

ADOPTED RULES

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

TITLE 4. AGRICULTURE

PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 32. HEARING AND APPEAL PROCEDURES

4 TAC §32.3

The Texas Animal Health Commission (Commission) in a duly noticed meeting on August 26, 2025, adopted amendments to Title 4, Part 2, Chapter 32 §32.3, concerning Appeal of Other Orders and Decisions in the Texas Administrative Code, Title 4, Part 2, Chapter 32, titled "Hearing and Appeal Procedures." The Commission adopted amendments to §32.3 without changes to the proposed text published in the June 6, 2025 issue of the *Texas Register* (50 TexReg 3301) and will not be republished.

JUSTIFICATION FOR RULE ACTION

Section 32.3 sets forth procedures for appeals of various orders and decisions of the Commission. The Commission adopts amendments to this section to remove language referencing appeals of orders and decisions concerning the CWD Herd Certification Program. A repeal of the CWD Herd Certification Program found in Chapter 40, concerning Chronic Wasting Disease, is filed concurrently with the adopted amendments to §32.3.

HOW THE RULES WILL FUNCTION

The amendment to §32.3 will eliminate references to the CWD Herd Certification Program and adjust numbering, and add "relating to" statements for clarification.

SUMMARY OF COMMENTS RECEIVED AND COMMISSION RESPONSE

The 30-day comment period ended July 7, 2025.

In addition to publishing the proposed rule changes in the June 6, 2025 issue of the *Texas Register*, the Commission also sent a copy of the proposed rule changes to all current participants of HCP via email to help ensure the participants were aware of the proposed rule changes.

During this period, the Commission received no comments regarding the changes to this rule.

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code, §2001.004(1), which requires all administrative agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

Pursuant to §161.038 of the Texas Agriculture Code, titled "Administrative Procedure Act Applicable," the Commission is sub-

ject to the administrative procedure law set forth in Chapter 2001 of the Texas Government Code.

Pursuant to §161.046 of the Texas Agriculture Code, titled "Rules," the Commission may adopt rules as necessary for the administration of enforcement of this chapter.

Pursuant to §161.148 of the Texas Agriculture Code, titled "Administrative Penalty," the Commission may impose an administrative penalty on a person who violates a statute, rule, or order of the Commission. Section 161.148 outlines the procedure for appeal from such notice of violation.

No other statutes, articles, or codes are affected by this adoption.

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

Filed with the Office of the Secretary of State on August 27, 2025.

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Texas Animal Health Commission

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For further information, please call: (512) 839-0511



CHAPTER 40. CHRONIC WASTING DISEASE

The Texas Animal Health Commission (Commission) in a duly noticed meeting on August 26, 2025, adopted changes to Title 4, Texas Administrative Code, Chapter 40 titled "Chronic Wasting Disease." Specifically, the Commission adopted amendments to §§40.1, 40.2, 40.5, and 40.7; and the repeal of §40.3 and §40.6 without changes to the proposed text published in the June 6, 2025 issue of the *Texas Register* (50 TexReg 3303) and will not be republished.

JUSTIFICATION FOR RULE ACTION

Chronic Wasting Disease (CWD) is a degenerative and fatal neurological communicable disease recognized by the veterinary profession that affects susceptible cervid species. CWD can spread through natural movements of infected animals and transportation of live infected animals or carcass parts. Specifically, prions are shed from infected animals in saliva, urine, blood, soft-antler material, feces, or from animal decomposition, which ultimately contaminates the environment in which CWD susceptible species live. CWD has a long incubation period, so animals infected with CWD may not exhibit clinical signs of the disease for months or years after infection. The disease can be passed through contaminated environmental conditions and

may persist for a long period of time. Currently, no vaccine or treatment for CWD exists.

The CWD Herd Certification Program (HCP) is a voluntary, cooperative surveillance and certification program between the Commission, United States Department of Agriculture, herd owners, and other affected parties. Participating herds that meet program requirements and have no evidence of CWD advance in status each year for five years receive a certified status. Certified herd status permits interstate animal movement to some states. Participating in HCP is not required to keep CWD susceptible species captive in Texas or to buy, sell, or transfer animals within Texas.

The United States Department of Agriculture publishes Chronic Wasting Disease Program Standards ("federal standards") to clarify and update acceptable methods for complying with the legal requirements in Title 9 of the Code of Federal Regulations Parts 55 and 81.

Federal standards not only specify the minimum requirements for participants to achieve certified status but require participating states to maintain state-wide standards for CWD diagnostic testing, epidemiological traces, and herd plans that must be enforced against all CWD susceptible animals. To be an approved state, Texas is required to follow the requirements of the federal standards.

Because of Texas's participation in HCP, Commission regulations were adopted to meet the requirements of federal standards. Current rules require Commission staff to perform five-year epidemiological traces for every confirmed case of CWD in a captive herd. Under current rules, movement is restricted by a hold order or quarantine order during the epidemiological investigations of the trace until TAHC can determine the extent of the herd's exposure to CWD and how to limit additional spread. To remove the quarantine from a positive facility or clear an epidemiological trace, a herd must enter a herd plan that meets the requirements of federal standards and commonly involves depopulation followed by a five-year quarantine.

