council proposes amended §801.43, relating to Professional Representation.

Overview and Explanation of the Proposed Rule. The proposed amendment clarifies how supervisees must represent themselves to clients and the public.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the pro-

posed rule will provide greater clarity and consistency in the Executive Council's rules, as well as require better or more specific notice to the public regarding supervisees and supervisors. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

**Probable Economic Costs.** Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be virtually little to no additional economic costs to persons required to comply with this rule. There may be a nominal one-time economic cost for supervisees to update advisements, practice documents, and other public representations, but the current rule already requires a licensee to indicate their licensure status and this rule amendment merely requires the licensee to provide more specifics regarding their status. To help minimize any potential impacts that may be caused by any nominal one-time economic costs the proposed change to the rule is given a future implementation date of January 1, 2023.

**Small Business, Micro-Business, and Rural Community Impact Statement.** Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

**Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities.** Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

**Local Employment Impact Statement.** Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

**Requirement for Rules Increasing Costs to Regulated Persons.** The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

**Government Growth Impact Statement.** For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

**Takings Impact Assessment.** Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

**Request for Public Comments.** Comments on the proposed rule may be submitted to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7-300, Austin, Texas 78701, or by email to rules@bhec.texas.gov. The deadline for receipt of comments is 5:00 p.m., Central Time, on September 4, 2022, which is at least 30 days from the date of publication in the *Texas Register*.

**Statutory Authority.** The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

*§801.43. Professional Representation.*

(a) A licensee is subject to and bound by provisions of the Act, the Council Act, and council rules.

(b) A licensee that becomes aware of another licensee violating state or federal law within the jurisdiction of the Council, may attempt to resolve the violation informally with the other licensee if the violation does not involve actual or likely harm to an individual or the public. Any unresolved violations must be reported to the Council. A licensee that becomes aware of another licensee violating a state or federal law within the jurisdiction of the Council involving actual or likely harm to an individual or the public, must report the violation to the Council.

(c) Licensure and Supervisory Status.

(1) When providing professional therapeutic services as defined in §801.42 of this title (relating to Professional Therapeutic

Services), a licensee must indicate his or her licensure status as an LMFT or LMFT Associate, including any probationary status or other restrictions placed on the licensee by the council.

(2) An LMFT Associate must not represent themselves as an independent practitioner. An LMFT Associate's name must be followed by a statement such as "supervised by (name of supervisor)" or a statement of similar effect, together with the name of the supervisor. This disclosure must appear on all marketing materials, billing documents, and practice related forms and documents where the LMFT Associate's name appears, including websites and intake documents. This paragraph is effective January 1, 2023.

(d) A licensee may not make any false, misleading, deceptive, fraudulent or exaggerated claim or statement about the licensee's services, including:

- (1) the effectiveness of services;
- (2) the licensee's qualifications, capabilities, background, training, education, experience, professional affiliations, fees, products, or publications; or
- (3) the practice of marriage and family therapy.

(e) A licensee may not misrepresent any agency or organization by presenting it as having attributes that it does not possess.

(f) A licensee may not encourage, or within the licensee's power, allow a client to hold exaggerated ideas about the efficacy of services provided by the licensee.

(g) If a licensee learns of a misrepresentation, exaggerated, false, deceptive, or fraudulent claim or statement made by another, the licensee must take reasonable action to correct the misrepresentation, claim or statement.

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

Filed with the Office of the Secretary of State on July 20, 2022.

TRD-202202742

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Marriage and Family Therapists

Earliest possible date of adoption: September 4, 2022

For further information, please call: (512) 305-7706



## SUBCHAPTER D. SCHEDULE OF SANCTIONS

### 22 TAC §801.302

The Texas Behavioral Health Executive Council proposes amended §801.302, relating to Schedule of Sanctions.

**Overview and Explanation of the Proposed Rule.** This amended rule is proposed to make the rule clearer and to simplify the guide by combining levels 2 and 3 into a suspension for any amount of time. Additionally, the possible penalty amount for a suspension is increased to a maximum of \$5,000 to align with Occupations Code Section 507.352.

**Fiscal Note.** Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state

or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

**Public Benefit.** Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the proposed rule will provide greater clarity and consistency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

**Probable Economic Costs.** Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

**Small Business, Micro-Business, and Rural Community Impact Statement.** Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

**Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities.** Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

**Local Employment Impact Statement.** Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

**Requirement for Rules Increasing Costs to Regulated Persons.** The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

**Government Growth Impact Statement.** For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

**Takings Impact Assessment.** Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

**Request for Public Comments.** Comments on the proposed rule may be submitted to Brenda Skiff, Executive Assistant,

Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7-300, Austin, Texas 78701, or by email to [rules@bhec.texas.gov](mailto:rules@bhec.texas.gov). The deadline for receipt of comments is 5:00 p.m., Central Time, on September 4, 2022, which is at least 30 days from the date of publication in the *Texas Register*.

Statutory Authority. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

#### *§801.302. Severity Level and Sanction Guide.*

The following severity levels and sanction guides are based on the relevant factors in council rules, 22 Texas Administrative Code, §884.20 (relating to Disciplinary Guidelines and General Schedule of Sanctions).

(1) Level One--Revocation of license with a possible administrative penalty from \$500 to \$5,000. These violations evidence intentional or gross misconduct on the part of the licensee or cause or pose a high degree of harm to the public or may require severe punishment as a deterrent to the licensee, or other licensees.

(2) Level Two--~~Suspension~~[Extended suspension] of license with a possible administrative penalty from \$250 to \$5,000 [\$2,500]. These violations involve less misconduct, harm, or need for deterrence than Level One violations, but may require suspension [termination] of licensure for a period of time [not less than one year].

{(3) Level Three--Moderate suspension of license with a possible administrative penalty of no more than \$250. These violations

are less serious than Level Two violations, but may require termination of licensure for a period of time that is less than a year.]

(3) [(4)] Level Three [Four]--Probated suspension of licensure. These violations do not involve enough harm, misconduct, or need for deterrence to warrant suspension [termination] of licensure, yet are severe enough to warrant monitoring of the licensee to ensure future compliance. Probationary terms may be ordered as appropriate.

(4) [(5)] Level Four [Five]--Reprimand. These violations involve inadvertent or relatively minor misconduct or rule violations not directly involving the health, safety and welfare of the public.

(5) [(6)] An administrative penalty may be assessed for any violation, in lieu of, or in addition to, other disciplinary actions.

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

Filed with the Office of the Secretary of State on July 20, 2022.

TRD-202202743

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Marriage and Family Therapists

Earliest possible date of adoption: September 4, 2022

For further information, please call: (512) 305-7706



## **22 TAC §801.305**

The Texas Behavioral Health Executive Council proposes the repeal of §801.305, relating to Schedule of Sanctions.

Overview and Explanation of the Proposed Rule. This rule is proposed to be repealed and replaced with a new schedule of sanctions that is proposed elsewhere in the edition of the *Texas Register*.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed repeal is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the repeal. Additionally, Mr. Spinks has determined that enforcing or administering the repeal does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect there will be a benefit to licensees, applicants, and the general public because the proposed repeal and replace of the schedule of sanctions rule will provide greater clarity and consistency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no additional economic costs to persons required to comply with this repeal.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no adverse

effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed repeal will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed repeal will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed repeal does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed repeal is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed repeal is in effect, the Executive Council estimates that the proposed repeal will have no effect on government growth. The proposed repeal does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to the agency; it does not require an increase or decrease in fees paid to this agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed repeal. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed repeal may be submitted to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7-300, Austin, Texas 78701, or by email to rules@bhec.texas.gov. The deadline for receipt of comments is 5:00 p.m., Central Time, on September 4, 2022, which is at least 30 days from the date of publication in the *Texas Register*.

Statutory Authority. The repeal is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this repeal pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists

previously voted and, by a majority, approved to propose this repeal to the Executive Council. The repeal is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may propose this repeal.

Lastly, the Executive Council proposes this repeal under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

§801.305. *Schedule of Sanctions.*

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

Filed with the Office of the Secretary of State on July 20, 2022.

TRD-202202744

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Marriage and Family Therapists

Earliest possible date of adoption: September 4, 2022

For further information, please call: (512) 305-7706



## 22 TAC §801.305

The Texas Behavioral Health Executive Council proposes new §801.305, relating to Schedule of Sanctions.

Overview and Explanation of the Proposed Rule. This new rule has been proposed to replace the current schedule of sanctions and make it easier to use. The format of this new schedule of sanctions will more closely resemble the format used by the other behavioral health boards. There are a few substantive changes being proposed to the schedule currently in effect. Rules that are currently split between an extended and moderate suspension are proposed to be a Level 2 suspension which aligns with the proposed changes to §801.302, which combines the two suspension levels into one, see §§801.44(t) and (v), 801.47, and 801.57(e). Additionally, typographical errors are being corrected with this proposed change and the sanction for 801.47 is now split into subsections (a) and (b) which are a suspension and revocation respectively. And §801.44(s) - (v) have been updated to correspond more accurately to the correct rule and sanction. Lastly, in the April 22, 2022, edition of the *Texas Register*, §801.143(h) - (l) were proposed to be amended so cor-

responding amendments have been made to match those previously proposed changes.

**Fiscal Note.** Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

**Public Benefit.** Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the proposed rule will provide greater clarity and consistency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

**Probable Economic Costs.** Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

**Small Business, Micro-Business, and Rural Community Impact Statement.** Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

**Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities.** Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

**Local Employment Impact Statement.** Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

**Requirement for Rules Increasing Costs to Regulated Persons.** The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

**Government Growth Impact Statement.** For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

**Request for Public Comments.** Comments on the proposed rule may be submitted to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7-300, Austin, Texas 78701, or by email to [rules@bhec.texas.gov](mailto:rules@bhec.texas.gov). The deadline for receipt of comments is 5:00 p.m., Central Time, on September 4, 2022, which is at least 30 days from the date of publication in the *Texas Register*.

**Statutory Authority.** The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

§801.305. Schedule of Sanctions.

The following standard sanctions shall apply to violations of the Texas Occupations Code, Chapter 502 and 22 Texas Administrative Code, Part 35.

Figure: 22 TAC §801.305

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

Filed with the Office of the Secretary of State on July 20, 2022.

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**PART 41. TEXAS BEHAVIORAL  
HEALTH EXECUTIVE COUNCIL**

**CHAPTER 885. FEES**

**22 TAC §885.1**

The Texas Behavioral Health Executive Council proposes amendments to §885.1, relating to Fees.

Overview and Explanation of the Proposed Rule. On October 8, 2019, Governor Greg Abbott sent a letter to all Texas State agency heads instructing agencies to reform occupational-licensing rules in several areas. One such area the Governor focused on was the reduction of fees, specifically the Governor instructed agencies to develop and implement plans to reduce license applications fees to 75% or less of the national average for equivalent or comparable occupations, whenever possible. This proposed amendment is intended to do just that, all application and renewal licensing fees have either been reduced to 75% of the national average or if the fee was already below 75% of the national average then the fee stayed the same. The current fee schedule will remain in effect until September 1, 2023, on this date these new fee changes are scheduled to take effect. Applications fees are proposed to be reduced for the following license types: LCSW by \$9.00, LPC and LPC-Associate by \$56.00, LPA by \$189.00, LP by \$426.00, and LSSP by \$36.00. Renewal fees are proposed to be reduced for the following license types: LBSW and LMSW by \$33.00, LCSW and LMSW-AP by \$55.00, and LP by \$129.00. Additionally, the \$4.00 Texas.gov fee is proposed to be removed from the temporary license application for social workers and the application for criminal history evaluation. The implementation of these proposed fee changes is scheduled to take effect on September 1, 2023, to provide all interested parties the opportunity to comment on these changes. Based upon future comments and information gathered these proposed fee changes may be subject to future proposed changes.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or increase in revenue to the state or local governments as a result of enforcing or administering the rule. However, Mr. Spinks has determined that enforcing or administering the rule does have foreseeable implications relating to a loss of revenues to state government. For fiscal year 2021 the Executive Council generated \$6,098,255.00 in application and renewal fees. It is estimated, using the number of licensees and applicants for fiscal year 2021, the Executive Council will generate \$4,863,897.50 in application and renewal fees under this proposed rule change, which will result in a loss in revenue of \$1,234,357.50 on an annual basis.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees and applicants because the proposed rule will provide

a reduction in fees paid to the Executive Council for applications and renewals. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase in fees paid to the agency, but it will result in a decrease in fees paid to this agency for some license types; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively affect the state's economy but it may have an adverse impact - as discussed previously the proposed rule change may result in a loss in revenue of \$1,234,357.50 to the State on an annual basis.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rule may be submitted to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7-300, Austin, Texas 78701 or by email to [rules@bhec.texas.gov](mailto:rules@bhec.texas.gov). The deadline for receipt of comments

is 5:00 p.m., Central Time, on September 4, 2022, which is at least 30 days from the date of publication of this proposal in the *Texas Register*.

Statutory Authority. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

The Executive Council proposes this amended rule pursuant to the authority found in §507.154 of the Tex. Occ. Code which authorizes the Executive Council to set fees necessary to cover the costs of administering Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code.

The Executive Council also proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

#### §885.1. *Executive Council Fees.*

##### (a) General provisions.

(1) All fees are nonrefundable and cannot be waived except as otherwise permitted by law.

(2) Fees required to be submitted online to the Council must be paid by debit or credit card. All other fees paid to the Council must be in the form of a personal check, cashier's check, or money order.

(3) For applications and renewals the Council is required to collect fees to fund the Office of Patient Protection (OPP) in accordance with Texas Occupations Code §101.307, relating to the Health Professions Council.

(4) For applications, examinations, and renewals the Council is required to collect subscription or convenience fees to recover costs associated with processing through Texas.gov.

(5) All examination fees are to be paid to the Council's designee.

(b) The Executive Council adopts the following chart of fees: [Figure: 22 TAC §885.1(b)]

(1) Fees effective through August 31, 2023.  
Figure: 22 TAC §885.1(b)(1)

(2) Fees effective on September 1, 2023.  
Figure: 22 TAC §885.1(b)(2)

##### (c) Late fees. (Not applicable to Inactive Status)

(1) If the person's license has been expired (i.e., delinquent) for 90 days or less, the person may renew the license by paying to the Council a fee in an amount equal to one and one-half times the base renewal fee.

(2) If the person's license has been expired (i.e., delinquent) for more than 90 days but less than one year, the person may renew the license by paying to the Council a fee in an amount equal to two times the base renewal fee.

(3) If the person's license has been expired (i.e., delinquent) for one year or more, the person may not renew the license; however, the person may apply for reinstatement of the license.

(d) Open Records Fees. In accordance with §552.262 of the Government Code, the Council adopts by reference the rules developed by the Office of the Attorney General in 1 TAC Part 3, Chapter 70 (relating to Cost of Copies of Public Information) for use by each governmental body in determining charges under Government Code, Chapter 552 (Public Information) Subchapter F (Charges for Providing Copies of Public Information).

(e) Military Exemption for Fees. All licensing and examination base rate fees payable to the Council are waived for the following individuals:

(1) military service members and military veterans, as those terms are defined by Chapter 55, Occupations Code, whose military service, training, or education substantially meets all licensure requirements; and

(2) military service members, military veterans, and military spouses, as those terms are defined by Chapter 55, Occupations Code, who hold a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements of this state.

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

Filed with the Office of the Secretary of State on July 20, 2022.

TRD-202202738

Darrel D. Spinks

Executive Director

Texas Behavioral Health Executive Council

Earliest possible date of adoption: September 4, 2022

For further information, please call: (512) 305-7706

## TITLE 26. HEALTH AND HUMAN SERVICES

### PART 1. HEALTH AND HUMAN SERVICES COMMISSION

#### CHAPTER 553. LICENSING STANDARDS FOR ASSISTED LIVING FACILITIES

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes in Texas Administrative Code (TAC) Title 26, Part 1, Chapter 553, Licensing Standards for Assisted Living Facilities, amendments to §553.3, relating to Definitions; §553.17, relating to Criteria for Licensing; §553.103, relating to Site and Location for all Assisted Living Facilities; §553.257, relating to Human Resources; and §553.259, relating to Admission Policies and Procedures.

#### BACKGROUND AND PURPOSE

The purpose of the proposed amendments to §553.17 and §553.103 is to implement House Bill (H.B.) 1681, 87th Legislature, Regular Session, 2021. H.B. 1681 prohibits new construction of assisted living facilities (ALFs) in a 100-year flood plain in counties of more than 3.3 million residents. The proposed amendments also update outdated procedural information related to the licensing process.

The purpose of the proposed amendment to §553.257 is to implement Senate Bill (S.B.) 271, 87th Legislature, Regular Session, 2021. S.B. 271 requires ALFs to obtain a signed disclosure, on an HHSC prescribed form, from applicants for employment regarding out-of-state criminal convictions and to perform a name-based criminal history check in any state the applicant has lived in during the previous five years.

The purpose of the proposed amendment to §553.259 is to implement S.B. 383, 87th Legislature, Regular Session, 2021. S.B. 383 requires an ALF that advertises, markets, or otherwise promotes that it provides memory care services to provide an additional HHSC-prescribed memory care disclosure statement to each resident.

The proposed amendments also update rule references that became outdated as a result of the administrative transfer of rules from 40 TAC Chapter 92 to 26 TAC Chapter 553, reflect the transfer of functions from the Texas Department of Human Services or the Texas Department of Aging and Disability Services to HHSC, update terminology, and remove outdated references and requirements.

#### SECTION-BY-SECTION SUMMARY

The proposed amendment to §553.3 adds new definitions for "Assisted Living Facility Memory Care Disclosure Statement form" and "memory care services" to implement S.B. 383 and renumbers the paragraphs accordingly.

The proposed amendment to §553.17 adds subsections (c)(1)(D) and (h) with the requirement that a newly constructed ALF cannot be located in a 100-year flood plain if the facility is located in a county of more than 3.3 million residents for initial license applications submitted or licenses issued after the effective date of the new rule. Subsections 553.17(d), (f), (h), and (i) update the licensing process to account for the change to the online licensing system.

The proposed amendment to §553.103 adds subsection (h) with the requirement that an ALF that applies for an initial license or that is initially licensed after November 1, 2022, must not be located in a 100-year floodplain if the facility is located in a county of more than 3.3 million residents.

The proposed amendment to §553.257 adds subsection (a)(7) with the requirement that an ALF include a signed disclosure statement, prescribed by HHSC, indicating whether a potential employee has been convicted of an offense described in Texas Health and Safety Code §250.006 and identifying any states in which the employee has lived other than Texas within the past five years. This disclosure statement must be included in the employee's personnel record. Section 553.257(b)(7) requires an ALF to conduct a name-based criminal history check for each state in which an applicant resided within the previous five years.

The proposed amendment to §553.259 adds subsection (a)(4) with the requirement that an ALF that advertises, markets, or otherwise promotes that it provides memory care services to residents provide a HHSC-prescribed memory care disclosure statement to each resident. The amendment also requires an ALF that is Alzheimer's certified to provide HHSC Form 3641 in addition to the memory care disclosure statement and make minor editorial changes to improve readability.

#### FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, enforcing

and administering the rules as proposed does not have foreseeable implications related to costs or revenues of state or local government.

#### GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Trey Wood has determined that there could be some assisted living facilities that are considered micro businesses or owned by small businesses or rural communities that will experience an adverse economic impact based on costs to comply. There are currently 2,028 licensed ALFs in Texas; 1,114 ALFs are considered small businesses with 16 or fewer residents. HHSC does not know how many ALFs are considered micro-businesses.

#### LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

#### COSTS TO REGULATED PERSONS

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

#### PUBLIC BENEFIT AND COSTS

Stephen Pahl, Deputy Executive Commissioner for Regulatory Services, has determined that for each year of the first five years the rules are in effect, the public will benefit from increased safety of ALF residents by requiring a written disclosure statement from a potential ALF employee regarding criminal history and a disclosure statement from ALF providers who provide memory care. The public will also benefit from the prohibition of building in a 100-year floodplain when certain criteria are met.

ALF providers may incur costs from having to run additional background checks for potential employees that have lived in other states in the past five years. As an example, in Texas there is a \$3 fee per online name-based background check using the Department of Public Safety website. ALF providers may incur costs associated with the printing of the additional Assisted Living Facility Memory Care Disclosure Statement form. HHSC is unable to provide an estimate of the costs each provider may incur.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Written comments on the proposal may be submitted to Josie Esparza, Program Specialist, Texas Health and Human Services Commission, Mail Code E-370, 701 W. 51st Street, Austin, Texas 78751; or by email to hhscltrrules@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) or emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 22R001" in the subject line.

### SUBCHAPTER A. INTRODUCTION

#### 26 TAC §553.3

##### STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively

The amendment implements Texas Government Code §531.0055 and §531.033, and Texas Health and Safety Code, Chapter 247.

##### §553.3. Definitions.

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

(1) Abuse--

(A) For a person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes, the term has the meaning in Texas Family Code §261.001(1), which is an intentional, knowing, or reckless act or omission by an employee, volunteer, or other individual working under the auspices of a facility or program that causes or may cause emotional harm or physical injury to, or the death of, a child served by the facility or program, as further described by rule or policy; and

(B) For a person other than one described in subparagraph (A) of this paragraph, the term has the meaning in Texas Health and Safety Code §260A.001(1), which is:

(i) the negligent or willful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical or emotional harm or pain to a resident by the resident's caregiver, family member, or other individual who has an ongoing relationship with the resident; or

(ii) sexual abuse of a resident, including any involuntary or nonconsensual sexual conduct that would constitute an offense under Texas Penal Code §21.08 (relating to Indecent Exposure), or Texas Penal Code, Chapter 22 (relating to Assaultive Offenses), committed by the resident's caregiver, family member, or other individual who has an ongoing relationship with the resident.

(2) Accreditation commission--Has the meaning given in Texas Health and Safety Code §247.032.

(3) Actual harm--A negative outcome that compromises a resident's physical, mental, or emotional well-being.

(4) Advance directive--Has the meaning given in Texas Health and Safety Code §166.002.

(5) Affiliate--With respect to:

(A) a partnership, each partner thereof;

(B) a corporation, each officer, director, principal stockholder, subsidiary, or person with a disclosable interest, as the term is defined in this section; and

(C) a natural person:

(i) said person's spouse;

(ii) each partnership and each partner thereof, of which said person or any affiliate of said person is a partner; and

(iii) each corporation in which said person is an officer, director, principal stockholder, or person with a disclosable interest.

(6) Alzheimer's Assisted Living Disclosure Statement form--The HHSC-prescribed form a facility uses to describe the nature of care or treatment of residents with Alzheimer's disease and related disorders.

(7) Alzheimer's disease and related disorders--Alzheimer's disease and any other irreversible dementia described by the Centers for Disease Control and Prevention (CDC), or the most current edition of the Diagnostic and Statistical Manual of Mental Disorders.

(8) Alzheimer's facility--A Type B facility that is certified to provide specialized services to residents with Alzheimer's disease or a related condition.

(9) Applicant--A person applying for a license to operate an assisted living facility under Texas Health and Safety Code, Chapter 247.

(10) Assisted Living Facility Memory Care Disclosure Statement form--The HHSC-prescribed form that a facility uses when the facility advertises, markets, or otherwise promotes that it provides services, including memory care services, to residents with Alzheimer's disease and related disorders.

(11) [(10)] Attendant--A facility employee who provides direct care to residents. This employee may serve other functions, including cook, janitor, porter, maid, laundry worker, security personnel, bookkeeper, activity director, and manager.

(12) [(11)] Authorized electronic monitoring (AEM)--The placement of an electronic monitoring device in a resident's room and using the device to make tapes or recordings after making a request to the facility to allow electronic monitoring.

(13) [(12)] Behavioral emergency--Has the meaning given in §553.261(g)(2) of this chapter (relating to Coordination of Care).

(14) [(13)] Certified ombudsman--Has the meaning given in §88.2 of this title (relating to Definitions).

(15) [(44)] CFR--Code of Federal Regulations.

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

(17) [(46)] Commingles--The laundering of apparel or linens of two or more individuals together.

(18) [(47)] Controlling person--A person with the ability, acting alone or with others, to directly or indirectly influence, direct, or cause the direction of the management, expenditure of money, or policies of a facility or other person. A controlling person includes:

(A) a management company, landlord, or other business entity that operates or contracts with others for the operation of a facility;

(B) any person who is a controlling person of a management company or other business entity that operates a facility or that contracts with another person for the operation of an assisted living facility;

(C) an officer or director of a publicly traded corporation that is, or that controls, a facility, management company, or other business entity described in subparagraph (A) of this paragraph but does not include a shareholder or lender of the publicly traded corporation; and

(D) any other individual who, because of a personal, familial, or other relationship with the owner, manager, landlord, tenant, or provider of a facility, is in a position of actual control or authority with respect to the facility, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the facility, except an employee, lender, secured creditor, landlord, or other person who does not exercise formal or actual influence or control over the operation of a facility.

(19) [(48)] Covert electronic monitoring--The placement and use of an electronic monitoring device that is not open and obvious, and about which the facility and HHSC have not been informed by the resident, by the person who placed the device in the room, or by a person who uses the device.

(20) [(49)] Delegation--In the assisted living facility context, written authorization by a registered nurse (RN) acting on behalf of the facility for personal care staff to perform tasks of nursing care in selected situations, where delegation criteria are met for the task. The delegation process includes nursing assessment of a resident in a specific situation, evaluation of the ability of the personal care staff, teaching the task to the personal care staff, ensuring supervision of the personal care staff in performing a delegated task, and re-evaluating the task at regular intervals.

(21) [(20)] Dietitian--A person who currently holds a license or provisional license issued by the Texas Department of Licensing and Regulation.

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

(23) [(22)] Disclosable interest--Five percent or more direct or indirect ownership interest in an applicant or license holder.

(24) [(23)] Disclosure statement--An HHSC form for prospective residents or their legally authorized representatives that a facility must complete. The form contains information regarding the preadmission, admission, and discharge process; resident assessment

and service plans; staffing patterns; the physical environment of the facility; resident activities; and facility services.

(25) [(24)] Electronic monitoring device--Video surveillance cameras and audio devices installed in a resident's room, designed to acquire communications or other sounds that occur in the room. An electronic, mechanical, or other device used specifically for the nonconsensual interception of wire or electronic communication is excluded from this definition.

(26) [(25)] Exploitation--

(A) For a person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes, the term has the meaning in Texas Family Code §261.001(3), which is the illegal or improper use of a child or of the resources of a child for monetary or personal benefit, profit, or gain by an employee, volunteer, or other individual working under the auspices of a facility or program as further described by rule or policy; and

(B) For a person other than one described in subparagraph (A) of this paragraph, the term has the meaning in Texas Health and Safety Code §260A.001(4), which is the illegal or improper act or process of a caregiver, family member, or other individual who has an ongoing relationship with the resident using the resources of a resident for monetary or personal benefit, profit, or gain without the informed consent of the resident.

(27) [(26)] Facility--An entity required to be licensed under the Assisted Living Facility Licensing Act, Texas Health and Safety Code, Chapter 247.

(28) [(27)] Fire suppression authority--The paid or volunteer fire-fighting organization or tactical unit that is responsible for fire suppression operations and related duties once a fire incident occurs within its jurisdiction.

(29) [(28)] Flame spread--The rate of fire travel along the surface of a material. This is different than other requirements for time-rated "burn through" resistance ratings, such as one-hour rated. Flame spread ratings are Class A (0-25), Class B (26-75), and Class C (76-200).

(30) [(29)] Functional disability--A mental, cognitive, or physical disability that precludes the physical performance of self-care tasks, including health maintenance activities and personal care.

(31) [(30)] Governmental unit--The state or any county, municipality, or other political subdivision, or any department, division, board, or other agency of any of the foregoing.

(32) [(31)] Health care professional--An individual licensed, certified, or otherwise authorized to administer health care, for profit or otherwise, in the ordinary course of business or professional practice. The term includes a physician, registered nurse, licensed vocational nurse, licensed dietitian, physical therapist, and occupational therapist.

(33) [(32)] Health maintenance activity (HMA)--Consistent with 22 TAC §225.4 (relating to Definitions), a task that:

(A) may be exempt from delegation based on an RN's assessment in accordance with §553.263(c) of this chapter (relating to Health Maintenance Activities); and

(B) requires a higher level of skill to perform than personal care services and, in the context of an ALF, excludes the following tasks:

(i) intermittent catheterization; and

(ii) subcutaneous, nasal, or insulin pump administration of insulin or other injectable medications prescribed in the treatment of diabetes mellitus.

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

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

(36) [(35)] Immediately available--The capacity of facility staff to immediately respond to an emergency after being notified through a communication or alarm system. The staff are to be no more than 600 feet from the farthest resident and in the facility while on duty.

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

(38) [(37)] Isolated--A very limited number of residents are affected, and a very limited number of staff are involved, or the situation has occurred only occasionally.

(39) [(38)] Key infectious agents--Bacteria, viruses, and other microorganisms which cause the most common infections and infectious diseases in long-term care facilities, and can be mitigated by establishing, implementing, maintaining, and enforcing proper infection, prevention, and control policies and procedures.

(40) [(39)] Large facility--A facility licensed for 17 or more residents.

(41) [(40)] Legally authorized representative--A person authorized by law to act on behalf of a person with regard to a matter described in this chapter, and may include a parent, guardian, or managing conservator of a minor, or the guardian of an adult.

(42) [(41)] License holder--A person that holds a license to operate a facility.

(43) [(42)] Listed--Equipment, materials, or services included in a list published by an organization concerned with evaluation of products or services, that maintains periodic inspection of production of listed equipment or materials or periodic evaluation of services, and whose listing states that either the equipment, material, or service meets appropriate designated standards or has been tested and found suitable for a specified purpose. The listing organization must be acceptable to the authority having jurisdiction, including HHSC or any other state, federal, or local authority.

(44) [(43)] Local code--A model building code adopted by the local building authority where the facility is constructed or located.

(45) [(44)] Management services--Services provided under contract between the owner of a facility and a person to provide for the operation of a facility, including administration, staffing, maintenance, or delivery of resident services. Management services do not include contracts solely for maintenance, laundry, transportation, or food services.

(46) [(45)] Manager--The individual in charge of the day-to-day operation of the facility.

(47) [(46)] Managing local ombudsman--Has the meaning given in §88.2 of this title.

(48) [(47)] Medication--

(A) Medication is any substance:

(i) recognized as a drug in the official United States Pharmacopoeia, Official Homeopathic Pharmacopoeia of the United

States, Texas Drug Code Index or official National Formulary, or any supplement to any of these official documents;

(ii) intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease;

(iii) other than food intended to affect the structure or any function of the body; and

(iv) intended for use as a component of any substance specified in this definition.

(B) Medication includes both prescription and over-the-counter medication, unless otherwise specified.

(C) Medication does not include devices or their components, parts, or accessories.

(49) [(48)] Medication administration--The direct application of a medication or drug to the body of a resident by an individual legally allowed to administer medication in the state of Texas.

(50) [(49)] Medication assistance or supervision--The assistance or supervision of the medication regimen by facility staff. Refer to §553.261(a) of this chapter.

(51) [(50)] Medication (self- or self-administration of)--The capability of a resident to administer the resident's own medication or treatments without assistance from the facility staff.

(52) Memory care services--Services provided by an assisted living facility that include enhanced safety measures and that are tailored to meet the needs of residents with a memory impairment or a diagnosis of dementia.

(53) [(51)] Multidrug-resistant organisms--Bacteria and other microorganisms that have developed resistance to multiple types of medicine used to act against the microorganism.

(54) [(52)] Neglect--

(A) For a person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes, the term has the meaning in Texas Family Code §261.001(4), which is a negligent act or omission by an employee, volunteer, or other individual working under the auspices of a facility or program, including failure to comply with an individual treatment plan, plan of care, or individualized service plan, that causes or may cause substantial emotional harm or physical injury to, or the death of, a child served by the facility or program as further described by rule or policy; and

(B) For a person other than one described in subparagraph (A) of this paragraph, the term has the meaning in Texas Health and Safety Code §260A.001(6), which is the failure to provide for oneself [one's self] the goods or services, including medical services, which are necessary to avoid physical or emotional harm or pain or the failure of a caregiver to provide such goods or services.

(55) [(53)] NFPA 101--The 2012 publication titled "NFPA 101 Life Safety Code" published by the National Fire Protection Association, Inc., 1 Batterymarch Park, Quincy, Massachusetts 02169.

(56) [(54)] Ombudsman intern--Has the meaning given in §88.2 of this title.

(57) [(55)] Ombudsman program--Has the meaning given in §88.2 of this title.

(58) [(56)] Online portal--A secure portal provided on the HHSC website for licensure activities, including for an assisted living facility applicant to submit licensure applications and information.

(59) [(57)] Pattern of violation--Repeated, but not widespread in scope, failures of a facility to comply with this chapter or a rule, standard, or order adopted under Texas Health and Safety Code, Chapter 247 that:

(A) result in a violation; and

(B) are found throughout the services provided by the facility or that affect or involve the same residents or facility employees.

(60) [(58)] Person--Any individual, firm, partnership, corporation, association, or joint stock association, and the legal successor thereof.

(61) [(59)] Personal care services--Assistance with feeding, dressing, moving, bathing, or other personal needs or maintenance; or general supervision or oversight of the physical and mental well-being of a person who needs assistance to maintain a private and independent residence in the facility or who needs assistance to manage his or her personal life, regardless of whether a guardian has been appointed for the person.

(62) [(60)] Personal care staff--An attendant whose primary employment function is to provide personal care services.

(63) [(61)] Physician--A practitioner licensed by the Texas Medical Board.

(64) [(62)] Potential for minimal harm--A violation that has the potential for causing no more than a minor negative impact on a resident.

(65) [(63)] Practitioner--An individual who is currently licensed in a state in which the individual practices as a physician, dentist, podiatrist, or a physician assistant; or a registered nurse approved by the Texas Board of Nursing to practice as an advanced practice registered nurse.

(66) [(64)] Private and unimpeded access--Access to enter a facility or communicate with a resident outside of the hearing and view of others, without interference or obstruction from facility employees, volunteers, or contractors.

(67) [(65)] Qualified medical personnel--An individual who is licensed, certified, or otherwise authorized to administer health care. The term includes a physician, registered nurse, and licensed vocational nurse.

(68) [(66)] Rapid influenza diagnostic test--A test administered to a person with flu-like symptoms that can detect the influenza viral nucleoprotein antigen.

(69) [(67)] Resident--An individual accepted for care in a facility.

(70) [(68)] Respite--The provision by a facility of room, board, and care at the level ordinarily provided for permanent residents of the facility to a person for not more than 60 days for each stay in the facility.

(71) [(69)] Restraint hold--

(A) A manual method, except for physical guidance or prompting of brief duration, used to restrict:

(i) free movement or normal functioning of all or a portion of a resident's body; or

(ii) normal access by a resident to a portion of the resident's body.

(B) Physical guidance or prompting of brief duration becomes a restraint if the resident resists the guidance or prompting.

(72) [(70)] Restraints--Chemical restraints are psychoactive drugs administered for the purposes of discipline or convenience and are not required to treat the resident's medical symptoms. Physical restraints are any manual method, or physical or mechanical device, material, or equipment attached or adjacent to the resident that restricts freedom of movement. Physical restraints include restraint holds.

(73) [(71)] RN (registered nurse)--A person who holds a current and active license from the Texas Board of Nursing to practice professional nursing, as defined in Texas Occupations Code §301.002(2).

(74) [(72)] Safety--Protection from injury or loss of life due to such conditions as fire, electrical hazard, unsafe building or site conditions, and the hazardous presence of toxic fumes and materials.

(75) [(73)] Seclusion--The involuntary separation of a resident from other residents and the placement of the resident alone in an area from which the resident is prevented from leaving.

(76) [(74)] Service plan--A written description of the medical care, supervision, or nonmedical care needed by a resident.

(77) [(75)] Short-term acute episode--An illness of less than 30 days' duration.

(78) [(76)] Small facility--A facility licensed for 16 or fewer residents.

(79) [(77)] Stable and predictable--A phrase describing the clinical and behavioral status of a resident that is non-fluctuating and consistent and does not require the regular presence of a registered or licensed vocational nurse.

(A) The phrase does not include within its meaning a description of the clinical and behavioral status of a resident that is expected to change rapidly or needs continuous or continual nursing assessment and evaluation.

(B) The phrase does include within its meaning a description of the condition of a resident receiving hospice care within a facility where deterioration is predictable.

(80) [(78)] Staff--Employees of an assisted living facility.

(81) [(79)] Standards--The minimum conditions, requirements, and criteria established in this chapter with which a facility must comply to be licensed under this chapter.

(82) [(80)] State Ombudsman--Has the meaning given in §88.2 of this title.

(83) [(81)] Terminal condition--A medical diagnosis, certified by a physician, of an illness that will result in death in six months or less.

(84) [(82)] Universal precautions--An approach to infection control in which blood, any body fluids visibly contaminated with blood, and all body fluids in situations where it is difficult or impossible to differentiate between body fluids are treated as if known to be infectious for HIV, hepatitis B, and other blood-borne pathogens.

(85) [(83)] Vaccine Preventable Diseases--The diseases included in the most current recommendations of the Advisory Committee on Immunization Practices of the CDC.

(86) [(84)] Widespread in scope--A violation of Texas Health and Safety Code, Chapter 247 or a rule, standard, or order adopted under Chapter 247 that:

(A) is pervasive throughout the services provided by the facility; or

(B) represents a systemic failure by the facility that affects or has the potential to affect a large portion of or all of the residents of the facility.

~~(87)~~ [(85)] Willfully interfere--To act or not act to intentionally prevent, interfere with, impede, or to attempt to intentionally prevent, interfere with, or impede.

~~(88)~~ [(86)] Working day--Any 24-hour period, Monday through Friday, excluding state and federal holidays.

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

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## SUBCHAPTER B. LICENSING

### 26 TAC §553.17

#### STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively

The amendment implements Texas Government Code §531.0055 and §531.033, and Texas Health and Safety Code, Chapter 247.

#### §553.17. *Criteria for Licensing.*

(a) A person must be licensed to establish or operate an assisted living facility in Texas.

(1) HHSC considers one or more facilities to be part of the same establishment and, therefore, subject to licensure as an assisted living facility, based on the following factors:

(A) common ownership;

(B) physical proximity;

(C) shared services, personnel, or equipment in any part of the facilities' operations; and

(D) any public appearance of joint operations or of a relationship between the facilities.

(2) The presence or absence of any one factor in paragraph (1) of this subsection is not conclusive.

(b) To obtain a license, a person must follow the application requirements in this subchapter and meet the criteria for a license.

(c) An applicant must affirmatively show that the applicant, license holder, controlling person, and any person required to submit background and qualification information meet the criteria and eligibility for licensing, in accordance with this section, and:

(1) the building in which the facility is housed:

(A) meets local fire ordinances;

(B) is approved by the local fire authority;

(C) meets HHSC licensing standards in accordance with Subchapter D of this chapter (relating to Facility Construction) based on an on-site inspection by HHSC; and

(D) if located in a county of more than 3.3 million residents for initial license applications submitted or issued after November 1, 2022, is not located in a 100-year floodplain; and

(2) [~~(D)~~] operation of the facility meets HHSC licensing standards based on an on-site health inspection by HHSC, which must include observation of the care of a resident; or

(3) [~~(2)~~] the facility meets the standards for accreditation based on an on-site accreditation survey by the accreditation commission.