Participation in this program has decreased significantly. In 2021, approximately 375 herds were enrolled in the program. Presently, there are 69 enrolled herds in good standing.

The Commission received feedback from herd managers and owners that the requirements for CWD quarantines and herd plans are overly restrictive, negatively impact land values, and cause unrecoverable losses to business operations.

The Commission finds that the repeal of the program would allow the Commission to amend current rules to eliminate the burdens caused by HCP.

Along with the repeal of the HCP program, the Commission proposes amendments that will eliminate the requirement that Commission herd plans and epidemiological traces be set at a minimum of five years. The proposed rule amendments are designed to allow epidemiological staff to assess a herd on a case-by-case basis.

HOW THE RULES WILL FUNCTION

The amendments to §40.1 eliminate the definitions for APHIS, Certified Herd, Farmed or Captive Cervids, High-risk Area or County, and TAHC Authorized Veterinarian; modify the definitions for Commingled, Commingling, CWD-Exposed Animal, CWD-Suspect Herd, CWD-Trace Herd, Herd Plan, and Official

CWD Test; adjusts numbering; and make minor grammatical changes.

The amendments to §40.2, concerning General Requirements, change the procedures for issuing hold orders and quarantines, making hold orders and quarantines optional rather than mandatory. The amendments also remove references to USDA and eliminate the federal standards for disposition of CWD positive and trace herds.

The repeal of §40.3 will eliminate the rules regulating HCP.

The amendments to §40.5, concerning Surveillance and Movement Requirements for Exotic CWD Susceptible Species, reduces the surveillance testing requirement from 100% of mortalities to three valid tests each year.

The repeal of §40.6 will eliminate the established containment and surveillance zones and remove the regulations regarding movement restriction zones.

The amendments to §40.7, concerning Executive Director Declaration of CWD Movement Restriction Zone, update language for consistency within the rule.

SUMMARY OF COMMENTS RECEIVED AND COMMISSION RESPONSE

The 30-day comment period ended July 7, 2025.

In addition to publishing the proposed rule changes in the June 6, 2025 issue of the *Texas Register*, the Commission also sent a copy of the proposed rule changes to all current participants of HCP via email to help ensure the participants were aware of the proposed rule changes.

During this period, the Commission received ten comments: seven from individuals, one from a group of ranchers and landowners, one from the Texas Wildlife Association, and one from the National Deer Association. A summary of the comments relating to the rules and the Commission's response follows.

Comments:

Three individual commenters, the group of ranchers and landowners, and Texas Deer Association were supportive of elimination of HCP because it was ineffective but opposed the changes proposed to the rules regarding hold order and quarantines. These commenters were concerned that the proposed changes add ambiguity to the rules and will negatively impact Texas Parks and Wildlife Department's (TPWD) ability to place movement restrictions on native species.

One individual commenter opposed the proposed changes to the rules regarding hold orders, quarantines, and testing requirements. The commenter is in favor of requiring post-mortem testing of all susceptible cervids and continuing with severely limiting movement as the best practice of to stop the spread of CWD.

One individual commenter opposed the proposed changes completely and is in favor of maintaining containment zones, post-mortem testing of all susceptible cervids, continuing HCP, and maintaining the rule to require mandatory hold orders and quarantines. The individual also commented that weakening regulations will damage the state's hunting economy caused by deer farming.

One individual, who was a participant in HCP, opposed the rule because the commenter was concerned that the proposed changes would allow the Commission to enter their property

without permission, require more testing than what is required to move deer through TWIMS, and believed that the proposal is overreaching.

One individual commenter expressed concerns that CWD is a zoonotic disease, fears the amendments may cause unnecessary conflicts, and hopes that the decision to repeal is by unanimous vote.

The National Deer Association opposed the elimination of HCP program, was concerned over making hold order and quarantines optional, and supports 100% mortality testing for Exotics.

Response: The Commission thanks the commenters for the feedback.

The Commission disagrees with the commenters' concerns that the changes to rules regarding hold orders and quarantines will weaken Texas's response to CWD. The proposed changes give Commission veterinary epidemiologists needed discretion to use and adapt hold orders and quarantines to the characteristics of the herd and better align the rules regarding the Commission's CWD response with epidemiology principals for a disease control program.

The Commission also disagrees that these rule changes will impact TPWD's ability to place movement controls on native susceptible species under its jurisdiction. While TPWD restricts movement on facilities that have a Commission hold order or quarantine, TPWD has adopted rules that automatically restricts the movement of native deer from facilities that receive a suspect CWD test result and all deer on facilities with an epidemiologically link to the index deer. See 31 Texas Administrative Code §65.91(f). TPWD movement restrictions are not dependent on action from the Commission and TPWD has independent statutory and regulatory authority to control the movement of native cervid species.

The Commission disagrees that 100% mortality testing of exotic susceptible species should continue to be required. The changes to the mortality testing requirements are intended to reduce the burden of post-mortem testing on producers while still maintaining robust active surveillance in exotic species across the state. Commission staff compared the surveillance value from 100% mortality testing, the number of test results received, and the burden of testing, and determined that three valid tests a year would provide necessary surveillance data regarding the existence of CWD in exotic species in Texas.