(d) An applicant who chooses the option authorized in subsection (c)(3) [~~(e)(2)~~] of this section must contact HHSC to determine which accreditation commissions are available to meet the requirements of that subsection. If a license holder uses an on-site accreditation survey by an accreditation commission, as provided in this paragraph and §553.33(i) of this subchapter (relating to Renewal Procedures and Qualifications), the license holder must:

(1) provide written notification to HHSC by submitting an updated application in the licensing system within five working days after the license holder receives a notice of change in accreditation status from the accreditation commission; and

(2) include a copy of the notice of change with its written notification to HHSC.

(e) HHSC issues a license to a facility meeting all requirements of this chapter. The facility must not exceed the maximum allowable number of residents specified on the license.

(f) HHSC denies an application for an initial license or a renewal of a license if:

(1) the applicant, license holder, controlling person, or any person required to be disclosed on the application for licensure [~~submit background and qualification information~~] has been debarred or excluded from the Medicare or Medicaid programs by the federal government or a state;

(2) a court has issued an injunction prohibiting the applicant, license holder, controlling person, or any person required to be disclosed on the application for licensure [~~submit background and qualification information~~] from operating a facility; or

(3) during the five years preceding the date of the application, a license to operate a health care facility, long-term care facility, assisted living facility, or similar facility in any state held by the applicant, license holder, controlling person, or any person required to be disclosed on the application for licensure [~~submit background and qualification information~~] has been revoked.

(g) A license holder or controlling person who operates a nursing facility or an assisted living facility for which a trustee was ap-

pointed and for which emergency assistance funds, other than funds to pay the expenses of the trustee, were used is subject to exclusion from eligibility for:

(1) the issuance of an initial license for a facility for which the person has not previously held a license; and

(2) the renewal of the license of the facility for which the trustee was appointed.

(h) HHSC may deny an application for an initial license or refuse to renew a license if an applicant, license holder, controlling person, or any person required to be disclosed on the application for licensure [~~submit background and qualification information~~]:

(1) violates Texas Health and Safety Code, Chapter 247; a section, standard or order adopted under Chapter 247; or a license issued under Chapter 247 in either a repeated or substantial manner;

(2) commits an act described in §553.751(a)(2) - (9) of this chapter (relating to Administrative Penalties);

(3) aids, abets, or permits a substantial violation described in paragraphs (1) or (2) of this subsection about which the person had or should have had knowledge;

(4) fails to provide the required information, facts, or references;

(5) engages in the following:

(A) knowingly submits false or intentionally misleading statements to HHSC;

(B) uses subterfuge or other evasive means of filing an application for licensure;

(C) engages in subterfuge or other evasive means of filing on behalf of another who is unqualified for licensure;

(D) knowingly conceals a material fact related to licensure; or

(E) is responsible for fraud;

(6) fails to pay the following fees, taxes, and assessments when due:

(A) license fees, as described in §553.47 of this subchapter (relating to License Fees); or

(B) franchise taxes, if applicable;

(7) during the five years preceding the date of the application, has a history in any state or other jurisdiction of any of the following:

(A) operation of a facility that has been decertified or has had its contract canceled under the Medicare or Medicaid program;

(B) federal or state long-term care facility, assisted living facility, or similar facility sanctions or penalties, including monetary penalties, involuntary downgrading of the status of a facility license, proposals to decertify, directed plans of correction, or the denial of payment for new Medicaid admissions;

(C) unsatisfied final judgments, excluding judgments wholly unrelated to the provision of care rendered in long-term care facilities;

(D) eviction involving any property or space used as a facility; or

(E) suspension of a license to operate a health care facility, long-term care facility, assisted living facility, or a similar facility;

(8) violates Texas Health and Safety Code §247.021 by operating a facility without a license; or

(9) is subject to denial or refusal as described in Chapter 560 of this title (relating to Denial or Refusal of License) during the time frames described in that chapter.

(i) Without limitation, HHSC reviews all information provided by an applicant, a license holder, a person required to be disclosed on the application for licensure [~~a person with a disclosable interest~~], or a manager when considering grounds for denial of an initial license application or a renewal application in accordance with subsection (h) of this section. HHSC may grant a license if HHSC finds the applicant, license holder, person required to be disclosed on the application for licensure [~~with a disclosable interest~~], affiliate, or manager is able to comply with the rules in this chapter.

(j) HHSC reviews final actions when considering the grounds for denial of an initial license application or renewal application in accordance with subsections (f) and (h) of this section. An action is final when routine administrative and judicial remedies are exhausted. An applicant must disclose all actions, whether pending or final.

(k) If an applicant owns multiple facilities, HHSC examines the overall record of compliance in all of the applicant's facilities. An overall record poor enough to deny issuance of a new license does not preclude the renewal of a license of a facility with a satisfactory record.

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

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## SUBCHAPTER D. FACILITY CONSTRUCTION DIVISION 2. PROVISIONS APPLICABLE TO ALL FACILITIES

### 26 TAC §553.103

#### STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively

The amendment implements Texas Government Code §531.0055 and §531.033, and Texas Health and Safety Code, Chapter 247.

§553.103. *Site and Location for all Assisted Living Facilities.*

(a) Firefighting unit. An assisted living facility must be served by a professional or volunteer firefighting unit and must have a water supply that meets the firefighting unit's requirements and approval.

(b) Correction of hazards. An assisted living facility must correct a site or building condition that HHSC staff identifies to be a fire, health, or physical hazard.

(c) Parking.

(1) An assisted living facility must provide or arrange for nearby parking spaces for the private vehicles of residents and visitors.

(2) An assisted living facility must provide a minimum of one parking space for every four residents in its licensed capacity, and for any fraction thereof, or per local requirements, whichever is more stringent.

(d) Ramps.

(1) An assisted living facility must ensure a ramp, walk, or step is of slip-resistant texture and is uniform, without irregularities.

(2) An assisted living facility must ensure a ramp does not exceed a slope of one foot in 12 feet.

(3) An assisted living facility must ensure any new ramp has a clear width of at least 36 inches. A new ramp is one that was installed or constructed on or after August 31, 2021.

(e) Site conditions. An assisted living facility must provide a guardrail, fence, or handrail where a grade makes an abrupt change in level.

(f) Outside grounds. An assisted living facility must ensure that each outside area, grounds, and any adjacent buildings are maintained in good condition and kept free of rubbish, garbage, and untended growth that may constitute a fire or health hazard.

(g) Drainage. An assisted living facility must ensure site grades provide for water drainage away from structures to prevent ponding or standing water at or near a building, unless the ponding or standing water is part of an approved drainage system intended to hold water for a period of time.

(h) 100-year Floodplain. An assisted living facility that applies for an initial license or is initially licensed after November 1, 2022, must not be located in a 100-year floodplain, if the facility is located in a county of more than 3.3 million residents.

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

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## SUBCHAPTER E. STANDARDS FOR LICENSURE

26 TAC §553.257, §553.259

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively

The amendment implements Texas Government Code §531.0055 and §531.033, and Texas Health and Safety Code, Chapter 247.

§553.257. *Human Resources.*

(a) Personnel records. A facility must keep current and complete personnel records on a facility employee for review by HHSC staff including:

(1) documentation that the facility performed a criminal history check;

(2) an annual employee misconduct registry check;

(3) an annual nurse aide registry check;

(4) documentation of initial tuberculosis screenings referenced in §553.261(f) of this subchapter (relating to Coordination of Care);

(5) documentation of the employee's compliance with or exemption from the facility vaccination policy referenced in §553.261(f) of this subchapter; ~~and~~

(6) the signed statement from the employee referenced in §553.273 of this subchapter (relating to Abuse, Neglect, or Exploitation Reportable to HHSC by Facilities), acknowledging that the employee may be criminally liable for the failure to report abuse, neglect, and exploitation; ~~and~~[-]

(7) a signed disclosure statement, indicating whether the employee:

(A) has been convicted of an offense described in Texas Health and Safety Code §250.006; and

(B) has lived in a state other than Texas within the past five years.

(b) Investigation of facility employees.

(1) A facility must comply with the provisions of Texas Health and Safety Code, Chapter 250.

(2) Before a facility hires an employee, the facility must search the employee misconduct registry (EMR) established under §253.007, Texas Health and Safety Code, and the HHSC nurse aide registry (NAR) to determine if the individual is designated in either registry as unemployable based on employee misconduct. Both registries can be accessed on the HHSC Internet website.

(3) A facility is prohibited from hiring or continuing to employ a person who is listed in the EMR or NAR as unemployable or who has been convicted of an offense listed in §250.006 as a bar to employment or is a contraindication to employment with the facility.

(4) A facility must provide notification about the EMR to an employee in accordance with 40 TAC §93.3 (relating to Employment and Registry Information).

(5) In addition to the initial search of the NAR and the EMR, a facility must conduct a search of the NAR and the EMR to determine if the employee is designated in either registry as unemployable at least every 12 months.

(6) A facility must keep a copy of the results of the initial and annual searches of the NAR and EMR in the employee's personnel file.

(7) If an applicant for employment indicates on the disclosure statement that they have lived in another state within the past five years, a facility, before employing the applicant in a position that has direct contact with residents, must conduct a name-based criminal history check in each state in which the applicant previously resided within the five-year period.

§553.259. *Admission Policies and Procedures.*

(a) Admission policies and disclosure statement.

(1) A facility must not admit or retain a resident whose needs cannot be met by the facility and who cannot secure the necessary services from an outside resource. As part of the facility's general supervision and oversight of the physical and mental well-being of its residents, the facility remains responsible for all care provided at the facility. If the individual is appropriate for placement in a facility, then the decision that additional services are necessary and can be secured is the responsibility of facility management with written concurrence of the resident, resident's attending physician, or legal representative. Regardless of the possibility of "aging in place" or securing additional services, the facility must meet all NFPA 101 and physical plant requirements in Subchapter D of this chapter (relating to Facility Construction), and, as applicable, §553.311 (relating to Physical Plant Requirements for Alzheimer's Units), based on each resident's evacuation capabilities, except as provided in subsection (e) of this section.

(2) There must be a written admission agreement between the facility and the resident. The agreement must specify such details as services to be provided and the charges for the services. If the facility provides services and supplies that could be a Medicare benefit, the facility must provide the resident a statement that such services and supplies could be a Medicare benefit.

(3) A facility must share a copy of the facility disclosure statement, rate schedule, and individual resident service plan with outside resources that provide any additional services to a resident. Outside resources must provide facilities with a copy of their resident care plans and must document, at the facility, any services provided, on the day provided.

(4) In addition to the facility disclosure statement, a facility that advertises, markets, or otherwise promotes that it provides services, including memory care services, to residents with Alzheimer's disease and related disorders, must provide to each resident the Assisted Living Facility Memory Care Disclosure Statement. The facility must disclose whether the facility is certified to provide specialized care to residents with Alzheimer's disease or related disorders.

(A) A facility that is Alzheimer's certified and provides the Assisted Living Facility Memory Care Disclosure Statement to a resident, must also provide HHSC Form 3641, Alzheimer's Assisted Living Facility Disclosure Statement.

(B) A facility that is not Alzheimer's certified and provides the Assisted Living Facility Memory Care Disclosure Statement, to a resident does not need to provide HHSC form 3641, Alzheimer's Assisted Living Disclosure Statement.

(5) [(4)] Each resident must have a health examination by a physician performed within 30 days before admission or 14 days af-

ter admission, unless a transferring hospital or facility has a physical examination in the medical record.

(6) [(5)] The facility must secure at the time of admission of a resident the following identifying information:

- (A) full name of resident;
- (B) social security number;
- (C) usual residence (where resident lived before admission);
- (D) sex;
- (E) marital status;
- (F) date of birth;
- (G) place of birth;
- (H) usual occupation (during most of working life);
- (I) family, other persons named by the resident, and physician for emergency notification;
- (J) pharmacy preference; and
- (K) Medicaid/Medicare number, if available.

(b) Resident assessment and service plan. Within 14 days of admission, a resident comprehensive assessment and an individual service plan for providing care, which is based on the comprehensive assessment, must be completed. The comprehensive assessment must be completed by the appropriate staff and documented on a form developed by the facility. When a facility is unable to obtain information required for the comprehensive assessment, the facility should document its attempts to obtain the information.

(1) The comprehensive assessment must include the following items:

- (A) the location from which the resident was admitted;
- (B) primary language;
- (C) sleep-cycle issues;
- (D) behavioral symptoms;
- (E) psychosocial issues (e.g. [i.e.], a psychosocial functioning assessment that includes an assessment of mental or psychosocial adjustment difficulty; a screening for signs of depression, such as withdrawal, anger or sad mood; assessment of the resident's level of anxiety; and determining if the resident has a history of psychiatric diagnosis that required in-patient treatment);
- (F) Alzheimer's disease/dementia history;
- (G) activities of daily living patterns (e.g., wakened to toilet all or most nights, bathed in morning/night, shower or bath);
- (H) involvement patterns and preferred activity pursuits (e.g. [i.e.], daily contact with relatives, friends, usually attended religious services, involved in group activities, preferred activity settings, general activity preferences);
- (I) cognitive skills for daily decision-making (e.g., independent, modified independence, moderately impaired, severely impaired);
- (J) communication (e.g. [i.e.], ability to communicate with others, communication devices);
- (K) physical functioning (e.g. [i.e.], transfer status; ambulation status; toilet use; personal hygiene; ability to dress, feed and groom self);

- (L) continence status;
- (M) nutritional status (e.g., weight changes, nutritional problems or approaches);
- (N) oral/dental status;
- (O) diagnoses;
- (P) medications (e.g., administered, supervised, self-administers);
- (Q) health conditions and possible medication side effects;
- (R) special treatments and procedures;
- (S) hospital admissions within the past six months or since last assessment; and
- (T) preventive health needs (e.g., blood pressure monitoring, hearing-vision assessment).

(2) The service plan must be approved and signed by the resident or a person responsible for the resident's health care decisions. The facility must provide care according to the service plan. The service plan must be updated annually and upon a significant change in condition, based upon an assessment of the resident.

(3) For respite clients, the facility may keep a service plan for six months from the date on which it is developed. During that period, the facility may admit the individual as frequently as needed.

(4) Emergency admissions must be assessed[?] and a service plan developed for them.

(c) Resident policies.

(1) Before admitting a resident, facility staff must explain and provide a copy of the disclosure statement to the resident, family, or responsible party. A facility that provides brain injury rehabilitation services must attach to its disclosure statement a specific statement that licensure as an assisted living facility does not indicate state review, approval, or endorsement of the facility's rehabilitative services. The facility must document receipt of the disclosure statement.

(2) The facility must provide residents with a copy of the Resident's Bill of Rights.

(3) When a resident is admitted, the facility must provide to the resident's immediate family, and document the family's receipt of, the HHSC telephone hotline number to report suspected abuse, neglect, or exploitation, as referenced in §553.273 of this subchapter (relating to Abuse, Neglect, or Exploitation Reportable to HHSC by Facilities).

(4) The facility must have written policies regarding residents accepted, services provided, charges, refunds, responsibilities of facility and residents, privileges of residents, and other rules and regulations.

(5) The facility must make available copies of the resident policies to staff and to residents or residents' responsible parties at time of admission. Documented notification of any changes to the policies must occur before the effective date of the changes.

(6) Before or upon admission of a resident, a facility must notify the resident and, if applicable, the resident's legally authorized representative, of HHSC rules and the facility's policies related to restraint and seclusion.

(7) The facility must provide a resident and the resident's legally authorized representative with a written copy of the facility's emergency preparedness plan or an evacuation summary, as required

under §553.275(d) of this subchapter (relating to Emergency Preparedness and Response[-]).

(d) Advance directives.

(1) The facility must maintain written policies regarding the implementation of advance directives. The policies must include a clear and precise statement of any procedure the facility is unwilling or unable to provide or withhold in accordance with an advance directive.

(2) The facility must provide written notice of these policies to residents at the time they are admitted to receive services from the facility.

(A) If, at the time notice is to be provided, the resident is incompetent or otherwise incapacitated and unable to receive the notice, the facility must provide the written notice, in the following order of preference, to:

- (i) the resident's legal guardian;
- (ii) a person responsible for the resident's health care decisions;
- (iii) the resident's spouse;
- (iv) the resident's adult child;
- (v) the resident's parents; or
- (vi) the person admitting the resident.

(B) If the facility is unable, after diligent search, to locate an individual listed under subparagraph (A) of this paragraph, the facility is not required to give notice.

(3) If a resident who was incompetent or otherwise incapacitated and unable to receive notice regarding the facility's advance directives policies later becomes able to receive the notice, the facility must provide the written notice at the time the resident becomes able to receive the notice.

(4) HHSC imposes an administrative penalty of \$500 for failure to inform the resident of facility policies regarding the implementation of advance directives.

(A) HHSC sends a facility written notice of the recommendation for an administrative penalty.

(B) Within 20 days after the date on which HHSC sends written notice to a facility, the facility must give written consent to the penalty or make written request to HHSC for an administrative hearing.

(C) Hearings are held in accordance with the formal hearing procedures at 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedures Act).

(e) Inappropriate placement in Type A or Type B facilities.

(1) HHSC or a facility may determine that a resident is inappropriately placed in the facility if the resident experiences a change of condition but continues to meet the facility evacuation criteria.

(A) If HHSC determines the resident is inappropriately placed and the facility is willing to retain the resident, the facility is not required to discharge the resident if, within 10 working days after receiving the Statement of Licensing Violations and Plan of Correction, Form 3724, and the Report of Contact, Form 3614-A, from HHSC, the facility submits the following to the HHSC regional office:

- (i) Physician's Assessment, Form 1126, indicating that the resident is appropriately placed and describing the resident's medical conditions and related nursing needs, ambulatory and transfer abilities, and mental status;

(ii) Resident's Request to Remain in Facility, Form 1125, indicating that:

(I) the resident wants to remain at the facility; or

(II) if the resident lacks capacity to provide a written statement, the resident's family member or legally authorized representative wants the resident to remain at the facility; and

(iii) Facility Request, Form 1124, indicating that the facility agrees that the resident may remain at the facility.

(B) If the facility initiates the request for an inappropriately placed resident to remain in the facility, the facility must complete and date the forms described in subparagraph (A) of this paragraph and submit them to the HHSC regional office within 10 working days after the date the facility determines the resident is inappropriately placed, as indicated on the HHSC prescribed forms.

(2) HHSC or a facility may determine that a resident is inappropriately placed in the facility if the facility does not meet all requirements for the evacuation of a designated resident referenced in §553.5 of this chapter (relating to Types of Assisted Living Facilities).

(A) If, during a site visit, HHSC determines that a resident is inappropriately placed at the facility and the facility is willing to retain the resident, the facility must request an evacuation waiver, as described in subparagraph (C) of this paragraph, to the HHSC regional office within 10 working days after the date the facility receives the Statement of Licensing Violations and Plan of Correction, Form 3724, and the Report of Contact, Form 3614-A. If the facility is not willing to retain the resident, the facility must discharge the resident within 30 days after receiving the Statement of Licensing Violations and Plan of Correction and the Report of Contact.

(B) If the facility initiates the request for a resident to remain in the facility, the facility must request an evacuation waiver, as described in subparagraph (C) of this paragraph, from the HHSC regional office within 10 working days after the date the facility determines the resident is inappropriately placed, as indicated on the HHSC prescribed forms.

(C) To request an evacuation waiver for an inappropriately placed resident, a facility must submit to the HHSC regional office:

(i) Physician's Assessment, Form 1126, indicating that the resident is appropriately placed and describing the resident's medical conditions and related nursing needs, ambulatory and transfer abilities, and mental status;

(ii) Resident's Request to Remain in Facility, Form 1125, indicating that:

(I) the resident wants to remain at the facility; or

(II) if the resident lacks capacity to provide a written statement, the resident's family member or legally authorized representative wants the resident to remain at the facility;

(iii) Facility Request, Form 1124, indicating that the facility agrees that the resident may remain at the facility;

(iv) a detailed emergency plan that explains how the facility will meet the evacuation needs of the resident, including:

(I) specific staff positions that will be on duty to assist with evacuation and their shift times;

(II) specific staff positions that will be on duty and awake at night; and

(III) specific staff training that relates to resident evacuation;

(v) a copy of an accurate facility floor plan, to scale, that labels all rooms by use and indicates the specific resident's room;

(vi) a copy of the facility's emergency evacuation plan;

(vii) a copy of the facility fire drill records for the last 12 months;

(viii) a copy of a completed Fire Marshal/State Fire Marshal Notification, Form 1127, signed by the fire authority having jurisdiction (either the local Fire Marshal or State Fire Marshal) as an acknowledgement that the fire authority has been notified that the resident's evacuation capability has changed;

(ix) a copy of a completed Fire Suppression Authority Notification, Form 1129, signed by the local fire suppression authority as an acknowledgement that the fire suppression authority has been notified that the resident's evacuation capability has changed;

(x) a copy of the resident's most recent comprehensive assessment that addresses the areas required by subsection (c) of this section and that was completed within 60 days, based on the date stated on the evacuation waiver form submitted to HHSC;

(xi) the resident's service plan that addresses all aspects of the resident's care, particularly those areas identified by HHSC, including:

(I) the resident's medical condition and related nursing needs;

(II) hospitalizations within 60 days, based on the date stated on the evacuation waiver form submitted to HHSC;

(III) any significant change in condition in the last 60 days, based on the date stated on the evacuation waiver form submitted to HHSC;

(IV) specific staffing needs; and

(V) services that are provided by an outside provider;

(xii) any other information that relates to the required fire safety features of the facility that will ensure the evacuation capability of any resident; and

(xiii) service plans of other residents, if requested by HHSC.

(D) A facility must meet the following criteria to receive a waiver from HHSC:

(i) The emergency plan submitted in accordance with subparagraph (C)(iv) of this paragraph must ensure that:

(I) staff is adequately trained;

(II) a sufficient number of staff are on all shifts to move all residents to a place of safety;

(III) residents will be moved to appropriate locations, given health and safety issues;

(IV) all possible locations of fire origin areas and the necessity for full evacuation of the building are addressed;

(V) the fire alarm signal is adequate;

(VI) there is an effective method for warning residents and staff during a malfunction of the building fire alarm system;

(VII) there is a method to effectively communicate the actual location of the fire; and

(VIII) the plan satisfies any other safety concerns that could have an effect on the residents' safety in the event of a fire; and

(ii) the emergency plan will not have an adverse effect on other residents of the facility who have waivers of evacuation or who have special needs that require staff assistance.

(E) HHSC reviews the documentation submitted under this subsection and notifies the facility in writing of its determination to grant or deny the waiver within 10 working days after the date the request is received in the HHSC regional office.

(F) Upon notification that HHSC has granted the evacuation waiver, the facility must immediately initiate all provisions of the proposed emergency plan. If the facility does not follow the emergency plan, and there are health and safety concerns that are not addressed, HHSC may determine that there is an immediate threat to the health or safety of a resident.

(G) HHSC reviews a waiver of evacuation during the facility's annual renewal licensing inspection.

(3) If an HHSC surveyor determines that a resident is inappropriately placed at a facility and the facility either agrees with the determination or fails to obtain the written statements or waiver required in this subsection, the facility must discharge the resident.

(A) The resident is allowed 30 days after the date of notice of discharge to move from the facility.

(B) A discharge required under this subsection must be made notwithstanding:

(i) any other law, including any law relating to the rights of residents and any obligations imposed under the Property Code; and

(ii) the terms of any contract.

(4) If a facility is required to discharge the resident because the facility has not submitted the written statements required by paragraph (1) of this subsection to the HHSC regional office, or HHSC denies the waiver as described in paragraph (2) of this subsection, HHSC may:

(A) assess an administrative penalty if HHSC determines the facility has intentionally or repeatedly disregarded the waiver process because the resident is still residing in the facility when HHSC conducts a future onsite visit; or

(B) seek other sanctions, including an emergency suspension or closing order, against the facility under Texas Health and Safety Code, Chapter 247, Subchapter C, if HHSC determines there is a significant risk and immediate threat to the health and safety of a resident of the facility.

(5) The facility's disclosure statement must notify the resident and resident's legally authorized representative of the waiver process described in this section and the facility's policies and procedures for aging in place.

(6) After the first year of employment and no later than the anniversary date of the facility manager's hire date, the manager must show evidence of annual completion of HHSC training on aging in place and retaliation.

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

Filed with the Office of the Secretary of State on July 25, 2022.

TRD-202202784

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: September 4, 2022

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



## CHAPTER 554. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes in Texas Administrative Code (TAC) Title 26, Part 1, Chapter 554, Nursing Facility Requirements for Licensure and Medicaid Certification, amendments to §554.101, relating to Definitions; §554.204, relating to Application Requirements; §554.403, relating to Notice of Rights and Services; §554.1921, relating to General Requirements for a Nursing Facility; §554.1935, relating to Automated External Defibrillators; §554.2002, relating to Procedural Requirements-Licensure Inspections and Surveys; and §554.2326, relating to Medicaid Swing Bed Program for Rural Hospitals. HHSC proposes the repeal of §554.1913, relating to Clinical Records Service Supervisor.

### BACKGROUND AND PURPOSE

The purpose of the proposed amendments to §§554.101, 554.204, 554.403, and 554.1921 is to implement Senate Bill (S.B.) 383, 87th Legislature, Regular Session, 2021. S.B. 383 requires a nursing facility (NF) that advertises, markets, or otherwise promotes that it provides memory care services to provide an additional HHSC prescribed memory care disclosure statement to each resident or resident representative and to each person applying for services from the facility or that person's next of kin or guardian.

The purpose of the proposed repeal of §554.1913 and amendment to §554.2326 is to remove the requirement for a NF to employ a clinical records supervisor or other medical records keeper.

The purpose of the proposed amendment to §554.1935 is to implement S.B. 199, 87th Legislature, Regular Session, 2021. S.B. 199 requires a NF to conduct monthly inspections of its automated external defibrillator.

The purpose of the proposed amendment to §554.2002 is to implement House Bill (H.B.) 1423, 87th Legislature, Regular Session, 2021. H.B. 1423 increases the survey frequency of required unannounced NF inspections from two per three-year licensing period to one annually. H.B. 1423 also allows HHSC to conduct a follow-up inspection for evaluation and monitoring purposes to ensure HHSC is citing deficiencies consistently.

The proposed amendments also update rule references that became outdated as a result of the administrative transfer of rules from 40 TAC Chapter 19 to 26 TAC Chapter 554, reflect the transfer of functions from the Texas Department of Human Ser-

vices or the Texas Department of Aging and Disability Services to HHSC, update terminology, and remove outdated references and requirements.

#### SECTION-BY-SECTION SUMMARY

The proposed amendment to §554.101 adds paragraphs (10), (40), (81), and (82) with new definitions for "Alzheimer's Disclosure Statement for Nursing Facilities," "Essential Caregiver," "Memory Care Disclosure Statement for Nursing Facilities," and "Memory care services."

The proposed amendment to §554.204(a) and (b) revises requirements for the application process to account for the online application system. The proposed amendment also removes the outdated requirement that a NF provide with its application for licensure the required disclosure statement regarding a NF's care and treatment of residents with Alzheimer's disease and related disorders, a certificate of good standing issued by the Comptroller of Public Accounts, and a certificate of incorporation or partnership agreement.

The proposed amendment to §554.403 adds new subsections (n) and (o). New subsection (n)(1) adds language requiring a NF that advertises, markets, or otherwise promotes that it provides memory care services to residents, to provide an HHSC prescribed memory care disclosure statement to each resident or resident representative and to each person applying for services from the facility or that person's next of kin or guardian. New subsection (n)(2) adds language requiring a NF that advertises, markets, or otherwise promotes that it provides services to residents with Alzheimer's disease and related disorders, to provide HHSC Form 3641-A, Alzheimer's Disclosure Statement for Nursing Facilities, to each resident or resident representative, each person applying for services from the facility or that person's next of kin or guardian, and a person seeking information about the facility's care and treatment of residents with Alzheimer's disease and related disorders. This new subsection replaces §554.1921(f). New subsection (o) requires a NF to provide an amended disclosure statement, required by subsection (n)(1) and (2) of this section, to a resident, responsible party, or legal guardian at least 30 days before the change in the operation of the facility reflected in the amended disclosure statement is effective.

The proposed repeal of §554.1913 removes the requirement that a NF employ a clinical records supervisor or other medical records keeper. The proposed amendment to §554.2326(e) removes a reference to this requirement for a NF to employ a clinical records supervisor or other medical records keeper.

The proposed amendment to §554.1921 deletes subsection (f) to remove the outdated requirement that a NF provide a disclosure statement if it advertises, markets, or otherwise promotes that it provides services to residents with Alzheimer's disease and related disorders. This subsection is replaced by §554.403(n)(2).

The proposed amendment to §554.1935 adds a new subsection (f). This new subsection requires a NF to conduct monthly inspections to verify that the automated external defibrillator in the NF is in its designated location, is ready for use, and does not appear to be damaged.

The proposed amendment to §554.2002(g) adds language that increases the survey frequency of required unannounced NF inspections from two per three-year licensing period to one annually and deletes references to certain organizations that no longer participate in HHSC inspections. HHSC is not proposing

any rule changes to allow HHSC to conduct a follow-up inspection for evaluation and monitoring purposes to ensure HHSC is citing deficiencies consistently. HHSC believes the language currently in §554.2002(i) allows these follow-up inspections.

#### FISCAL NOTE

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

#### GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Trey Wood has also determined that there could be some nursing facilities owned by small businesses, micro-business, or rural communities that will experience an adverse economic effect based on costs to comply. There are currently about 1,200 licensed NFs in Texas. HHSC doesn't know how many NFs are considered small businesses, micro-businesses, or rural communities.

#### LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

#### COSTS TO REGULATED PERSONS

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

#### PUBLIC BENEFIT AND COSTS

Stephen Pahl, Deputy Executive Commissioner for Regulatory Services, has determined that for each year of the first five years the rules are in effect, the public will benefit from increased safety of NF residents by requiring disclosure statements from NF providers who provide memory care services and monthly defibrillator inspections by NFs. The public will also benefit from improved inspection and penalty standards.

NF providers may incur costs associated with the printing of the additional Alzheimer's Disclosure Statement for Nursing Facilities and Memory Care Disclosure Statement for Nursing Facilities forms.

## TAKINGS IMPACT ASSESSMENT

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

## PUBLIC COMMENT

Written comments on the proposal may be submitted to Josie Esparza, Program Specialist, Texas Health and Human Services Commission, Mail Code E-370, 701 W. 51st Street, Austin, Texas 78751; or by email to [hhscltrrules@hhs.texas.gov](mailto:hhscltrrules@hhs.texas.gov).

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be post-marked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 22R001" in the subject line.

## SUBCHAPTER B. DEFINITIONS

### 26 TAC §554.101

#### STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; Texas Health and Safety Code §242.001, which states that the goal of Chapter 242 is to ensure that nursing facilities in Texas deliver the highest possible quality of care and establish the minimum acceptable levels of care for individuals who are living in a nursing facility; and Texas Health and Safety Code §242.037, which requires the Executive Commissioner of HHSC to make and enforce rules prescribing the minimum standards relating to quality of life, quality of care, and resident rights for nursing facility residents.

The amendment implements Texas Government Code §531.0055 and §534.033 and Texas Health and Safety Code Chapter 242.

#### §554.101. *Definitions.*

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

(1) **Abuse**--Negligent or willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical or emotional harm or pain to a resident; or sexual abuse, including involuntary or nonconsensual sexual conduct that would constitute an offense under Texas Penal Code §21.08 (indecent exposure) or Texas Penal Code Chapter 22 (assaultive offenses), sexual harassment, sexual coercion, or sexual assault.

(2) **Act**--Chapter 242 of the Texas Health and Safety Code.

(3) **Activities assessment**--See Comprehensive Assessment and Comprehensive Care Plan.

(4) **Activity director**--The qualified individual appointed by the facility to direct the activities program as described in §554.702 [~~§19.702~~] of this chapter (relating to Activities).

(5) **Addition**--The addition of floor space to an institution.

(6) **Administrator**--A person currently licensed in accordance with 26 TAC Chapter 555 (relating to Nursing Facility Administrators).

(7) **Admission MDS assessment**--An MDS assessment that determines a recipient's initial determination of eligibility for medical necessity for admission into the Texas Medicaid Nursing Facility Program.

(8) **Advanced practice registered nurse**--A person licensed as a registered nurse and approved to practice as an advanced practice registered nurse by the Texas Board of Nursing.

(9) **Adverse event**--An untoward, undesirable, and usually unanticipated event that causes death or serious injury, or the risk of death or serious injury.

(10) **Alzheimer's Disclosure Statement for Nursing Facilities**--The HHSC-prescribed form a facility uses to describe the nature of care or treatment of residents with Alzheimer's disease and related disorders.

(11) [~~(10)~~] **Alzheimer's disease and related disorders**--Alzheimer's disease and any other irreversible dementia described by the Centers for Disease Control and Prevention or the most current edition of the Diagnostic and Statistical Manual of Mental Disorders.

(12) [~~(11)~~] **Applicant**--A person or governmental unit, as those terms are defined in the Texas Health and Safety Code, Chapter 242, applying for a license under that chapter.

(13) [~~(12)~~] **Attending physician**--A physician, currently licensed by the Texas Medical Board, who is designated by the resident or resident representative as having primary responsibility for the treatment and care of the resident.

(14) [~~(13)~~] **Authorized electronic monitoring**--The placement of an electronic monitoring device in a resident's room and using the device to make tapes or recordings after making a request to the facility to allow electronic monitoring.

(15) [~~(14)~~] **Barrier precautions**--Precautions including the use of gloves, masks, gowns, resuscitation equipment, eye protectors, aprons, face shields, and protective clothing for purposes of infection control.

(16) [~~(15)~~] **Care and treatment**--Services required to maximize resident independence, personal choice, participation, health, self-care, psychosocial functioning, and reasonable safety, all consistent with the preferences of the resident.

(17) [~~(16)~~] **Certification**--The determination by HHSC that a nursing facility meets all the requirements of the Medicaid or Medicare programs.

(18) [~~(17)~~] **Certified facility**--A facility that meets the requirements of the Medicare program, the Medicaid program, or both.

(19) [~~(18)~~] **Certified Ombudsman**--Has the meaning given in [26 TAC] §88.2 of this title (relating to Definitions).

(20) [~~(19)~~] **CFR**--Code of Federal Regulations.

(21) [~~(20)~~] **Change of ownership**--An event that results in a change to the federal taxpayer identification number of the license

holder of a facility. The substitution of a personal representative for a deceased license holder is not a change of ownership.

(22) [(21)] Chemical restraints--Any drug administered for the purpose of discipline or convenience, and not required to treat the resident's medical symptoms.

(23) [(22)] CMS--Centers for Medicare & Medicaid Services.

(24) [(23)] Complaint--Any allegation received by HHSC other than an incident reported by the facility. Such allegations include, but are not limited to, abuse, neglect, exploitation, or violation of state or federal standards.

(25) [(24)] Completion date--The date an RN assessment coordinator signs an MDS assessment as complete.

(26) [(25)] Comprehensive assessment--An interdisciplinary description of a resident's needs and capabilities including daily life functions and significant impairments of functional capacity, as described in §554.801(2) [§19.801(2)] of this chapter (relating to Resident Assessment).

(27) [(26)] Comprehensive care plan--A plan of care prepared by an interdisciplinary team that includes measurable short-term and long-term objectives and timetables to meet the resident's needs developed for each resident after admission. The plan addresses at least the following needs: medical, nursing, rehabilitative, psychosocial, dietary, activity, and resident's rights. The plan includes strategies developed by the team, as described in §554.802(c)(2) [§19.802(e)(2)] of this chapter (relating to Comprehensive Person-Centered Care Planning), consistent with the physician's prescribed plan of care, to assist the resident in eliminating, managing, or alleviating health or psychosocial problems identified through assessment. Planning includes:

- (A) goal setting;
- (B) establishing priorities for management of care;
- (C) making decisions about specific measures to be used to resolve the resident's problems; and
- (D) assisting in the development of appropriate coping mechanisms.

(28) [(27)] Controlling person--A person with the ability, acting alone or in concert with others, to directly or indirectly, influence, direct, or cause the direction of the management, expenditure of money, or policies of a nursing facility or other person. A controlling person does not include a person, such as an employee, lender, secured creditor, or landlord, who does not exercise any influence or control, whether formal or actual, over the operation of a facility. A controlling person includes:

- (A) a management company, landlord, or other business entity that operates or contracts with others for the operation of a nursing facility;
- (B) any person who is a controlling person of a management company or other business entity that operates a nursing facility or that contracts with another person for the operation of a nursing facility;
- (C) an officer or director of a publicly traded corporation that is, or that controls, a facility, management company, or other business entity described in subparagraph (A) of this paragraph but does not include a shareholder or lender of the publicly traded corporation; and
- (D) any other individual who, because of a personal, familial, or other relationship with the owner, manager, landlord, tenant,

or provider of a nursing facility, is in a position of actual control or authority with respect to the nursing facility, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the facility.

(29) [(28)] Covert electronic monitoring--The placement and use of an electronic monitoring device that is not open and obvious, and the facility and HHSC have not been informed about the device by the resident, by a person who placed the device in the room, or by a person who uses the device.

(30) [(29)] DADS--The term referred to the Department of Aging and Disability Services; it now refers to HHSC.

(31) [(30)] Dentist--A practitioner licensed to practice dentistry by the Texas State Board of Dental Examiners.

(32) [(31)] DHS--This term referred to the Texas Department of Human Services; it now refers to HHSC.

(33) [(32)] Dietitian--A qualified dietitian is one who is qualified based upon either:

- (A) registration by the Commission on Dietetic Registration of the Academy of Nutrition and Dietetics; or
- (B) licensure, or provisional licensure, as a dietitian under Texas Occupations Code, Chapter 701 and one year of supervisory experience in dietetic service of a health care facility.

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

(35) [(34)] Disclosable interest--Five percent or more direct or indirect ownership interest in an applicant or license holder.

(36) [(35)] Distinct part--That portion of a facility certified to participate in the Medicaid Nursing Facility program or as a SNF in the Medicare program.

(37) [(36)] Drug (also referred to as medication)--Any of the following:

- (A) any substance recognized as a drug in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them;
- (B) any substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans;
- (C) any substance (other than food) intended to affect the structure or any function of the body of a human; and
- (D) any substance intended for use as a component of any substance specified in subparagraphs (A) - (C) of this paragraph. It does not include devices or their components, parts, or accessories.

(38) [(37)] Electronic monitoring device--Video surveillance cameras and audio devices installed in a resident's room, designed to acquire communications or other sounds that occur in the room. An electronic, mechanical, or other device used specifically for the nonconsensual interception of wire or electronic communication is excluded from this definition.

(39) [(38)] Emergency--A sudden change in a resident's condition requiring immediate medical intervention.

(40) Essential Caregiver--A family member, friend, guardian, volunteer, or other person designated for in-person visits by an individual, resident, or client or the individual's, resident's, or client's guardian or legally authorized representative (LAR) during a

public health emergency or disaster. In case of conflict between an individual's, resident's, or client's selection and a guardian's selection on behalf of the individual, resident, or client, the guardian's selection prevails, in accordance with the terms of the guardianship. If an individual, resident, or client has no guardian and is unable to select an essential caregiver, the individual's, resident's, or client's LAR may select the essential caregiver.

(41) [(39)] Executive Commissioner--The executive commissioner of the Health and Human Services Commission.

(42) [(40)] Exploitation--The illegal or improper act or process of a caregiver, family member, or other individual who has an ongoing relationship with a resident using the resources of the resident for monetary or personal benefit, profit, or gain without the informed consent of the resident.

(43) [(41)] Facility--Unless otherwise indicated, a facility is an institution that provides organized and structured nursing care and service and is subject to licensure under Texas Health and Safety Code, Chapter 242.