The Commission disagrees with comments that opposed elimination of HCP. As previously discussed, the participation of the program has dropped significantly and a state's participation in the program requires the Commission to enforce federal standards against both participants in the program and non-participants. By withdrawing from the program, the Commission will be able to allow its veterinary and epidemiology staff to adapt its CWD response as needed.

No changes were made as a result of the comments.

4 TAC §§40.1, 40.2, 40.5, 40.7

STATUTORY AUTHORITY

The amendments within Chapter 40 of the Texas Administrative Code are adopted under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code:

The Commission is vested by statute, §161.041(a), titled "Disease Control," to protect all livestock, exotic livestock, domes-

tic fowl, and exotic fowl from disease. The Commission is authorized, through §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock, exotic livestock, domestic fowl, or exotic fowl, even if the agent of transmission is an animal species that is not subject to the jurisdiction of the Commission.

Pursuant to §161.0415, titled "Disposal of Diseased or Exposed Livestock or Fowl," the Commission may require by order the slaughter of livestock, domestic fowl, or exotic fowl exposed to or infected with certain diseases.

Pursuant to §161.0417, titled "Authorized Personnel for Disease Control," the Commission must authorize a person, including a veterinarian, to engage in an activity that is part of a state or federal disease control or eradication program for animals.

Pursuant to §161.046, titled "Rules," the Commission may adopt rules as necessary for the administration and enforcement of this chapter.

Pursuant to §161.047, titled "Entry Power," Commission personnel are permitted to enter public or private property for the performance of an authorized duty.

Pursuant to §161.048, titled "Inspection of Shipment of Animals or Animal Products," the Commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. An agent of the Commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or non-communicable disease.

Pursuant to §161.049, titled "Dealer Records," the Commission may require a livestock, exotic livestock, domestic fowl, or exotic fowl dealer to maintain records of all livestock, exotic livestock, domestic fowl, or exotic fowl bought and sold by the dealer. The Commission may also inspect and copy the records of a livestock, exotic livestock, domestic fowl, or exotic fowl dealer that relate to the buying and selling of those animals. The Commission, by rule, shall adopt the form and content of the records maintained by a dealer.

Pursuant to §161.054, titled "Regulation of Movement of Animals; Exception," the Commission, by rule, may regulate the movement of animals. The Commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The Commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. The Commission is authorized, through §161.054(b), to prohibit or regulate the movement of animals into a quarantined herd, premises, or area. The Executive Director of the Commission is authorized, through §161.054(d), to modify a restriction on animal movement, and may consider economic hardship.

Pursuant to §161.0541, titled "Elk Disease Surveillance Program," the Commission, by rule, may establish a disease surveillance program for elk. Such rules include the requirement for persons moving elk in interstate commerce to test the elk for chronic wasting disease. Additionally, provisions must include testing, identification, transportation, and inspection under the disease surveillance program.

Pursuant to §161.0545, titled "Movement of Animal Products," the Commission may adopt rules that require the certification of

persons who transport or dispose of inedible animal products, including carcasses, body parts, and waste material. The Commission, by rule, may provide terms and conditions for the issuance, renewal, and revocation of a certification under this section.

Pursuant to §161.056(a), titled "Animal Identification Program," the Commission may develop and implement an animal identification program that is no more stringent than a federal animal disease traceability or other federal animal identification program to provide for disease control and enhance the ability to trace disease-infected animals or animals that have been exposed to disease. Section 161.056(d) authorizes the Commission to adopt rules to provide for an animal identification program more stringent than a federal program only for control of a specific animal disease or for animal emergency management.

Pursuant to §161.057, titled "Classification of Areas," the Commission may prescribe criteria for classifying areas in the state for disease control based on sound epidemiological principals and may prescribe control measures for classification areas.

Pursuant to §161.058, titled "Compensation of Livestock or Fowl Owner," the Commission may pay indemnity to the owner of livestock or fowl, if necessary, to eradicate the disease.

Pursuant to §161.060, titled "Authority to Set and Collect Fees," the Commission may charge a fee for an inspection made by the Commission as provided by Commission rule.

Pursuant to §161.061, titled "Establishment," if the Commission determines that a disease listed in §161.041 of this code or an agent of transmission of one of those diseases exists in a place in this state or among livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl, or a place in this state or livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl are exposed to one of those diseases or any agent of transmission of one of those diseases, the Commission shall establish a quarantine on the affected animals or on the affected place. The quarantine of an affected place may extend to any affected area, including a county, district, pasture, lot, ranch, farm, field, range, thoroughfare, building, stable, or stockyard pen. The Commission may, through §161.061(c), establish a quarantine to prohibit or regulate the movement of any article or animal the Commission designates to be a carrier of a disease listed in Section 161.041 or a potential carrier of one of those diseases, if movement is not otherwise regulated or prohibited for an animal into an affected area, including a county district, pasture, lot, ranch, field, range, thoroughfare, building, stable, or stockyard pen.