(A) For Medicaid, a facility is a nursing facility which meets the requirements of §1919(a) - (d) of the Social Security Act (42 U.S.C. §1396r(a) - (d)). A facility may not include any institution that is for the care and treatment of mental diseases except for services furnished to individuals age 65 and over and who are eligible as defined in [26 TAC] Chapter 303 of this title (relating to Preadmission Screening and Resident Review (PASRR)).

(B) For Medicare and Medicaid purposes (including eligibility, coverage, certification, and payment), the "facility" is always the entity which participates in the program, whether that entity is comprised of all of, or a distinct part of, a larger institution.

(C) "Facility" is also referred to as a nursing home or nursing facility. Depending on context, these terms are used to represent the management, administrator, or other persons or groups involved in the provision of care of the resident; or to represent the physical building, which may consist of one or more floors or one or more units, or which may be a distinct part of a licensed hospital.

(44) [(42)] Family council--A group of family members, friends, or legal guardians of residents, who organize and meet privately or openly.

(45) [(43)] Family representative--An individual appointed by the resident to represent the resident and other family members, by formal or informal arrangement.

(46) [(44)] Fiduciary agent--An individual who holds in trust another's monies.

(47) [(45)] Goals--Long-term: general statements of desired outcomes. Short-term: measurable time-limited, expected results that provide the means to evaluate the resident's progress toward achieving long-term goals.

(48) [(46)] Governmental unit--A state or a political subdivision of the state, including a county or municipality.

(49) [(47)] Health care provider--An individual, including a physician, or facility licensed, certified, or otherwise authorized to administer health care, in the ordinary course of business or professional practice.

(50) [(48)] Hearing--A contested case hearing held in accordance with the Administrative Procedure Act, Texas Government Code, Chapter 2001, and the formal hearing procedures in 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative

Procedure Act) and 40 TAC Chapter 91 [of this title] (relating to Hearings Under the Administrative Procedure Act).

(51) [(49)] HHSC--The Texas Health and Human Services Commission.

(52) [(50)] HIV--Human Immunodeficiency Virus.

(53) [(51)] Incident--An abnormal event, including accidents or injury to staff or residents, which is documented in facility reports. An occurrence in which a resident may have been subject to abuse, neglect, or exploitation must also be reported to HHSC.

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

(55) [(53)] Infection control--A program designed to prevent the transmission of disease and infection in order to provide a safe and sanitary environment.

(56) [(54)] Inspection--Any on-site visit to or survey of an institution by HHSC for the purpose of licensing, monitoring, complaint investigation, architectural review, or similar purpose.

(57) [(55)] Involuntary seclusion--Separation of a resident from others or from the resident's room or confinement to the resident's room, against the resident's will or the will of a person who is legally authorized to act on behalf of the resident. Monitored separation from other residents is not involuntary seclusion if the separation is a therapeutic intervention that uses the least restrictive approach for the minimum amount of time, not to exceed [tø] 24 hours, until professional staff can develop a care plan to meet the resident's needs.

(58) [(56)] IV--Intravenous.

(59) [(57)] Legend drug or prescription drug--Any drug that requires a written or telephonic order of a practitioner before it may be dispensed by a pharmacist, or that may be delivered to a particular resident by a practitioner in the course of the practitioner's practice.

(60) [(58)] License holder--A person that holds a license to operate a facility.

(61) [(59)] Licensed health professional--A physician; physician assistant; advanced practice registered nurse; physical, speech, or occupational therapist; pharmacist; physical therapist assistant; [øf] occupational therapy assistant; registered professional nurse; licensed vocational nurse; licensed dietitian; licensed social worker; or certified respiratory care practitioner.

(62) [(60)] Licensed vocational nurse (LVN)--A nurse who is currently licensed by the Texas Board of Nursing as a licensed vocational nurse.

(63) [(61)] Life Safety Code--NFPA 101.

(64) [(62)] Life safety features--Fire safety components required by NFPA 101, including building construction, fire alarm systems, smoke detection systems, interior finishes, sizes and thicknesses of doors, exits, emergency electrical systems, and sprinkler systems.

(65) [(63)] Life support--Use of any technique, therapy, or device to assist in sustaining life. (See §554.419 [§19.419] of this chapter (relating to Advance Directives)).

(66) [(64)] Local authorities--Persons, including, but not limited to, local health authority, fire marshal, and building inspector, who may be authorized by state law, county order, or municipal ordinance to perform certain inspections or certifications.

(67) [(65)] Local health authority--The physician appointed by the governing body of a municipality or the commissioner's court of the county to administer state and local laws relating to public health in the municipality's or county's jurisdiction as defined in Texas Health and Safety Code, §121.021.

(68) [(66)] Long-term care-regulatory--HHSC Regulatory Services Division, which is responsible for surveying nursing facilities to determine compliance with regulations for licensure and certification for Medicaid participation.

(69) [(67)] Major injury--An injury that qualifies as a major injury under NFPA 99.

(70) [(68)] Management services--Services provided under contract between the owner of a facility and a person to provide for the operation of a facility, including administration, staffing, maintenance, or delivery of resident services. Management services do not include contracts solely for maintenance, laundry, or food service.

(71) [(69)] Manager--A person, other than a licensed nursing home administrator, having a contractual relationship to provide management services to a facility.

(72) [(70)] Managing local ombudsman--Has the meaning given in [26 FAC] §88.2 of this title [(relating to Definitions)].

(73) [(71)] MDS--Minimum data set. See RAI.

(74) [(72)] MDS nurse reviewer--A registered nurse employed by HHSC to monitor the accuracy of the MDS assessment submitted by a Medicaid-certified nursing facility.

(75) [(73)] Medicaid applicant--A person who requests the determination of eligibility to become a Medicaid recipient.

(76) [(74)] Medicaid nursing facility vendor payment system--Electronic billing and payment system for reimbursement to nursing facilities for services provided to eligible Medicaid recipients.

(77) [(75)] Medicaid recipient--A person who meets the eligibility requirements of the Title XIX Medicaid program, is eligible for nursing facility services, and resides in a Medicaid-participating facility.

(78) [(76)] Medical director--A physician licensed by the Texas Medical Board, who is engaged by the nursing home to assist in and advise regarding the provision of nursing and health care.

(79) [(77)] Medical power of attorney--The legal document that designates an agent to make treatment decisions if the individual designator becomes incapable.

(80) [(78)] Medication aide--A person who holds a current permit issued under the Medication Aide Training Program as described in Chapter 557 [95] of this title (relating to Medication Aides-Program Requirements) and acts under the authority of a person who holds a current license under state law which authorizes the licensee to administer medication.

(81) Memory Care Disclosure Statement for Nursing Facilities--The HHSC-prescribed form a facility uses when the facility advertises, markets, or otherwise promotes that it provides services, including memory care services, to residents with Alzheimer's disease and related disorders.

(82) Memory care services--Services provided by a nursing facility that include enhanced safety measures and that are tailored to meet the needs of residents with a memory impairment or diagnosis of dementia.

(83) [(79)] Misappropriation--The taking, secretion, misapplication, deprivation, transfer, or attempted transfer to any person not entitled to receive any property, real or personal, or anything of value belonging to or under the legal control of a resident without the effective consent of the resident or other appropriate legal authority, or the taking of any action contrary to any duty imposed by federal or state law prescribing conduct relating to the custody or disposition of property of a resident.

(84) [(80)] MN--Medical necessity. A determination, made by physicians and registered nurses who are employed by or contract with the state Medicaid claims administrator, that a recipient requires the services of a licensed nurse in an institutional setting to carry out a physician's planned regimen for total care. A recipient's need for custodial care in a 24-hour institutional setting does not constitute medical necessity.

(85) [(81)] Neglect--The failure to provide goods or services, including medical services that are necessary to avoid physical or emotional harm, pain, or mental illness.

(86) [(82)] NFPA--National Fire Protection Association.

(87) [(83)] NFPA 99--NFPA 99, Health Care Facilities Code, 2012 Edition.

(88) [(84)] NFPA 101--NFPA 101, Life Safety Code, 2012 Edition.

(89) [(85)] Nurse aide--An individual who provides nursing or nursing-related services to residents in a facility under the supervision of a licensed nurse. This term may include an individual who provides these services through an agency or under a contract with the facility. This definition does not include an individual who is a licensed health professional, a registered dietitian, or someone who volunteers such services without pay. A nurse aide is not authorized to provide nursing or nursing-related services for which a license or registration is required under state law. Nurse aides do not include those individuals who furnish services to residents only as paid feeding assistants.

(90) [(86)] Nurse practitioner--An advanced practice registered nurse licensed by the Texas Board of Nursing in the role of Nurse Practitioner.

(91) [(87)] Nurses' station--A nurses' station is an area designated as the focal point on all shifts for the administration and supervision of resident-care activities for a designated number of resident bedrooms.

(92) [(88)] Nursing care--Services provided by nursing personnel which include, but are not limited to, observation; promotion and maintenance of health; prevention of illness and disability; management of health care during acute and chronic phases of illness; guidance and counseling of individuals and families; and referral to physicians, other health care providers, and community resources when appropriate.

(93) [(89)] Nursing facility or nursing home--See definition of "facility."

(94) [(90)] Nursing personnel--Persons assigned to give direct personal and nursing services to residents, including registered nurses, licensed vocational nurses, nurse aides, and medication aides. Unlicensed personnel function under the authority of licensed personnel.

(95) [(91)] Objectives--See definition of "goals."

(96) [(92)] OBRA--Omnibus Budget Reconciliation Act of 1987, which includes provisions relating to nursing home reform.

(97) [(93)] Ombudsman intern--Has the meaning given in [26 TAC] §88.2 of this title [(relating to Definitions)].

(98) [(94)] Ombudsman Program--Has the meaning given in [26 TAC] §88.2 of this title [(relating to Definitions)].

(99) [(95)] Paid feeding assistant--An individual who meets the requirements of §554.1113 [§19.1113] of this chapter (relating to Paid Feeding Assistants) and who is paid to feed residents by a facility or who is used under an arrangement with another agency or organization.

(100) [(97)] Palliative Plan of Care--Appropriate medical and nursing care for residents with advanced and progressive diseases for whom the focus of care is controlling pain and symptoms while maintaining optimum quality of life.

(101) [(96)] PASARR or PASRR--Preadmission Screening and Resident Review.

(102) [(98)] Patient care-related electrical appliance--An electrical appliance that is intended to be used for diagnostic, therapeutic, or monitoring purposes in a patient care area, as defined in Standard 99 of the National Fire Protection Association.

(103) [(99)] Person--An individual, firm, partnership, corporation, association, joint stock company, limited partnership, limited liability company, or any other legal entity, including a legal successor of those entities.

(104) [(100)] Person-centered care--To focus on the resident as the locus of control, and to support the resident in making choices and having control over the resident's daily life.

(105) [(101)] Pharmacist--An individual, licensed by the Texas State Board of Pharmacy to practice pharmacy, who prepares and dispenses medications prescribed by a practitioner.

(106) [(102)] Physical restraint--Any manual method, or physical or mechanical device, material or equipment attached, or adjacent to the resident's body, that the individual cannot remove easily which restricts freedom of movement or normal access to one's body. The term includes a restraint hold.

(107) [(103)] Physician--A doctor of medicine or osteopathy currently licensed by the Texas Medical Board to practice medicine.

(108) [(104)] Physician assistant (PA)--An individual who is licensed as a physician assistant under Texas Occupations Code, Chapter 204.

(109) [(105)] Podiatrist--A practitioner whose profession encompasses the care and treatment of feet who is licensed to practice podiatry by the Texas State Board of Podiatric Medical Examiners.

(110) [(106)] Poison--Any substance that federal or state regulations require the manufacturer to label as a poison and is to be used externally by the consumer from the original manufacturer's container. Drugs to be taken internally that contain the manufacturer's poison label, but are dispensed by a pharmacist only by or on the prescription order of a practitioner, are not considered a poison, unless regulations specifically require poison labeling by the pharmacist.

(111) [(107)] Practitioner--A physician, podiatrist, dentist, or an advanced practice registered nurse or physician assistant to whom a physician has delegated authority to sign a prescription order, when relating to pharmacy services.

(112) [(108)] Private and unimpeded access--Access to enter a facility, or communicate with a resident outside of the hearing or view of others, without interference or obstruction from facility employees, volunteers, or contractors.

(113) [(109)] PRN (pro re nata)--As needed.

(114) [(110)] Provider--The individual or legal business entity that is contractually responsible for providing Medicaid services under an agreement with HHSC.

(115) [(111)] Qualified mental health professional - community services--Has the meaning given in §301.303 of this title [25 TAC §412.303] (relating to Definitions).

(116) [(112)] Qualified surveyor--An employee of HHSC who has completed state and federal training on the survey process and passed a federal standardized exam.

(117) [(113)] Quality assessment and assurance committee--A group of health care professionals in a facility who develop and implement appropriate action to identify and rectify substandard care and deficient facility practice.

(118) [(115)] Quality measure report--A report that provides information derived from an MDS that provides a numeric value to quality indicators. This data is available to the public as part of the Nursing Home Quality Initiative (NHQI), and is intended to provide objective measures for consumers to make informed decisions about the quality of care in a nursing facility.

(119) [(114)] Quality-of-care monitor--A registered nurse, pharmacist, or dietitian employed by HHSC who is trained and experienced in long-term care facility regulation, standards of practice in long-term care, and evaluation of resident care, and functions independently of HHSC Regulatory Services Division.

(120) [(116)] RAI--Resident Assessment Instrument. An assessment tool used to conduct comprehensive, accurate, standardized, and reproducible assessments of each resident's functional capacity as specified by the Secretary of the U. S. Department of Health and Human Services. At a minimum, this instrument must consist of the MDS core elements as specified by CMS; utilization guidelines; and Care Area Assessment process.

(121) [(117)] Recipient--Any individual residing in a Medicaid certified facility or a Medicaid certified distinct part of a facility whose daily vendor rate is paid by Medicaid.

(122) [(118)] Rehabilitative services--Rehabilitative therapies and devices provided to help a person regain, maintain, or prevent deterioration of a skill or function that has been acquired but then lost or impaired due to illness, injury, or disabling condition. The term includes physical and occupational therapy, speech-language pathology, and psychiatric rehabilitation services.

(123) [(119)] Representative payee--A person designated by the Social Security Administration to receive and disburse benefits, act in the best interest of the beneficiary, and ensure that benefits will be used according to the beneficiary's needs.

(124) [(120)] Resident--Any individual residing in a nursing facility.

(125) [(121)] Resident group--A group or council of residents who meet regularly.

(126) [(122)] Resident representative--

(A) Any of the following:

(i) an individual chosen by the resident to act on behalf of the resident in order to support the resident in decision-making; access medical, social, or other personal information of the resident; manage financial matters; or receive notifications;

(ii) a person authorized by state or federal law (including agents under power of attorney, representative payees, and other fiduciaries) to act on behalf of the resident in order to support the resident in decision-making; access medical, social, or other personal information of the resident; manage financial matters; or receive notifications;

(iii) legal representative, as used in Section 712 of the Older Americans Act (40 U.S.C. §3058g); or

(iv) the court-appointed guardian of a resident.

(B) This definition is not intended to expand the scope of authority of any resident representative beyond that authority specifically authorized by the resident, state or federal law, or a court of competent jurisdiction.

(127) [(123)] Responsible party--An individual authorized by the resident to act for him as an official delegate or agent. Responsible party is usually a family member or relative, but may be a legal guardian or other individual. Authorization may be in writing or may be given orally.

(128) [(124)] Restraint--A chemical or physical restraint.

(129) [(125)] Restraint hold--

(A) A manual method, except for physical guidance or prompting of brief duration, used to restrict:

(i) free movement or normal functioning of all or a portion of a resident's body; or

(ii) normal access by a resident to a portion of the resident's body.

(B) Physical guidance or prompting of brief duration becomes a restraint if the resident resists the guidance or prompting.

(130) [(126)] RN--Registered nurse. An individual currently licensed by the Texas Board of Nursing as a registered nurse.

(131) [(127)] RN assessment coordinator--A registered nurse who signs and certifies a comprehensive assessment of a resident's needs, using the RAI, including the MDS, as specified by HHSC.

(132) [(128)] RUG--Resource Utilization Group. A categorization method, consisting of 34 categories based on the MDS, that is used to determine a recipient's service and care requirements and to determine the daily rate HHSC pays a nursing facility for services provided to the recipient.

(133) [(129)] Secretary--Secretary of the U.S. Department of Health and Human Services.

(134) [(130)] Services required on a regular basis--Services which are provided at fixed or recurring intervals and are needed so frequently that it would be impractical to provide the services in a home or family setting. Services required on a regular basis include continuous or periodic nursing observation, assessment, and intervention in all areas of resident care.

(135) [(131)] SNF--A skilled nursing facility or distinct part of a facility that participates in the Medicare program. SNF requirements apply when a certified facility is billing Medicare for a resident's per diem rate.

(136) [(132)] Social Security Administration--Federal agency for administration of social security benefits. Local social security administration offices take applications for Medicare, assist beneficiaries file claims, and provide information about the Medicare program.

(137) [(133)] Social worker--A qualified social worker is an individual who is licensed, or provisionally licensed, by the Texas State Board of Social Work Examiners as prescribed by the Texas Occupations Code, Chapter 505, and who has at least:

(A) a bachelor's degree in social work; or

(B) similar professional qualifications, which include a minimum educational requirement of a bachelor's degree and one year experience met by supervised employment providing social services in a health care setting.

(138) [(134)] Standards--The minimum conditions, requirements, and criteria established in this chapter with which an institution must comply to be licensed under this chapter.

(139) [(135)] State Medicaid claims administrator--The entity under contract with HHSC to process Medicaid claims in Texas.

(140) [(136)] State Ombudsman--Has the meaning given in [26 FAC] §88.2 of this title [(relating to Definitions)].

(141) [(137)] State plan--A formal plan for the medical assistance program, submitted to CMS, in which the State of Texas agrees to administer the program in accordance with the provisions of the State Plan, the requirements of Titles XVIII and XIX, and all applicable federal regulations and other official issuances of the U.S. Department of Health and Human Services.

(142) [(138)] Stay agreement--An agreement between a license holder and the executive commissioner that sets forth all requirements necessary to lift a stay and rescind a license revocation proposed under §554.2107 [§19.2107] of this chapter (relating to Revocation of a License by the HHSC Executive Commissioner).

(143) [(139)] Substandard quality of care violation--A violation of §554.401(a) or (b); §554.402(b), (c), or (m); §554.406(d) - (h); §554.417(a), (b), or (d); §554.425(b)(1); §554.504(a); §554.601; §554.602; §554.701; §554.703; §554.706(a), (c), (d)(1) - (5), or (e)(7); §554.801; §554.901; §554.904(2) or (4); §554.1501(5), (6), or (7); or §554.1601(c)(2) [§19.401(a), §19.401(b), §19.402(b), (e), or (m); §19.406(d) - (h); §19.417(a), (b), or (d); §19.425(b)(1); §19.504(a); §19.601; §19.602; §19.701; §19.703; §19.706(a), (c), (d)(1) - (5), or (e)(7); §19.801; §19.901; §19.904(2) or (4); §19.1501(5), (6), or (7); or §19.1601(e)(2)] of this chapter (relating to Resident Rights) that constitutes:

(A) an immediate threat to resident health or safety;

(B) a pattern of or actual harm that is not an immediate threat; or

(C) a widespread potential for more than minimal harm, but less than an immediate threat, with no actual harm.

(144) [(140)] Supervision--General supervision, unless otherwise identified.

(145) [(141)] Supervision (direct)--Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within the qualified person's sphere of competence. If the person being supervised does not meet assistant-level qualifications specified in this chapter and in federal regulations, the supervisor must be on the premises and directly supervising.

(146) [(142)] Supervision (general)--Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within the qualified person's sphere of competence. The person being supervised must have access to the qualified person providing the supervision.