Pursuant to §161.0615, titled "Statewide or Widespread Quarantine," the Commission may quarantine livestock, exotic livestock, domestic fowl, or exotic fowl in all or any part of this state as a means of immediately restricting the movement of animals potentially infected with disease and shall clearly describe the territory included in a quarantine area.

Pursuant to §161.065, titled "Movement from Quarantined Area; Movement of Quarantined Animals," the Commission may provide a written certificate or written permit authorizing the movement of animals from quarantined places. If the Commission finds animals have been moved in violation of an established quarantine or in violation of any other livestock sanitary law, the Commission shall quarantine the animals until they have been properly treated, vaccinated, tested, dipped, or disposed of in accordance with the rules of the Commission.

Pursuant to §161.081, titled "Importation of Animals," the Commission may regulate the movement of livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl into this state from another state, territory, or country. The Commission, by rule, may provide the method for inspecting and testing animals before and after entry into this state, and for the issuance and form of health certificates and entry permits.

Pursuant to §161.101, titled "Duty to Report," a veterinarian, a veterinary diagnostic laboratory, or a person having care, custody, or control of an animal shall report the existence of the disease, if required by the Commission, among livestock, exotic livestock, bison, domestic fowl, or exotic fowl to the Commission within 24 hours after diagnosis of the disease.

Pursuant to §161.148, titled "Administrative Penalty," the Commission may impose an administrative penalty on a person who violates Chapter 161 or a rule or order adopted under Chapter 161. The penalty for a violation may be in an amount not to exceed \$5,000.

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

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4 TAC §40.3, §40.6

STATUTORY AUTHORITY

The repeals within Chapter 40 of the Texas Administrative Code are adopted under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code:

The Commission is vested by statute, §161.041(a), titled "Disease Control," to protect all livestock, exotic livestock, domestic fowl, and exotic fowl from disease. The Commission is authorized, through §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock, exotic livestock, domestic fowl, or exotic fowl, even if the agent of transmission is an animal species that is not subject to the jurisdiction of the Commission.

Pursuant to §161.0415, titled "Disposal of Diseased or Exposed Livestock or Fowl," the Commission may require by order the slaughter of livestock, domestic fowl, or exotic fowl exposed to or infected with certain diseases.

Pursuant to §161.0417, titled "Authorized Personnel for Disease Control," the Commission must authorize a person, including a veterinarian, to engage in an activity that is part of a state or federal disease control or eradication program for animals.

Pursuant to §161.046, titled "Rules," the Commission may adopt rules as necessary for the administration and enforcement of this chapter.

Pursuant to §161.047, titled "Entry Power," Commission personnel are permitted to enter public or private property for the performance of an authorized duty.

Pursuant to §161.048, titled "Inspection of Shipment of Animals or Animal Products," the Commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. An agent of the Commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or non-communicable disease.

Pursuant to §161.049, titled "Dealer Records," the Commission may require a livestock, exotic livestock, domestic fowl, or exotic fowl dealer to maintain records of all livestock, exotic livestock, domestic fowl, or exotic fowl bought and sold by the dealer. The Commission may also inspect and copy the records of a livestock, exotic livestock, domestic fowl, or exotic fowl dealer that relate to the buying and selling of those animals. The Commission, by rule, shall adopt the form and content of the records maintained by a dealer.

Pursuant to §161.054, titled "Regulation of Movement of Animals; Exception," the Commission, by rule, may regulate the movement of animals. The Commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The Commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. The Commission is authorized, through §161.054(b), to prohibit or regulate the movement of animals into a quarantined herd, premises, or area. The Executive Director of the Commission is authorized, through §161.054(d), to modify a restriction on animal movement, and may consider economic hardship.

Pursuant to §161.0541, titled "Elk Disease Surveillance Program," the Commission, by rule, may establish a disease surveillance program for elk. Such rules include the requirement for persons moving elk in interstate commerce to test the elk for chronic wasting disease. Additionally, provisions must include testing, identification, transportation, and inspection under the disease surveillance program.

Pursuant to §161.0545, titled "Movement of Animal Products," the Commission may adopt rules that require the certification of persons who transport or dispose of inedible animal products, including carcasses, body parts, and waste material. The Commission, by rule, may provide terms and conditions for the issuance, renewal, and revocation of a certification under this section.

Pursuant to §161.056(a), titled "Animal Identification Program," the Commission may develop and implement an animal identification program that is no more stringent than a federal animal disease traceability or other federal animal identification program to provide for disease control and enhance the ability to trace disease-infected animals or animals that have been exposed to disease. Section 161.056(d) authorizes the Commission to adopt rules to provide for an animal identification program more stringent than a federal program only for control of a specific animal disease or for animal emergency management.

Pursuant to §161.057, titled "Classification of Areas," the Commission may prescribe criteria for classifying areas in the state

for disease control based on sound epidemiological principals and may prescribe control measures for classification areas.

Pursuant to §161.058, titled "Compensation of Livestock or Fowl Owner," the Commission may pay indemnity to the owner of livestock or fowl, if necessary, to eradicate the disease.

Pursuant to §161.060, titled "Authority to Set and Collect Fees," the Commission may charge a fee for an inspection made by the Commission as provided by Commission rule.

Pursuant to §161.061, titled "Establishment," if the Commission determines that a disease listed in §161.041 of this code or an agent of transmission of one of those diseases exists in a place in this state or among livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl, or a place in this state or livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl are exposed to one of those diseases or any agent of transmission of one of those diseases, the Commission shall establish a quarantine on the affected animals or on the affected place. The quarantine of an affected place may extend to any affected area, including a county, district, pasture, lot, ranch, farm, field, range, thoroughfare, building, stable, or stockyard pen. The Commission may, through §161.061(c), establish a quarantine to prohibit or regulate the movement of any article or animal the Commission designates to be a carrier of a disease listed in Section 161.041 or a potential carrier of one of those diseases, if movement is not otherwise regulated or prohibited for an animal into an affected area, including a county district, pasture, lot, ranch, field, range, thoroughfare, building, stable, or stockyard pen.

Pursuant to §161.0615, titled "Statewide or Widespread Quarantine," the Commission may quarantine livestock, exotic livestock, domestic fowl, or exotic fowl in all or any part of this state as a means of immediately restricting the movement of animals potentially infected with disease and shall clearly describe the territory included in a quarantine area.

Pursuant to §161.065, titled "Movement from Quarantined Area; Movement of Quarantined Animals," the Commission may provide a written certificate or written permit authorizing the movement of animals from quarantined places. If the Commission finds animals have been moved in violation of an established quarantine or in violation of any other livestock sanitary law, the Commission shall quarantine the animals until they have been properly treated, vaccinated, tested, dipped, or disposed of in accordance with the rules of the Commission.

Pursuant to §161.081, titled "Importation of Animals," the Commission may regulate the movement of livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl into this state from another state, territory, or country. The Commission, by rule, may provide the method for inspecting and testing animals before and after entry into this state, and for the issuance and form of health certificates and entry permits.

Pursuant to §161.101, titled "Duty to Report," a veterinarian, a veterinary diagnostic laboratory, or a person having care, custody, or control of an animal shall report the existence of the disease, if required by the Commission, among livestock, exotic livestock, bison, domestic fowl, or exotic fowl to the Commission within 24 hours after diagnosis of the disease.

Pursuant to §161.148, titled "Administrative Penalty," the Commission may impose an administrative penalty on a person who violates Chapter 161 or a rule or order adopted under Chapter 161. The penalty for a violation may be in an amount not to exceed \$5,000.

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

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For further information, please call: (512) 839-0511



CHAPTER 51. ENTRY REQUIREMENTS

4 TAC §51.9, §51.10

The Texas Animal Health Commission (Commission) in a duly noticed meeting on August 26, 2025, adopted amendments to Title 4, Texas Administrative Code, Chapter 51 titled "Entry Requirements." Specifically, the Commission adopted amendments to §51.9 regarding Exotic Livestock and Fowl, and §51.10 regarding Cervidae without changes to the proposed text published in the June 6, 2025 issue of the *Texas Register* (50 TexReg 3311) and will not be republished.

JUSTIFICATION FOR RULE ACTION

The Commission is tasked with creating and enforcing entry requirements for livestock, fowl, exotic livestock, and exotic fowl. The Commission proposed amendments to the entry requirements governing ratites and exotic fowl moving from Association of Zoos and Aquariums (AZA) facilities.

The amendments to §51.9 clarify that one of three forms of accepted identification is needed for ratites entering Texas. The amendments also provide simplified requirements for exotic fowl, excluding ratites, moving between AZA accredited facilities. The amendments allow for movement to and from accredited facilities without testing for pullorum-typhoid and avian influenza and without entry permitting, provided there is no commingling. This amendment is made because the risk posed by these movements is low. The AZA has rigorous accreditation requirements, transfers between accredited facilities are closely tracked, accredited facilities operate in relatively closed environments, and animals in accredited facilities receive comprehensive care.

The amendments also update the language found in §51.10 concerning movement of cervids from AZA accredited facilities. The language previously referenced the "American Zoo and Aquarium Association (AZAA)." However, the organization has since changed their name. The amendments reflect the name change.

HOW THE RULES WILL FUNCTION

Section 51.9 includes entry requirements for exotic livestock and fowl. The amendments clarify the identification requirements for ratites entering Texas and create simplified requirements for exotic fowl (other than ratites) moving between AZA accredited facilities.

Section 51.10 includes entry requirements for Cervidae. The amendments update language to reflect the name change of the American Zoo and Aquarium Association to Association of Zoos and Aquariums.

SUMMARY OF COMMENTS RECEIVED AND COMMISSION RESPONSE

The 30-day comment period ended July 6, 2025.

During this period, the Commission received one comment in support of the rule. A summary of the comment and the Commission's response follows:

Comment: A veterinarian from Zoo Miami commented in support of the proposal stating previous AZA to AZA movement in Texas has been extremely challenging. The commenter noted that the amendments will simplify transfers of low-risk but high conservation value birds.

Response: The Commission thanks the commenter for the feedback. No changes were made as a result of these comments.

STATUTORY AUTHORITY

The amendments are authorized under the Texas Agriculture Code, Chapter 161, §161.046 which authorizes the Commission to promulgate rules in accordance with the Texas Agriculture Code.