(147) [(143)] Survey agency--HHSC is the agency that, through contractual agreement with CMS, is responsible for Title XIX (Medicaid) survey and certification of nursing facilities.

(148) [(144)] *Texas Register*--A publication of the Texas Register Publications Section of the Office of the Secretary of State that contains emergency, proposed, withdrawn, and adopted rules issued by Texas state agencies. [The *Texas Register* was established by the Administrative Procedure and Texas Register Act of 1975.]

(149) [(145)] Therapeutic diet--A diet ordered by a physician as part of treatment for a disease or clinical condition, in order to eliminate, decrease, or increase certain substances in the diet or to provide food which has been altered to make it easier for the resident to eat.

(150) [(146)] Threatened violation--A situation that, unless immediate steps are taken to correct, may cause injury or harm to a resident's health and safety.

(151) [(147)] Title II--Federal Old-Age, Survivors, and Disability Insurance Benefits of the Social Security Act (42 U.S.C. §§401 - 434).

(152) [(148)] Title XVI--Supplemental Security Income (SSI) of the Social Security Act (42 U.S.C. §§1381 - 1385).

(153) [(149)] Title XVIII--Medicare provisions of the Social Security Act (42 U.S.C. §§1390 - 1395lll).

(154) [(150)] Title XIX--Medicaid provisions of the Social Security Act (42 U.S.C. §§1396 - 1396w-5).

(155) [(151)] Total health status--Includes functional status, medical care, nursing care, nutritional status, rehabilitation and restorative potential, activities potential, cognitive status, oral health status, psychosocial status, and sensory and physical impairments.

(156) [(152)] Universal precautions--The use of barrier precautions and other precautions to prevent the spread of blood-borne diseases.

(157) [(153)] Unreasonable confinement--Involuntary seclusion.

(158) [(154)] Vaccine preventable diseases--The diseases included in the most current recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention.

(159) [(155)] Vendor payment--Payment made by HHSC on a daily-rate basis for services delivered to recipients in Medicaid-certified nursing facilities. Vendor payment is based on the nursing facility's approved-to-pay claim processed by the state Medicaid claims administrator. The Nursing Facility Billing Statement, subject to adjustments and corrections, is prepared from information submitted by the nursing facility, which is currently on file in the computer system as of the billing date. Vendor payment is made at periodic intervals, but not less than once per month for services rendered during the previous billing cycle.

(160) [(156)] Widespread--When the problem causing a violation is pervasive in a facility or represents systemic failure that affected or has the potential to affect a large portion or all of a facility's residents.

(161) [(157)] Willfully interfere--To act or not act to intentionally prevent, interfere with, or impede or to attempt to intentionally prevent, interfere with, or impede.

(162) [(158)] Working day--Any 24-hour period, Monday through Friday, excluding state and federal holidays.

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

Filed with the Office of the Secretary of State on July 25, 2022.

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Health and Human Services Commission

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



## SUBCHAPTER C. NURSING FACILITY LICENSURE APPLICATION PROCESS

### 26 TAC §554.204

#### STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; Texas Health and Safety Code §242.001, which states that the goal of Chapter 242 is to ensure that nursing facilities in Texas deliver the highest possible quality of care and establish the minimum acceptable levels of care for individuals who are living in a nursing facility; and Texas Health and Safety Code §242.037, which requires the Executive Commissioner of HHSC to make and enforce rules prescribing the minimum standards relating to quality of life, quality of care, and resident rights for nursing facility residents.

The amendment implements Texas Government Code §531.0055 and §534.033 and Texas Health and Safety Code Chapter 242.

#### §554.204. *Application Requirements.*

(a) Applications. All applications must be made on forms prescribed by and available from the Texas Health and Human Services Commission (HHSC). All applications must be submitted through the licensure system [DADS].

(1) Each application must be completed in accordance with HHSC [DADS] instructions, and it must be signed and notarized.

(2) Changes to information required in the application must be reported to HHSC by submitting a change application in the licensure system [DADS], as required by §554.1918 [§19.1918] of this chapter [title] (relating to Disclosure of Ownership).

(b) General information required. An applicant for an initial application or change of ownership, must file with HHSC [DADS] an application in the licensure system that contains:

[+] [for initial applications and change of ownership only] evidence of the right to possession of the facility at the time the application will be granted, which may be satisfied by the submission of applicable portions of a lease agreement, deed or trust, or appropriate legal document. The names and addresses of any persons or organizations listed as owner of record in the real estate, including the buildings and grounds, must be disclosed to HHSC. [DADS;]

{(2) a certificate of good standing issued by the Comptroller of Public Accounts;}

{(3) for initial applications and change of ownership only, the certificate of incorporation issued by the secretary of state for a corporation or a copy of the partnership agreement for a partnership; and}

{(4) for a facility that advertises, markets, or otherwise promotes that it provides services to residents with Alzheimer's disease and related disorders; a disclosure statement, using the departmental form, describing the nature of its care or treatment of residents with Alzheimer's disease and related disorders, as required by the Texas Health and Safety Code, §242.202.}

{(A) Failure to submit the required disclosure statement will result in an administrative penalty in accordance with §19.2112 of this title (relating to Administrative Penalties).}

{(B) The disclosure statement must contain the following information:}

{(i) the facility's philosophy of care for residents with Alzheimer's disease and related disorders;}

{(ii) whether the facility is certified under Texas Health and Safety Code §242.040 for the provision of specialized care and treatment of residents with Alzheimer's disease and related disorders;}

{(iii) the preadmission, admission, and discharge process;}

{(iv) resident assessment, care planning, and implementation of the care plan;}

{(v) staffing patterns, such as resident to staff ratios, and staff training;}

{(vi) the physical environment of the facility;}

{(vii) resident activities;}

{(viii) program charges;}

{(ix) systems for evaluation of the facility's program;}

{(x) family involvement in resident care; and}

{(xi) the telephone number for DADS toll-free complaint line.}

{(C) A facility must:}

{(i) amend its disclosure statement if changes in the operation of the facility will affect the information in the disclosure statement required by subparagraph (B)(i) - (xi) of this paragraph; and}

{(ii) submit the amended disclosure statement to DADS at least 30 days before the changes are effective.}

(c) Requested information. An applicant or license holder must provide any information HHSC [DADS] requests within 30 days after the request.

(d) Exemptions. The provisions of this section do not apply to a bank, trust company, financial institution, title insurer, escrow company, or underwriter title company to which a license is issued in a fiduciary capacity.

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

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## SUBCHAPTER E. RESIDENT RIGHTS

### 26 TAC §554.403

#### STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; Texas Health and Safety Code §242.001, which states that the goal of Chapter 242 is to ensure that nursing facilities in Texas deliver the highest possible quality of care and establish the minimum acceptable levels of care for individuals who are living in a nursing facility; and Texas Health and Safety Code §242.037, which requires the Executive Commissioner of HHSC to make and enforce rules prescribing the minimum standards relating to quality of life, quality of care, and resident rights for nursing facility residents.

The amendment implements Texas Government Code §531.0055 and §534.033 and Texas Health and Safety Code Chapter 242.

§554.403. *Notice of Rights and Services.*

(a) The facility must inform the resident, both orally and in writing, in a language that the resident understands, of the resident's rights and all rules and regulations governing resident conduct and responsibilities during the stay in the facility. This notification must be made prior to or upon admission and during the resident's stay if changed.

(b) The facility must also inform the resident, upon admission and during the stay, in a language the resident understands, of the following:

(1) facility admission policies;

(2) a description of the protection of personal funds as described in §554.404 [§19.404] of this subchapter (relating to Protection of Resident Funds);

(3) the Texas Human Resources Code, Title 6, Chapter 102; or a written list of the rights and responsibilities contained in the Texas Human Resources Code, Title 6, Chapter 102;

(4) a written description of the services available through the Ombudsman Program. This information must be made available to each facility by the ombudsman program. Facilities are responsible for reproducing this information and making it available to residents, their families, and resident representatives;

(5) a written statement to the resident, the resident's next of kin, or guardian describing the facility's policy for:

(A) the drug testing of employees who have direct contact with residents; and

(B) the criminal history checks of employees and applicants for employment; ~~and~~

(6) HHSC rules and the facility's policies related to the use of restraint and involuntary seclusion. This information must also be given to the resident's legally authorized representative, if the resident has one; ~~and~~[-]

(7) facility essential caregiver policies and procedures during a public health emergency or disaster, and this information must also be given to the resident's legally authorized representative, if the resident has one.

(c) Upon admission of a resident, a facility must:

(1) provide written information to the resident's family representative, in a language the representative understands, of the right to form a family council; or

(2) inform the resident's family representative, in writing, if a family council exists, of the council's meeting time, date, location and contact person.

(d) Receipt of information in subsections (b) - (d) of this section, and any amendments to it, must be acknowledged in writing by all parties receiving the information.

(e) The facility must post a copy of the documents specified in subsections (a) and (b) of this section in a conspicuous location.

(f) The resident or the resident's legal representative has the following rights:

(1) upon an oral or written request to the facility, to access all records pertaining to the resident, including clinical records, within 24 hours (excluding weekends and holidays); and

(2) to purchase photocopies of all or any portion of the records upon request and two workdays advance notice to the facility.

(g) The resident has the right to be fully informed in language the resident understands of the resident's total health status, including the resident's medical condition.

(h) The resident has the right to refuse treatment, to formulate an advance directive (as specified in §554.419 [§19.419] of this subchapter (relating to Advance Directives), and to refuse to participate in experimental research.

(1) If the resident refuses treatment, the resident must be informed of the possible consequences.

(2) If the resident chooses to participate in experimental research, the resident must be fully notified of the research and possible effects of the research. The research may be carried on only with the full written consent of the resident's physician, and the resident.

(3) Experimental research must comply with Federal Drug Administration regulations on human research as found in 45 CFR, Part 46.

(i) The facility must inform a resident before, or at the time of admission, and periodically during the resident's stay (if there are any changes), of services available in the facility and of charges for those services, including any charges for services not covered under Medicare or by the facility's per diem rate.

(j) The facility must provide a written description of a resident's legal rights, which includes:

(1) a description of the manner of protecting personal funds, described in §554.404 [§19.404] of this subchapter;

(2) a posting of names, addresses, and telephone numbers of all pertinent state client advocacy groups such as HHSC, the Ombudsman Program, the protection and advocacy network, and, in Medicaid-certified facilities, the Medicaid fraud control unit; and

(3) a statement that the resident may file a complaint with HHSC concerning resident abuse, neglect, and misappropriation of resident property in the facility.

(k) The facility must inform a resident of the name, specialty, and way of contacting the physician responsible for the resident's care.

(l) Notification of changes.

(1) A facility must immediately inform the resident; consult with the resident's physician; and notify, consistent with the representative's authority, the resident representative when there is:

(A) an accident involving the resident that results in injury and has the potential for requiring physician intervention;

(B) a significant change in the resident's physical, mental, or psychosocial status (that is, a deterioration in health, mental, or psychosocial status in either life-threatening conditions or clinical complications);

(C) a need to alter treatment significantly (that is, a need to discontinue an existing form of treatment due to adverse consequences, or to commence a new form of treatment); or

(D) a decision to transfer or discharge the resident from the facility.

(2) The facility also must promptly notify the resident and the resident representative, if any, when there is:

(A) a change in room or roommate assignment with the reason for the change provided in writing; or

(B) a change in resident rights under federal or state law or regulations as described in subsection (b) of this section.

(3) The facility must record and periodically update the address and phone number of the resident.

(m) Additional requirements for Medicaid-certified facilities. Medicaid-certified facilities must:

(1) provide the resident with the state-developed notice of rights under §1919(e)(6) of the Social Security Act (42 U.S.C. §1396r(e)(6));

(2) inform a resident who is entitled to Medicaid benefits, in writing, at the time of admission to the nursing facility or, when the resident becomes eligible for Medicaid of:

(A) the items and services that are included in nursing facility services provided under the State Plan and for which the resident may not be charged;

(B) those other items and services that the facility offers and for which the resident may be charged, and the amount of charges for those services;

(3) inform each resident when changes are made to the items and services specified in paragraph (2)(A) and (B) of this subsection;

(4) provide a written description of the requirements and procedures for establishing eligibility for Medicaid, including the right to request an assessment under §1924(c) of the Social Security Act (42 U.S.C. §1396r-5(c)), which:

(A) is used to determine the extent of a couple's nonexempt resources at the time of institutionalization; and

(B) attributes to the community spouse an equitable share of resources that cannot be considered available for payment toward the cost of the institutionalized spouse's medical care in the process of spending down to Medicaid eligibility levels; and

(5) prominently display in the facility written information, and provide to residents and potential residents oral and written information about how to apply for and use Medicare and Medicaid benefits, and how to receive refunds for previous payments covered by such benefits.

(n) Additional requirements for certain facilities related to memory care and Alzheimer's disease and related disorders. Facilities must provide the following HHSC forms:

(1) for a facility that advertises, markets, or otherwise promotes that it provides memory care services to residents, the Memory Care Disclosure Statement for Nursing Facilities, to each resident, disclosing as required by the Texas Health and Safety Code §242.0405 whether the facility is certified to provide specialized care and treatment for a resident with Alzheimer's disease and related disorders to:

(A) each resident or resident representative; and

(B) each person applying for services from the facility or that person's next of kin or guardian; or

(2) for a facility that advertises, markets, or otherwise promotes that it provides services to residents with Alzheimer's disease and related disorders, HHSC Form 3641-A, Alzheimer's Disclosure Statement for Nursing Facilities, disclosing as required by the Texas Health and Safety Code §242.202 whether the facility is certified to provide specialized care and treatment for a resident with Alzheimer's disease and related disorders to:

(A) each resident or resident representative;

(B) each person seeking to become a resident of the facility or that person's representative; and

(C) a person seeking information about the facility's care and treatment of residents with Alzheimer's disease and related disorders.

(o) Amended disclosure statement. A facility must provide an amended disclosure statement required by subsection (n)(1) and (2) of this section, to a resident, responsible party, or legal guardian at least 30 days before the change in the operation of the facility reflected in the amended disclosure statement is effective.

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## SUBCHAPTER T. ADMINISTRATION

### 26 TAC §554.1913

#### STATUTORY AUTHORITY

The repeal is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; Texas Health and Safety Code §242.001, which states that the goal of Chapter 242 is to ensure that nursing facilities in Texas deliver the highest possible quality of care and establish the minimum acceptable levels of care for individuals who are living in a nursing facility; and Texas Health and Safety Code §242.037, which requires the Executive Commissioner of HHSC to make and enforce rules prescribing the minimum standards relating to quality of life, quality of care, and resident rights for nursing facility residents.

The repeal implements Texas Government Code §531.0055 and §534.033 and Texas Health and Safety Code Chapter 242.

§554.1913. *Clinical Records Service Supervisor.*

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

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### 26 TAC §554.1921, §554.1935

#### STATUTORY AUTHORITY

The amendments authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; Texas Health and Safety Code §242.001, which states that the goal of Chapter 242 is to ensure that nursing facilities in Texas deliver the highest possible quality of care and establish the minimum acceptable levels of care for individuals who are living in a nursing facility; and Texas Health and Safety Code §242.037, which requires the Executive Commissioner of HHSC to make and enforce rules prescribing the minimum standards relating to quality of life, quality of care, and resident rights for nursing facility residents.

The amendments implement Texas Government Code §531.0055 and §534.033 and Texas Health and Safety Code Chapter 242.

§554.1921. *General Requirements for a Nursing Facility.*

(a) The facility must admit and retain only residents whose needs can be met through service from the facility staff, or in cooperation with community resources or other providers under contract.

(b) Individuals who have met the requirements of Chapter 17 of this title (relating to Preadmission Screening and Resident Review (PASRR) and have mental or physical diseases, or both, that endanger other residents may be admitted or retained if adequate rooms and care are provided to protect the other residents.

(c) The term "hospital" may not be used as part of the name of a nursing facility unless it has been classified and duly licensed as a hospital by the appropriate state agency.

(d) A facility that ceases operation, temporarily or permanently, voluntarily or involuntarily, must provide notice to the residents and residents' relatives or responsible parties of closure. See §554.2310 [~~§19.2310~~] of this chapter (relating to Nursing Facility Ceases to Participate) for additional notice requirements that apply to a Medicaid or Medicare certified facility.

(1) If the closure is voluntary, within one week after the date on which the decision to close is made, the facility must send written notice to residents' relatives or responsible parties stating that the closure will occur no earlier than 60 days after receipt of the notice.

(2) If the closure is involuntary, the facility must make the notification, whether orally or in writing, immediately on receiving notice of the closure.

(e) Each licensed facility must conspicuously and prominently post the information listed in paragraphs (1) - (13) of this subsection in an area of the facility that is readily available to residents, employees, and visitors. The posting must be in a manner that each item of information is directly visible at a single time. In the case of a licensed section that is part of a larger building or complex, the posting must be in the licensed section or public way leading to it. Any exceptions must be approved by HHSC [~~DADS~~]. The following items must be posted:

(1) the facility license;

(2) a complaint sign provided by HHSC [~~DADS~~] giving the toll-free telephone number;

(3) a notice in a form prescribed by HHSC [~~DADS~~] that inspection and related reports are available at the facility for public inspection;

(4) a concise summary prepared by HHSC [~~DADS~~] of the most recent inspection report;

(5) a notice of HHSC [~~DADS~~] toll-free telephone number 1-800-458-9858 to request summary reports relating to the quality of care, recent investigations, litigation or other aspects of the operation of the facility that are available to the public;

(6) a notice that HHSC [~~DADS~~] can provide information about the nursing facility administrator at (512) 438-2015 [~~512-438-2015~~];

(7) if a facility has been ordered to suspend admissions, a notice of the suspension, which must be posted also on all doors providing public ingress to and egress from the facility;

(8) the statement of resident rights provided in §554.401 [~~§19.401~~] of this chapter (relating to Introduction) and any additional facility requirements involving resident rights and responsibilities;

(9) a notice that employees, other staff, residents, volunteers, and family members and guardians of residents are protected from discrimination or retaliation as provided by the Texas Health and Safety Code, §260A.014 and §260A.015; and that the facility has available for public inspection a copy of the Texas Health and Safety Code, Chapter 260A;

(10) a prominent and conspicuous sign for display in a public area of the facility that is readily available to the residents, employees, and visitors and that includes the statement: CASES OF SUSPECTED ABUSE, NEGLECT, OR EXPLOITATION SHALL BE REPORTED TO HHSC [THE DEPARTMENT OF AGING AND DISABILITY SERVICES] BY CALLING 1-800-458-9858;

(11) for a facility that advertises, markets, or otherwise promotes that it provides services to residents with Alzheimer's disease and related disorders, a disclosure statement describing the nature of its care or treatment of residents with Alzheimer's disease and related disorders in accordance with §554.403(n)(2) [~~§19.204(b)(4)~~] of this chapter (relating to Notice of Rights and Services [~~Application Requirements~~]);

(12) at each entrance to the facility, a sign that states that a person may not enter the premises with a concealed handgun and that complies with Government Code §411.204; and

(13) daily for each shift, the current number of licensed and unlicensed nursing staff directly responsible for resident care in the facility. In addition, the nursing facility must make the information required to be posted available to the public upon request.