Pursuant to §161.041, titled "Disease Control," the Commission shall protect all livestock, exotic livestock, domestic fowl, and exotic fowl from diseases the commission determines require control or eradication. Pursuant to §161.041(b) the Commission may act to eradicate or control any disease or agent of transmission for any disease that affects livestock, exotic livestock, domestic fowl, or exotic fowl. The Commission may adopt any rules necessary to carry out the purposes of this subsection, including rules concerning testing, movement, inspection, and treatment.

Pursuant to §161.043, titled "Regulation of Exhibitions," the Commission may regulate the entry of livestock and may require certification of those animals as reasonably necessary to protect against communicable diseases.

Pursuant to §161.048, titled "Inspection of Shipment of Animals or Animal Product," the Commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. An agent of the Commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or non-communicable disease.

Pursuant to §161.054, titled "Regulation of Movement of Animals; Exception," the Commission may by rule regulate the movement of animals, and may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The Commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved.

Pursuant to §161.056(a), titled "Animal Identification Program," the Commission, to provide for disease control and enhance the ability to trace disease-infected animals or animals that have been exposed to disease, may develop and implement an animal identification program that is no more stringent than a federal animal disease traceability or other federal animal identification program. Section 161.056(d) authorizes the Commission to adopt rules to provide for an animal identification program more stringent than a federal program only for control of a specific animal disease or for animal emergency management.

Pursuant to §161.081, titled "Importation of Animals," the Commission by rule may provide the method for inspecting and testing animals before and after entry into Texas. The Commission may create rules for the issuance and form of health certificates and entry permits.

Pursuant to §161.101, titled "Duty to Report," a veterinarian, a veterinary diagnostic laboratory, or a person having care, custody, or control of an animal shall report the existence of the disease, if required by the Commission, among livestock, exotic livestock, bison, domestic fowl, or exotic fowl to the Commission within 24 hours after diagnosis of the disease.

No other statutes, articles, or codes are affected by this adoption.

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

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 259. COMMUNITY LIVING ASSISTANCE AND SUPPORT SERVICES (CLASS) PROGRAM AND COMMUNITY FIRST CHOICE (CFC) SERVICES

SUBCHAPTER B. ELIGIBILITY, ENROLLMENT, AND REVIEW

DIVISION 1. ELIGIBILITY AND MAINTENANCE OF THE CLASS INTEREST LIST

26 TAC §259.51

The executive commissioner of the Texas Health and Human Services Commission (HHSC) adopts an amendment to §259.51, concerning Eligibility Criteria for CLASS Program Services and CFC Services.

Section 259.51 is adopted with changes to the proposed text as published in the July 11, 2025, issue of the *Texas Register* (50 TexReg 3987). This rule will be republished.

BACKGROUND AND JUSTIFICATION

This amendment is necessary to increase the waiver cost limit for an individual's individual plan of care (IPC) in the Community Living Assistance and Support Services (CLASS) waiver program. The 2026-2027 General Appropriations Act, Senate Bill 1, 89th Texas Legislature, Regular Session, 2025 (Article II, HHSC

Rider 23) includes appropriations to increase the attendant wage for personal attendant services. This attendant wage increase impacts Medicaid personal attendant reimbursement rates.

As a result of this direction and prior reimbursement rate increases, the amendment increases the waiver cost limit for an individual's IPC in the CLASS waiver program to off-set the cost of higher personal attendant reimbursement rates. The increase allows the individual to continue to qualify for services in the CLASS waiver program without exceeding the cost limit for the IPC.

HHSC's amendments to the cost limit rules for an individual's IPC in the Deaf Blind with Multiple Disabilities and Texas Home Living Programs, and the cost limits in the Home and Community-based Services Program, are published in this same issue of the *Texas Register*.

COMMENTS

The 21-day comment period ended August 1, 2025.

During this period, HHSC received one comment regarding the proposed rule from one individual. A summary of the comment relating to the rule and HHSC's response follows.

Comment: The commentor supported the rule amendment and recommended that HHSC conduct a biennial review of the CLASS IPC cost limit.

Response: HHSC thanks the commentor for the commentor's support and recommendation to conduct a biennial review of the CLASS IPC cost limit. However, HHSC clarifies that biennial waiver cost limit reviews fall outside the scope of this rule project and are dependent on available levels of appropriated state and federal funds. HHSC did not revise the rule in response to this comment.

HHSC revised §259.51(a)(4) to add the new dollar amount of the IPC cost limit in the CLASS Program is \$149,774.00. This dollar amount, added to the rule for clarity, is based on the final September 1, 2025 reimbursement rates for the Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions Program.

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, and Texas Human Resources Code §32.021, which provides HHSC with the authority to administer the federal medical assistance program in Texas and to adopt rules and standards for program administration.

§259.51. Eligibility Criteria for CLASS Program Services and CFC Services.