~~{(f) A facility that advertises, markets, or otherwise promotes that it provides services to residents with Alzheimer's disease and related disorders must give: }~~

~~{(1) the disclosure statement required by §19.204(b)(4) of this chapter (related to Application Requirements) to:}~~

~~{(A) an individual with Alzheimer's disease or a related disorder who is seeking to become a resident of the facility;}~~

~~{(B) an individual assisting an individual with Alzheimer's disease or a related disorder who is seeking to become a resident of the facility; and}~~

~~{(C) an individual seeking information about the facility's care and treatment of residents with Alzheimer's disease and related disorders; and}~~

~~{(2) an amended disclosure statement required by §19.204(b)(4)(C) to a resident, responsible party, or legal guardian at least 30 days before the change in the operation of the facility reflected in the amended disclosure statement is effective.}~~

~~(f) [(g)] The reports referenced in subsection (e)(3) of this section must be maintained in a well-lit, accessible location and must include:~~

~~(1) a statement of the facility's compliance record that is updated at least bi-monthly and reflects at least one year's compliance record, in a form required by HHSC [~~DADS~~]; and~~

~~(2) if a facility has been cited for a violation of residents' rights, a copy of the citation, which must remain in the reports until any regulatory action with respect to the violation is complete and HHSC [~~DADS~~] has determined that the facility is in full compliance with the applicable requirement.~~

~~(g) [(h)] The facility must inform the resident or responsible party or both upon the resident's admission that the inspection reports referenced in subsection (e)(3) of this section are available for review.~~

~~(h) [(i)] A facility must provide the telephone number for reporting cases of suspected abuse, neglect, or exploitation to an immediate family member of a resident of the facility upon the resident's admission to the facility.~~

~~(i) [(j)] A copy of the Texas Health and Safety Code, Chapters 242 and 260A, must be available for public inspection at the facility.~~

(j) [(k)] Within 72 hours after admission, the facility must prepare a written inventory of the personal property a resident brings to the facility, such as furnishings, jewelry, televisions, radios, sewing machines, and medical equipment. The facility does not have to inventory the resident's clothing; however, the operating policies and procedures must provide for the management of resident clothing and other personal property to prevent loss or damage. The facility administrator or his or her designee must sign and retain the written inventory and must give a copy to the resident or the resident's responsible party or both. The facility must revise the written inventory to show if property is lost, destroyed, damaged, replaced, or supplemented. Upon discharge of the resident, the facility must document the disposition of personal effects by a dated receipt bearing the signature of the resident or the resident's responsible party or both. See §554.416 [(§)416] of this chapter (relating to Personal Property).

(k) [(h)] Each facility must comply with the provisions of the Texas Health and Safety Code, Chapter 250 (relating to Nurse Aide Registry and Criminal History Checks of Employees and Applicants for Employment in Certain Facilities Serving the Elderly or Persons with Disabilities).

(l) [(m)] Before a facility hires an unlicensed employee, the facility must search the employee misconduct registry (EMR) established under §253.007, Texas Health and Safety Code, and the HHSC [DADS] nurse aide registry (NAR) to determine whether the individual is designated in either registry as unemployable. Both registries can be accessed on the HHSC [DADS] Internet website.

(m) [(n)] A facility is prohibited from hiring or continuing to employ a person who is listed in the EMR or NAR as unemployable.

(n) [(o)] A facility must provide notification about the EMR to an employee in accordance with 40 TAC §93.3 [of this title] (relating to Employment and Registry Information).

(o) [(p)] In addition to the initial search of the EMR and NAR, a facility must:

(1) conduct a search of the NAR and EMR to determine if an employee of the facility is listed as unemployable in either registry as follows:

(A) for an employee most recently hired before September 1, 2009, by August 31, 2011, and at least every 12 months thereafter; and

(B) for an employee most recently hired on or after September 1, 2009, at least every twelve months; and

(2) keep a copy of the results of the initial and annual searches of the NAR and EMR in the employee's personnel file.

[(q)] A facility must upload to the DADS website, at <http://fives.dads.state.tx.us/choose.asp>, a statement of all facility requirements involving resident rights and responsibilities that are not described in §19.401(b) of this chapter. The facility must promptly upload a revised statement if the facility changes its requirements.]

§554.1935. *Automated External Defibrillators.*

(a) In this section:

(1) "automated external defibrillator" means a heart monitor and defibrillator that:

(A) has received approval from the United States Food and Drug Administration of its premarket notification filed under United States Code, Title 21, §360(k);

(B) is capable of recognizing the presence or absence of ventricular fibrillation or rapid ventricular tachycardia;

(C) is capable of determining, without interpretation of cardiac rhythm by an operator, whether defibrillation should be performed; and

(D) after determining that defibrillation should be performed, automatically charges and requests delivery of an electrical impulse to an individual's heart; and

(2) "onsite" means:

(A) in a single story building;

(B) on each floor of a multiple story building; or

(C) in each small house of a multiple small house model.

(b) A facility must have at least one automated external defibrillator available for use onsite at all times. The facility must place the automated external defibrillator in a location that is easily accessible for staff persons who are trained to operate it.

(c) A facility must ensure at least one staff person who has completed and maintains training in cardiopulmonary resuscitation (CPR) and automated external defibrillator operation in accordance with the guidelines established by the defibrillator's manufacturer and as approved by the American Heart Association, the American Red Cross, or other nationally recognized associations is onsite at all times.

(d) A facility must ensure that a licensed physician provides medical consultation or general oversight of the staff training to ensure the facility complies with subsection (c) of this section.

(e) A facility must maintain and test the automated external defibrillator according to the manufacturer's guidelines and keep records of the maintenance and testing.

(f) A facility must conduct a monthly inspection to verify the automated external defibrillator:

(1) is placed at its designated location;

(2) reasonably appears to be ready for use; and

(3) does not reasonably appear to be damaged in a manner that could prevent operation.

(g) [(h)] A facility must ensure the use of an automated external defibrillator is consistent with a resident's advance directive executed or issued under Texas Health and Safety Code, Chapter 166, Subchapter C.

(h) [(g)] The facility must notify the local emergency medical services provider by calling 9-1-1, per standard CPR procedures, while using an automated external defibrillator on a resident.

(i) [(h)] Within 24 hours after acquiring an automated external defibrillator, a facility must notify the local emergency medical services provider of:

(1) the existence of the automated external defibrillator;

(2) the location of the automated external defibrillator in the facility; and

(3) the type of automated external defibrillator.

(j) [(i)] If a facility has an automated external defibrillator on the effective date of this rule, the facility must provide the notification described in subsection (i) [(h)] of this section within seven days after the effective date.

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

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## SUBCHAPTER U. INSPECTIONS, SURVEYS, AND VISITS

### 26 TAC §554.2002

#### STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; Texas Health and Safety Code §242.001, which states that the goal of Chapter 242 is to ensure that nursing facilities in Texas deliver the highest possible quality of care and establish the minimum acceptable levels of care for individuals who are living in a nursing facility; and Texas Health and Safety Code §242.037, which requires the Executive Commissioner of HHSC to make and enforce rules prescribing the minimum standards relating to quality of life, quality of care, and resident rights for nursing facility residents.

The amendment implements Texas Government Code §531.0055 and §534.033 and Texas Health and Safety Code Chapter 242.

*§554.2002. Procedural Requirements--Licensure Inspections and Surveys.*

(a) HHSC inspection and survey personnel perform inspections and surveys, follow-up visits, complaint investigations, investigations of abuse or neglect, and other contact visits from time to time as they deem appropriate or as required for carrying out the responsibilities of licensing.

(b) An inspection may be conducted by an individual qualified surveyor or by a team, of which at least one member is a qualified surveyor.

(c) To determine standard compliance which cannot be verified during regular working hours, night or weekend inspections may be conducted to cover specific segments of operation and will be completed with the least possible interference to staff and residents.

(d) Generally, all inspections, surveys, complaint investigations and other visits, whether routine or non-routine, made for the purpose of determining the appropriateness of resident care and day-to-day operations of a facility will be unannounced; any exceptions must be justified. Releasing advance information of an unannounced inspection is a third degree felony, as provided in §242.045 of the Health and Safety Code.

(e) Certain visits may be announced, including, but not limited to, consultation visits to determine how a physical plant may be expanded or upgraded and visits to determine the progress of physical plant construction or repairs, equipment installation or repairs, or systems installation or repairs or conditions when certain emergencies

arise, such as fire, windstorm, or malfunctioning or nonfunctioning of electrical or mechanical systems.

(f) Persons authorized to receive advance information on unannounced inspections include:

(1) citizen advocates invited to attend inspections, as described in subsection (g) of this section;

(2) the State Ombudsman, a certified ombudsman, and an ombudsman intern who are authorized to attend and participate in inspections;

(3) representatives of the United States Department of Health and Human Services whose programs relate to the Medicare/Medicaid Long Term Care Program; and

(4) representatives of HHSC whose programs relate to the Medicare/Medicaid long term care program.

(g) HHSC conducts at least one ~~two~~ unannounced inspection annually [inspections during each licensing period] of each institution licensed under Health and Safety Code, Chapter 242, except as provided for in this subsection. For purposes of this subsection, "annually" means a statewide average of once every 12 months.

(1) In order to ensure continuous compliance, a sufficient number of inspections will be conducted between the hours of 5:00 p.m. and 8:00 a.m. in randomly selected institutions. This cursory after-hours inspection is conducted to verify staffing, assurance of emergency egress, resident care, medication security, food service or nourishments, sanitation, and other items as deemed appropriate. To the greatest extent feasible, any disruption of the residents is minimal.

(2) For at least one ~~two~~ unannounced inspection annually [inspections each licensing period], HHSC invites to the inspections at least one person as a citizen advocate from [~~the American Association of Retired Persons, the Texas Senior Citizen Association, the Texas Retired Federal Employees;~~] the Ombudsman Program~~;~~ or any other statewide organization for older adults [~~the elderly~~]. HHSC provides to these organizations basic licensing information and requirements for the organizations' dissemination to their members whom they engage to attend the inspections. Advocates participating in the inspections must follow all protocols of HHSC. Advocates provide their own transportation. The schedule of inspections in this category are arranged confidentially in advance with the organizations. Participation by the advocates is not a condition precedent to conducting the inspection.

(h) The facility must make all of its books, records, and other documents maintained by or on behalf of a facility accessible to HHSC upon request.

(1) During an inspection, survey, or investigation, HHSC is authorized to photocopy documents, photograph residents, and use any other available recordation devices to preserve all relevant evidence of conditions that HHSC reasonably believes threaten the health and safety of a resident.

(2) Examples of records and documents which may be requested and photocopied or otherwise reproduced are resident medical records, including nursing notes, pharmacy records medication records, and physician's orders.

(3) When the facility is requested to furnish the copies, the facility may charge HHSC at the rate not to exceed the rate charged by HHSC for copies. The procedure of copying is the responsibility of the administrator or his designee. If copying requires the records be removed from the facility, a representative of the facility is expected to accompany the records and assure their order and preservation.

(4) HHSC protects the copies for privacy and confidentiality in accordance with recognized standards of medical records practice, applicable state laws, and HHSC [department] policy.

(i) HHSC provides for a special team to conduct validation surveys or verify findings of previous licensure surveys.

(1) At HHSC's discretion, based on record review, random sample, or any other determination, HHSC may assign a team to conduct a validation survey. HHSC may use the information to verify previous determinations or identify training needs to assure consistency in deficiencies cited and in punitive actions recommended throughout the state.

(2) Facilities are required to correct any additional deficiencies cited by the validation team but are not subject to any new or additional punitive action.

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## SUBCHAPTER X. REQUIREMENTS FOR MEDICAID-CERTIFIED FACILITIES

### 26 TAC §554.2326

#### STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; Texas Health and Safety Code §242.001, which states that the goal of Chapter 242 is to ensure that nursing facilities in Texas deliver the highest possible quality of care and establish the minimum acceptable levels of care for individuals who are living in a nursing facility; and Texas Health and Safety Code §242.037, which requires the Executive Commissioner of HHSC to make and enforce rules prescribing the minimum standards relating to quality of life, quality of care, and resident rights for nursing facility residents.

The amendment implements Texas Government Code §531.0055 and §534.033 and Texas Health and Safety Code Chapter 242.

§554.2326. *Medicaid Swing Bed Program for Rural Hospitals.*

(a) Program description. HHSC [DADS] operates the Medicaid Swing Bed Program for rural hospitals located in counties with populations of 100,000 or less. The Medicaid Swing Bed Program is modeled on Medicare's Swing Bed Program. The Medicaid Swing Bed Program permits participating rural hospitals to use their beds interchangeably to furnish both acute hospital care and nursing facility care to Medicaid recipients, when no care beds are available in nursing facilities (NFs) in the area. When a participating rural hospital furnishes

NF nursing care to Medicaid recipients, HHSC [DADS] makes payment to the hospital using the same procedures and the same Resource Utilization Group daily rates that the Texas Health and Human Services Commission authorizes for reimbursing NFs participating in the Texas Medicaid Nursing Home Program.

(b) Application to participate. Rural hospitals apply to HHSC [DADS] to participate in the Medicaid Swing Bed Program. Each applicant must be located in a county with a population of 100,000 or less and must meet the qualifying requirements of the Medicare Swing Bed Program. Hospitals approved for participation enter into swing bed provider agreements with HHSC [DADS].

(c) Parallel participation in Medicare. A rural hospital participating in the Medicaid Swing Bed Program must:

(1) have a Medicare hospital provider agreement; and

(2) be Medicare-certified [by the Department of State Health Services (DSHS)] as a swing bed hospital in the Medicare Swing Bed Program.

(d) Applicability of Medicare requirements. Each participating rural hospital must satisfy all the requirements of the Medicare Swing Bed Program, except that Medicare's five-weekday transfer requirement[, as stated in §482.66(b)(i)-(ii), 42 Code of Federal Regulations,] and 15 percent [15%] payment limitation, as stated in 42 CFR §413.114(d)(2), do not apply for Medicaid reimbursement purposes.

(e) Applicability of NF requirements. From day one of the resident's stay, a rural hospital participating in the Medicaid Swing Bed Program must meet the requirements set forth in §554.101 [§19.101] of this chapter [title] (relating to Definitions); §554.2304(c) [§19.2304(e)] of this chapter [title] (relating to Contract Requirements); §§554.300 - 554.314 [§§19.300 -19.314] and 554.316 [19.316] of this chapter [title] (relating to General Requirements; Definitions; Applicable Codes and Standards; [Waivers;] Emergency Power; Space and Equipment; Resident Rooms; Toilet Facilities; Resident Call System; Dining and Resident Activities; Other Environmental Conditions; Site and Grounds; Fire Service and Access; [Means of Egress;] Interior Finishes - Walls, Ceilings, and Floors; and Fire Alarms, Detection Systems, and Sprinkler Systems; [and Subdivision of Building Spaces - Smoke Barriers]); §§554.1901 - 554.1912, 554.1914, and 554.1917 [§§19.1901 -19.1914 and 19.1917] of this chapter [title] (relating to Administration; Governing Body; Staff Qualifications; [Required Training of Nurse Aides; Proficiency of Nurse Aides; Staff Qualifications;] Use of Outside Resources; Medical Director; Laboratory Services; Radiology and Other Diagnostic Services; Clinical Records; Contents of the Clinical Record; Additional Clinical Record Service Requirements; Emergency Preparedness and Response [Clinical Records Service Supervisor; Disaster and Emergency Preparedness]; and Quality Assessment and Assurance); §§554.2601 - 554.2608 [§§19.2601 - 19.2608] and 554.2610 [19.2610] of this chapter [title] (relating to [Subchapter AA,] Vendor Payment (Items and Services Included), Additional Charges (Items and Services Excluded from Vendor Payment), Therapeutic Home Visits Away from the Facility, Vendor Payment Information, Effective Date of Vendor Coverage, Supplementation of Vendor Payments, Penalties for Supplementation, Limitations on Provider Charges, and Medicare part A Skilled Nursing Facility Deductible and Coinsurance Payment); and Subchapter Y of this chapter [title] (relating to Medical Necessity Determinations)[; and Appendix B, Cost Determination Process]; and Appendix C, Reimbursement Methodology for Nursing Facilities; of DADS' *Nursing Facility Requirements for Licensure and Medicaid Certification Handbook*].

(f) Rural hospital (Medicaid swing bed facility) licensure and certification requirements. Pursuant to Texas Health and Safety Code

§222.024 [ §§222.021, 222.024, and 222.025 ] concerning the duplication of health care inspections and licensing, a rural hospital participating in the Medicaid Swing Bed Program satisfies licensure and certification requirements referenced in this section when it is currently licensed and certified as a hospital [by DSHS]. However, in accordance with Texas Human Resources Code, §32.024, if the rural hospital's swing beds are used for more than one 30-day length of stay per year, per resident the hospital must comply with the full Nursing Facility Requirements.

(g) Rural hospital (Medicaid swing bed facility) administrator. The governing body of a rural hospital participating in the Medicaid Swing Bed Program satisfies the requirement to appoint a qualified full-time nursing facility administrator, found at §554.1902(b) [§19.1902(b)] of this chapter [title] (relating to Governing Body), when it appoints a hospital administrator as its official representative and designates the administrator's responsibilities and authority, subject to the following exception. If the swing beds are used for more than one 30-day length of stay per year, per resident, the hospital's governing body must appoint a full-time licensed nursing facility administrator.

(h) Rural hospital (Medicaid swing bed facility) staff development requirements. A rural hospital participating in the Medicaid Swing Bed Program satisfies the staff development requirements found at §554.1929 [§19.1929] of this chapter [title] (relating to Staff Development) if the swing beds are used for no more than one 30-day length of stay per year, per resident.

(i) Rural hospital (Medicaid swing bed facility) transfer agreement. A rural hospital participating in the Medicaid Swing Bed Program is not required to have a transfer agreement with another hospital, as required by §554.1915 [§19.1915] of this chapter [title] (relating to Transfer Agreement).

(j) Rural hospital geographic region. The phrase "a participating rural hospital's geographic region" refers to an area that includes nursing facilities with which the hospital normally arranges transfers and all other nursing facilities in similar proximity to the hospital. If a hospital has no previous transfer practices on which to base a determination, the phrase "geographic region" refers to an area that includes all nursing facilities within 50 miles of the hospital except for facilities that the hospital demonstrates to be inaccessible to its patients.

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

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



## CHAPTER 967. STATE SUPPORTED LIVING CENTER INDEPENDENT MORTALITY REVIEW

### 26 TAC §967.1

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes new §967.1, concerning Independent Mortality Review.

## BACKGROUND AND PURPOSE

The proposal is necessary to comply with Texas Government Code §531.851(d), which requires HHSC to identify the manner in which the state supported living centers (SSLCs) must report the death of an individual served to the independent mortality review organization contracted pursuant to §531.851(c) to conduct an independent mortality review. Additionally, this proposal places HHSC rules in Title 26 and the repeal of Texas Administrative Code (TAC) Title 40, Chapter 3, Subchapter E, concerning Death of an Individual, is being simultaneously proposed in this issue of the *Texas Register*.

## SECTION-BY-SECTION

Proposed new §967.1, concerning Independent Mortality Review, describes the timeframe the SSLC must follow when there is a death of a person with an intellectual or developmental disability in a SSLC.

## FISCAL NOTE

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

## GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

## LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect the local economy.

## COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule is necessary to protect the health, safety, and welfare of the residents of Texas; does not impose a cost on regulated persons; and is necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

## PUBLIC BENEFIT AND COSTS

Laura Cazabon-Braly, SSLCs Associate Commissioner, has determined that for each year of the first five years the rule is in effect, the public benefit will be improved care of the individuals served at SSLCs.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the rule applies only to HHSC.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Written comments on the proposal may be submitted to HHSC, Texas Health and Specialty Care System, Mail Code E-619, P.O. Box 13247, Austin, Texas 78711-3247, or by email to [HealthandSpecialtyCare@hhsc.state.tx.us](mailto:HealthandSpecialtyCare@hhsc.state.tx.us).

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 22R029" in the subject line.

#### STATUTORY AUTHORITY

The new section is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.851(d) which requires the adoption of rules regarding the manner in which the death of an individual served by an SSLC must be reported to the contracted organization to conducting independent mortality reviews.

The new section affects Texas Government Code §531.0055 and §531.851(d).

#### §967.1. *Independent Mortality Review.*

The Texas Health and Human Services Commission contracts with an independent mortality review organization pursuant to Texas Government Code §531.851(c). A state supported living center (SSLC) must report the death of a person with an intellectual or developmental disability who, at the time of the person's death or at any time during the 24-hour period before the person's death, resided in or received services from the SSLC. The death must be reported to the independent mortality review organization within 72 hours after the pronouncement of death.

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

Filed with the Office of the Secretary of State on July 25, 2022.

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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-3049



## TITLE 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### CHAPTER 20. STATEWIDE PROCUREMENT AND SUPPORT SERVICES

##### SUBCHAPTER C. PROCUREMENT

##### METHODS AND CONTRACT FORMATION

##### DIVISION 2. PROCUREMENT METHODS

#### 34 TAC §20.222

The Comptroller of Public Accounts proposes new §20.222, concerning methods for procuring automated information systems, including request for offers method. The new section will reside in Chapter 20 (Statewide Procurement and Support Services), Subchapter C (Procurement Methods and Contract Formation), Division 2 (Procurement Methods). New §20.222 will replace §20.391, concerning request for offers purchase method, which the comptroller will propose for repeal in a separate proposal.

New §20.222 tracks §20.391 but with improved syntax and style that mirrors that of the other subchapters in Chapter 20 and results in a more readable rule.

Subsection (a) provides that with some exceptions state agencies must purchase from Department of Information Resources (DIR) cooperative contracts those automated information systems that are designated as commodity items by Government Code, §2157.068. "Automated information system" and "commodity items" are defined in Government Code, §2157.001, and Government Code, §2157.068, respectively.

Subsection (b) identifies the circumstances when a state agency is not required to use DIR cooperative contracts to purchase a commodity item.

Subsection (c) designates the request for offers method as the primary purchasing method for procuring automated information systems but provides that state agencies may use the request for offers method, or any other purchasing method designated by the comptroller to obtain best value for the state, to purchase automated information systems.

Subsection (d) requires that the procurement of automated information systems must comply with the State of Texas Procurement and Contract Management Guide.

Subsection (e) states that the determination of best value for the purchase of an automated information system is governed by Government Code, §2157.003.

Subsection (f) identifies the minimum elements that comprise the request for offers method.

Subsection (g) states that a qualified vendor for purposes of new §20.222 is a vendor that meets the minimum requirements of

the request for offers and is capable of providing the needed automated information system.

Subsection (h) stipulates language that a state agency must include in its request for offers method if the state agency believes that the needed automated information system may be proprietary to one vendor under Government Code, §2155.067.

Subsection (i) states that a state agency does not need approval from the comptroller to use the request for offers method.

Subsection (j) provides that the request for offers method permits negotiation of contracts, including negotiation of price.

Subsection (k) clarifies that state agencies or local governments may use the request for offers method for the purchase of goods or services other than automated information systems if doing so will obtain best value for the state agency or local government.

There are several substantive differences between §20.391 and new §20.222. For example, new §20.222 does not include outdated references to Texas Procurement and Support Services nor to the catalog purchase method repealed in 2007. In addition, new §20.222 does not include a requirement that the Division work with the Department of Information Resources to clarify how agencies can identify which NIGP codes are information technology commodities or automated information systems and to post such information on the Division's website. This work will continue as before but without promulgation in agency regulation. Also, new §20.222 does not include a statement that local governments may use the request for offers purchase method because that is simply a restatement of Government Code, §2157.006(b).

Finally, new §20.222 does not include recommendations (as currently found in §20.391(d)) to qualified vendors to maintain current registrations on the centralized master bidders list to receive notices of issuance of solicitations because agency rulemaking is not an appropriate vehicle for making such recommendations.

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

Mr. Reynolds also has determined that the proposed new rule would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed new rule would benefit the public by improving the clarity of the Rule and the administration of statewide procurement and support services. There would be no significant anticipated economic cost to the public. The proposed new rule would have no significant fiscal impact on small businesses or rural communities.

A public hearing will be held to receive comments on the new rule. There is no physical location for this meeting. The meeting will be held at 10:00 a.m. on Tuesday, August 30, 2022. To access the online public meeting by web browser, please enter the following URL into your browser: <https://txcpa.webex.com/txcpa/j.php?MTID=m12b07bbec1be4c4a2b8026cb9f176c79>. To join the meeting by computer or cell phone using the Webex app, use the access code 2499 075 6884. Persons interested in providing comments at the public hearing may contact Mr. Gerard MacCrossan, Comptroller of Public Accounts, at Ger-

ard.MacCrossan@cpa.texas.gov or by calling (512) 463-4468 by Monday, August 29, 2022.

Comments on the proposal may be submitted to Ms. Tosca M. McCormick, Comptroller of Public Accounts, P.O. Box 13186, Austin, Texas 78701-3186 or to the email address: [Tosca.McCormick@cpa.texas.gov](mailto:Tosca.McCormick@cpa.texas.gov). The comptroller must receive your comments no later than 30 days from the date of publication of the proposal in the *Texas Register*.

This section is proposed under Government Code, §2155.0012, which authorizes the comptroller to adopt rules to administer Government Code, Chapter 2155; Government Code, §2157.0012, which authorizes the comptroller to adopt rules to administer Government Code, Chapter 2157; and Government Code, §2157.006(c), which requires the comptroller to adopt rules for designating purchasing methods under Government Code, §2157.006(a)(2).

The new section implements Government Code, §§2155.062, 2157.006, and 2157.068.

§20.222. *Methods for Procuring Automated Information Systems, including Request for Offers Method.*

(a) Except as provided for in subsection (b) of this section, state agencies must purchase from Department of Information Resources (DIR) cooperative contracts those automated information systems that are designated as commodity items by Government Code, §2157.068.

(b) A state agency is not required to use DIR cooperative contracts to purchase a commodity item if:

(1) the state agency has obtained an exemption from DIR for the purchase of the commodity item;

(2) DIR has certified in writing that the commodity item is not available for purchase under an existing DIR cooperative contract;

(3) the state agency has obtained approval from the Legislative Budget Board under Government Code, §2157.068(f), for the purchase of the commodity item;

(4) the contract for the commodity item is valued at more than \$5 million; or

(5) the state agency is otherwise exempt from Government Code, §2157.068.

(c) The comptroller designates the request for offers method as the primary purchasing method for procuring automated information systems, including commodity items not procured through DIR. However, state agencies may use the request for offers method, or any other purchasing method designated by the comptroller to obtain best value for the state, to purchase automated information systems.

(d) The procurement of automated information systems must comply with the procurement manual and contract management guide described in §20.131 of this title (relating to Procurement Manual and Contract Management Guide).

(e) The determination of best value for the purchase of an automated information system is governed by Government Code, §2157.003.

(f) The request for offers method is a direct purchase or lease method that contains, at a minimum, the following:

(1) publication of an open and competitive solicitation, in writing, seeking request for offers for the needed automated information system;

(2) evaluation of written offers received from qualified vendors as defined in subsection (g) of this section;

(3) disqualification of offers from vendors that do not meet the minimum requirements of the request for offer or that are not capable of providing the needed automated information system; and

(4) award to the qualified vendor providing best value to the state.

(g) A qualified vendor for purposes of this section is a vendor that meets the minimum requirements of the request for offers and is capable of providing the needed automated information system.

(h) If a state agency believes that the needed automated information system may be proprietary to one vendor under Government Code, §2155.067, it shall include the following statement in bold and prominent type at the beginning of the request for offer: "Although the requested items in this request for offers appear to be proprietary to one vendor under Government Code, §2155.067, all qualified respondents that may be able to provide the requested items are encouraged to submit offers."

(i) A state agency does not need approval from the comptroller to use the request for offers method.

(j) The request for offers method permits negotiation of contracts, including negotiation of price.

(k) State agencies or local governments may use the request for offers method described in this section for the purchase of goods or services other than automated information systems if doing so will obtain best value for the state agency or local government.

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

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Don Neal

General Counsel, Operations and Support Legal Services

Comptroller of Public Accounts

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For further information, please call: (512) 475-2220



## SUBCHAPTER E. SPECIAL CATEGORIES OF CONTRACTING

### DIVISION 1. STATE SUPPORT SERVICES - MAIL AND PRINTING

#### 34 TAC §20.381

The Comptroller of Public Accounts proposes to amend §20.381, concerning mail and messenger services.

This amendment provides that mail equipment or private entity service contracts \$10,000 in value are subject to the same requirements as those under \$10,000 in value. Under current §20.381(f)(1), for mail equipment or private entity service contracts under \$10,000, a state agency shall submit a written justification to the comptroller stating why the equipment or service is needed and what benefits are expected to be received. Likewise, the current §20.381(f)(2) provides that for mail equipment or private service contracts over \$10,000, a state agency shall

submit a detailed life-cycle cost benefit analysis to the comptroller that includes all expected costs and benefits over the life of the equipment or service. However, §20.381(f) does not currently prescribe the information a state agency must submit to the comptroller for mail equipment or private entity service contracts that are precisely \$10,000. The amendment provides that, for mail equipment or private entity service contracts \$10,000 and under, a state agency shall submit a written justification to the comptroller stating why the equipment or service is needed and what benefits are expected to be received.

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

Mr. Reynolds also has determined that the proposed amended rule would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed amended rule would benefit the public by improving the clarity of the Rule and the administration of state support services. There would be no significant anticipated economic cost to the public. The proposed amended rule would have no significant fiscal impact on small businesses or rural communities.

A public hearing will be held to receive comments on the proposed amendment. There is no physical location for this meeting. The meeting will be held at 10:00 am on Tuesday, August 30, 2022. To access the online public meeting by web browser, please enter the following URL into your browser: <https://txcpa.webex.com/txcpa/j.php?MTID=m12b07bbec1be4c4a2b8026cb9f176c79>. To join the meeting by computer or cell phone using the Webex app, use the access code 2499 075 6884. Persons interested in providing comments at the public hearing may contact Mr. Gerard MacCrossan, Comptroller of Public Accounts, at [Gerard.MacCrossan@cpa.texas.gov](mailto:Gerard.MacCrossan@cpa.texas.gov) or by calling (512) 463-4468 by Monday, August 29, 2022.

Comments on the proposal may be submitted to Ms. Tosca M. McCormick, Comptroller of Public Accounts, P.O. Box 13186, Austin, Texas 78701-3186 or to the email address: [Tosca.McCormick@cpa.texas.gov](mailto:Tosca.McCormick@cpa.texas.gov). The comptroller must receive your comments no later than 30 days from the date of publication of the proposal in the *Texas Register*.

This rule amendment is proposed under Government Code, §2176.110, which requires the comptroller to adopt rules for state agencies to implement Government Code, Chapter 2176.

The amendment implements Government Code, §2176.003 and §2176.104.

*§20.381. Mail and Messenger Services.*

(a) The comptroller provides and operates an interagency mail and messenger service to deliver unstamped or non-metered written communications and packages between the legislature, state agencies and legislative agencies located in Travis County.

(b) No personal mail will be carried by the mail and messenger service. No package that exceeds 70 pounds will be delivered by the mail and messenger service.

(c) State warrants may be delivered by the mail and messenger service upon agreement by the state comptroller and the agency concerned.

(d) Mail may be delivered to and from the United States Post Office upon the agreement of the state agency and the comptroller.

(e) The mail and messenger service may process and meter outgoing mail for state agencies upon agreement of the state agency and the comptroller. Each state agency must furnish funds to cover amounts of postage to be metered.

(1) No mail shall be metered for a state agency in excess of funds provided by the agency, unless approved by the comptroller so as to avoid undue delays in processing mail. Any deficit in an agency's postage account shall be promptly reimbursed to the comptroller.

(2) The mail and messenger service will provide each state agency utilizing the metered mail service with a monthly report showing the amounts of postage used and volume of mail metered.

(3) State agencies who use the comptroller's outgoing mail service for the purpose of postage meter rental requirements and cost effective mailing requirements will be considered to be in compliance with Government Code, Chapter 2176 and Government Code, §2113.103.

(f) A state agency located in Travis County is required to consult with the comptroller before renting, purchasing, upgrading, or selling mail processing equipment; contracting with a private entity for mail processing services; or taking any action that will significantly affect the agency's first class mail practices.

(1) For mail equipment or private entity service contracts \$10,000 and under [~~\$10,000~~], a state agency shall submit a written justification to the comptroller stating why the equipment or service is needed and what benefits are expected to be received.

(2) For mail equipment or private service contracts over \$10,000, a state agency shall submit a detailed life-cycle cost benefit analysis to the comptroller that includes all expected costs and benefits over the life of the equipment or service. The analysis shall be in a format prescribed by the comptroller.

(3) For any action that will significantly affect its first class mail practices, a state agency shall provide a written statement of the need for the action and anticipated benefits. Significant actions affecting the first class mail practices of an agency include, but are not limited to, the following:

(A) creation or elimination of internal mail processing functions, organization, or staff; and

(B) addition or elimination of any specific mail processing activities such as metering, presorting, folding/inserting, or labeling.

(4) The comptroller shall provide a written response to the state agency indicating whether or not it agrees with the intended action and any suggested alternatives.

(g) The comptroller establishes statewide term contracts for postage meter machine rentals when in the best interest of the state. Postage for statewide term contracts is purchased separately by state agencies and cooperative purchasing members. State agencies may pay for postage in accordance with the requirements of United States Postal Service Domestic Mail Manual.

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

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Don Neal

General Counsel, Operations and Support Legal Services  
Comptroller of Public Accounts

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For further information, please call: (512) 475-2220



## SUBCHAPTER H. PURCHASE METHODS

### 34 TAC §20.391

The Comptroller of Public Accounts proposes the repeal of §20.391, concerning request for offers purchase method. In a separate proposal, updated language from §20.391 will be included in new §20.222, concerning methods for procuring automated information systems, including request for offers method. Also, because §20.391 is the sole section that resides in Subchapter H of Chapter 20, the comptroller proposes the repeal of Subchapter H.

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

Mr. Reynolds also has determined that the proposed rule repeal would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed rule repeal would benefit the public by improving the clarity and organization of the rules. There would be no anticipated significant economic cost to the public. The proposed rule repeal would have no significant fiscal impact on small businesses or rural communities.

A public hearing will be held to receive comments on the proposed repeal. There is no physical location for this meeting. The meeting will be held at 10:00 a.m. on Tuesday, August 30, 2022. To access the online public meeting by web browser, please enter the following URL into your browser: <https://txcpa.webex.com/txcpa/j.php?MTID=m12b07bbec1be4c4a2b8026cb9f176c79>. To join the meeting by computer or cell phone using the Webex app, use the access code 2499 075 6884. Persons interested in providing comments at the public hearing may contact Mr. Gerard MacCrossan, Comptroller of Public Accounts, at [Gerard.MacCrossan@cpa.texas.gov](mailto:Gerard.MacCrossan@cpa.texas.gov) or by calling (512) 463-4468 by Monday, August 29, 2022.

You may submit written comments on the proposal to Ms. Tosca M. McCormick, Comptroller of Public Accounts, P.O. Box 13186, Austin, Texas 78701-3186 or to the email address: [Tosca.McCormick@cpa.texas.gov](mailto:Tosca.McCormick@cpa.texas.gov). The comptroller must receive your comments no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The repeal is proposed under Government Code, §2155.0012, which authorizes the comptroller to adopt rules to administer Government Code, Chapter 2155, and Government Code

§2157.0012, which authorizes the comptroller to adopt rules to administer Government Code, Chapter 2157.

This repeal implements Government Code, §2155.0012 and §2157.0012.

§20.391. *Request for Offers Purchase Method.*

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

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Comptroller of Public Accounts

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## **TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

### **PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES**

#### **CHAPTER 3. RESPONSIBILITIES OF STATE FACILITIES**

##### **SUBCHAPTER E. DEATH OF AN INDIVIDUAL** **40 TAC §§3.501 - 3.506, 3.508, 3.509**

As required by Texas Government Code §531.0202(b), the Department of Aging and Disability Services (DADS) was abolished effective September 1, 2017, after all of its functions were transferred to the Texas Health and Human Services Commission (HHSC) in accordance with Texas Government Code §531.0201 and §531.02011. Rules of the former DADS are codified in Texas Administrative Code (TAC) Title 40, Part 1, and will be repealed or administratively transferred to 26 TAC, Health and Human Services, as appropriate. Until such action is taken, the rules in 40 TAC Part 1 govern functions previously performed by DADS that have transferred to HHSC. Texas Government Code §531.0055 requires the Executive Commissioner of HHSC to adopt rules for the operation and provision of services by the health and human services system, including rules in 40 TAC Part 1. Therefore, the Executive Commissioner of HHSC proposes the repeal of 40 TAC Chapter 3, Subchapter E, concerning Death of an Individual, which comprises §§3.501, concerning Discovery, 3.502, concerning Reporting and Notification, 3.503, concerning Medical Certification of Death and Autopsies, 3.504, concerning Disposition, 3.505, concerning Clinical Death Review, 3.506, concerning Administrative Death Review, 3.508, concerning State Office Mortality Review, and 3.509, concerning Independent Mortality Review.

##### **BACKGROUND AND PURPOSE**

The proposal is necessary to facilitate updates to internal operating procedures for which there are no statutory requirements for adoption in the TAC by repealing the rules in Title 40, Chapter 3, Subchapter E, concerning Death of an Individual. While the state supported living centers (SSLCs) will continue to conduct both facility-level and state office-level reviews of the deaths of

individuals served, the adoption of these procedures in the TAC impedes the SSLCs' ability to make necessary and timely updates to the procedures. This proposal also complies with Texas Government Code §531.851(d), which requires HHSC to identify the manner in which the SSLCs must report the death of an individual served to the independent mortality review organization contracted pursuant to Section 531.851(c) to conduct an independent mortality review. This independent mortality review is in addition to the reviews conducted at the facility and state office levels. This proposal repeals HHSC rules in Title 40 and a new rule is proposed in 26 TAC 967, concerning State Supported Living Center Independent Mortality Review, which is being simultaneously proposed in this issue of the *Texas Register*.

##### **SECTION-BY-SECTION SUMMARY**

Proposed repeal of Chapter 3, Subchapter E, concerning Death of an Individual, is necessary to facilitate updates to internal operating procedures for which there are no statutory requirements for adoption.

##### **FISCAL NOTE**

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

##### **GOVERNMENT GROWTH IMPACT STATEMENT**

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

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

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

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

##### **LOCAL EMPLOYMENT IMPACT**

The proposed repeals will not affect the local economy.

##### **COSTS TO REGULATED PERSONS**

Texas Government Code §2001.0045 does not apply to these repeals because the repeals do not impose a cost on regulated persons.

##### **PUBLIC BENEFIT AND COSTS**

Laura Cazabon-Braly, SSLCs Associate Commissioner, has determined that for each year of the first five years the repeals

are in effect, the public benefit will be more timely adoption by the SSLCs of evolving standards and practices related to the death review procedures resulting in improved care of individuals served in SSLCs.

Trey Wood has also determined that for the first five years the repeals are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed repeals because the repeals apply only to HHSC.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Written comments on the proposal may be submitted to HHSC, Health and Specialty Care System, Mail Code E-619, P.O. Box 13247, Austin, Texas 78711-3247, or by email to [HealthandSpecialtyCare@hhsc.state.tx.us](mailto:HealthandSpecialtyCare@hhsc.state.tx.us).

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) faxed or emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 22R029" in the subject line.

#### STATUTORY AUTHORITY

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

services by the health and human services agencies, and §531.851(d), which requires the adoption of rules regarding the manner in which the death of an individual served by the SSLC must be reported to the contracted organization conducting independent mortality reviews.

The repeals affect Texas Government Code §531.0055 and §531.851(d).

§3.501. *Discovery.*

§3.502. *Reporting and Notification.*

§3.503. *Medical Certification of Death and Autopsies.*

§3.504. *Disposition.*

§3.505. *Clinical Death Review.*

§3.506. *Administrative Death Review.*

§3.508. *State Office Mortality Review.*

§3.509. *Independent Mortality Review.*

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

Filed with the Office of the Secretary of State on July 25, 2022.

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Karen Ray  
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Department of Aging and Disability Services

Earliest possible date of adoption: September 4, 2022

For further information, please call: (512) 438-3049