(a) An individual is eligible for CLASS Program services if:

(1) the individual meets the financial eligibility criteria described in Appendix B of the CLASS Program waiver application approved by CMS and available on the HHSC website;

(2) the individual is determined by HHSC to meet the LOC VIII criteria described in §261.239 of this title (relating to ICF/MR Level of Care VIII Criteria);

(3) the individual demonstrates a need for CFC PAS/HAB;

(4) the individual's IPC has an IPC cost for CLASS Program services at or below 210 percent of the annualized cost of care

in an ICF/IID using the unweighted average of the current non-state operated small facility daily rates for level of need, as defined by the ICF/IID program rules in §261.203 of this title (relating to Definitions), 1, 5, and 8 rounded to the nearest dollar, which as of September 1, 2025 is \$149,774;

(5) the individual is not enrolled in another waiver program or receiving a service that may not be received if the individual is enrolled in the CLASS Program, as identified in the Mutually Exclusive Services table in Appendix III of the Community Living Assistance and Support Services Provider Manual available on the HHSC website;

(6) the individual resides in the individual's own home or family home; and

(7) the individual requires the provision of:

(A) at least one CLASS Program service per month or a monthly monitoring by a case manager; and

(B) at least one CLASS Program service during an IPC period.

(b) Except as provided in subsection (c) of this section, an individual is eligible for a CFC service under this chapter if the individual:

(1) meets the criteria described in subsection (a) of this section;

(2) requires the provision of the CFC service; and

(3) is not receiving SFS or CFS.

(c) To be eligible for a CFC service under this chapter, an individual receiving MAO Medicaid must, in addition to meeting the eligibility criteria described in subsection (b) of this section, receive a CLASS Program service at least monthly, as required by 42 CFR §441.510(d).

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

Filed with the Office of the Secretary of State on August 28, 2025.

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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-2910



CHAPTER 260. DEAF BLIND WITH MULTIPLE DISABILITIES (DBMD) PROGRAM AND COMMUNITY FIRST CHOICE (CFC) SERVICES

SUBCHAPTER B. ELIGIBILITY, ENROLLMENT, AND REVIEW

DIVISION 1. ELIGIBILITY AND MAINTENANCE OF THE DBMD INTEREST LIST

26 TAC §260.51

The executive commissioner of the Texas Health and Human Services Commission (HHSC) adopts an amendment to §260.51, concerning Eligibility Criteria for DBMD Program Services and CFC Services.

Section 260.51 is adopted with changes to the proposed text as published in the July 11, 2025, issue of the *Texas Register* (50 TexReg 3988). This rule will be republished.

BACKGROUND AND JUSTIFICATION

This amendment is necessary to increase the waiver cost limit for an individual's individual plan of care (IPC) in the Deaf Blind with Multiple Disabilities (DBMD) waiver program. The 2026-2027 General Appropriations Act, Senate Bill 1, 89th Texas Legislature, Regular Session, 2025 (Article II, HHSC Rider 23) includes appropriations to increase the attendant wage for personal attendant services. This attendant wage increase impacts Medicaid personal attendant reimbursement rates.

As a result of this direction and prior reimbursement rate increases, the amendment increases the waiver cost limit for an individual's IPC in the DBMD waiver program to off-set the cost of higher personal attendant reimbursement rates. This increase allows the individual to continue to qualify for services in the DBMD waiver program without exceeding the cost limit for the IPC.

HHSC's amendments to the cost limit rules for an individual's IPC in the Community Living Assistance and Support Services and Texas Home Living Programs, and the cost limits in the Home and Community-based Services Program, are published in this same issue of the *Texas Register*.

COMMENTS

The 21-day comment period ended August 1, 2025.

During this period, HHSC received one comment regarding the proposed rule from one individual. A summary of the comment relating to the rule and HHSC's response follows.

Comment: The commentor supported the rule amendment and recommended that HHSC conduct a biennial review of the DBMD IPC cost limit.

Response: HHSC thanks the commentor for the commentor's support and recommendation to conduct a biennial review of the DBMD IPC cost limit. However, HHSC clarifies that biennial waiver cost limit reviews fall outside the scope of this rule project and are dependent on available levels of appropriated state and federal funds. HHSC did not revise the rule in response to this comment.

HHSC revised §260.51(a)(4) to add the new dollar amount of the IPC cost limit in the DBMD program which is \$149,774.00. The dollar amount, added to the rule for clarity, is based on the final September 1, 2025 reimbursement rates for the Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions Program.

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, and Texas Human Resources Code §32.021, which provides HHSC with the authority to administer the federal medical assistance program in Texas and to adopt rules and standards for program administration.

§260.51. Eligibility Criteria for DBMD Program Services and CFC Services.

- (a) An individual is eligible for DBMD Program services if:
 - (1) the individual meets the financial eligibility criteria as described in Appendix B of the DBMD Program waiver application approved by CMS and available on the HHSC website;
 - (2) the individual is determined by HHSC to meet the LOC VIII criteria described in §261.239 of this title (relating to ICF/MR Level of Care VIII Criteria);
 - (3) the individual, as documented on the ID/RC Assessment:
 - (A) has one or more diagnosed related conditions and, as a result:
 - (i) has deafblindness;
 - (ii) has been determined to have a progressive medical condition that will result in deafblindness; or
 - (iii) functions as a person with deafblindness; and
 - (B) has one or more additional disabilities that result in impairment to independent functioning;
 - (4) the individual has an IPC with a cost for DBMD Program services at or below 210 percent of the annualized cost of care in an ICF/IID using the unweighted average of the current non-state operated small facility daily rates for level of need, as defined by the ICF/IID program rules in §261.203 of this title (relating to Definitions), 1, 5, and 8 rounded to the nearest dollar, which as of September 1, 2025 is \$149,774;
 - (5) the individual is not enrolled in another waiver program or receiving a service that may not be received if the individual is enrolled in the DBMD Program, as identified in the Mutually Exclusive Services table in Appendix V of the Deaf Blind with Multiple Disabilities Program Manual;
 - (6) the individual does not reside in:
 - (A) an ICF/IID;
 - (B) a nursing facility;
 - (C) an ALF, unless it provides licensed assisted living in the DBMD Program;
 - (D) a residential child-care facility unless it is an agency foster home;
 - (E) a hospital;
 - (F) a mental health facility;
 - (G) an inpatient chemical dependency treatment facility;
 - (H) a residential facility operated by the Texas Workforce Commission;
 - (I) a residential facility operated by the Texas Juvenile Justice Department;
 - (J) a jail; or
 - (K) a prison;
 - (7) at least one program provider is willing to provide DBMD Program services to the individual;
 - (8) the individual resides or moves to reside in a county served by a program provider; and

- (9) the individual requires the provision of:

- (A) at least one DBMD Program Service per month or a monthly monitoring by a case manager; and
 - (B) at least one DBMD Program Service during an IPC period.
- (b) Except as provided in subsection (c) of this section, an individual is eligible for a CFC service under this chapter if the individual:
 - (1) meets the criteria described in subsection (a) of this section;
 - (2) requires the provision of the CFC service; and
 - (3) is not receiving licensed assisted living or licensed home health assisted living.

(c) To be eligible for a CFC service under this chapter, an individual receiving MAO Medicaid must, in addition to meeting the eligibility criteria described in subsection (b) of this section, receive a DBMD Program service at least monthly, as required by 42 CFR §441.510(d).

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-2910



CHAPTER 262. TEXAS HOME LIVING (TxHmL) PROGRAM AND COMMUNITY FIRST CHOICE (CFC) SUBCHAPTER B. ELIGIBILITY, ENROLLMENT, AND REVIEW

26 TAC §262.101

The executive commissioner of the Texas Health and Human Services Commission (HHSC) adopts an amendment to §262.101, concerning Eligibility Criteria for TxHmL Program Services and CFC Services.

Section 262.101 is adopted with changes to the proposed text as published in the July 11, 2025, issue of the *Texas Register* (50 TexReg 3990). This rule will be republished.

BACKGROUND AND JUSTIFICATION

This amendment is necessary to increase the waiver cost limit for an individual's individual plan of care (IPC) in the Texas Home Living (TxHmL) waiver program. The 2026-2027 General Appropriations Act, Senate Bill 1, 89th Texas Legislature, Regular Session, 2025 (Article II, HHSC Rider 23) includes appropriations to increase the attendant wage for personal attendant services. This attendant wage increase impacts Medicaid personal attendant reimbursement rates.

As a result of this direction and prior reimbursement rate increases, the amendment increases the waiver cost limit for an individual's IPC in the TxHmL waiver program to off-set the cost of higher personal attendant reimbursement rates. The increase allows the individual to continue to qualify for services in the TxHmL waiver program without exceeding the cost limit for the IPC.

HHSC's amendments to the cost limit rules for an individual's IPC in the Community Living Assistance and Support Services, Deaf Blind with Multiple Disabilities, and the cost limits in the Home and Community-based Services Program, are published in the same issue of the *Texas Register*.

COMMENTS

The 21-day comment period ended August 1, 2025.

During this period, HHSC received one comment regarding the proposed rule from one individual. A summary of the comment relating to the rule and HHSC's response follows.

Comment: The commentor supported the rule amendment and recommended that HHSC conduct a biennial review of the TxHmL IPC cost limit.

Response: HHSC thanks the commentor for the commentor's support and recommendation to conduct a biennial review of the TxHmL IPC cost limit. However, HHSC clarifies that biennial waiver cost limit reviews fall outside the scope of this rule project and are dependent on available levels of appropriated state and federal funds. HHSC did not revise the rule in response to this comment.

HHSC revised §262.101(a)(4) to add the new dollar amount of the IPC cost limit in the TxHmL Program, which is \$31,684. This dollar amount, added to the rule for clarity, is based on the final September 1, 2025 reimbursement rates for Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions. HHSC also revised this rule to correctly spell "non-state operated."

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, and Texas Human Resources Code §32.021, which provides HHSC with the authority to administer the federal medical assistance program in Texas and to adopt rules and standards for program administration.

§262.101. Eligibility Criteria for TxHmL Program Services and CFC Services.

(a) An applicant or individual is eligible for TxHmL Program services if:

(1) the applicant or individual meets the financial eligibility criteria as described in Appendix B of the TxHmL waiver application approved by CMS and available on the HHSC website;

(2) the applicant or individual meets one of the following criteria:

(A) based on a DID and as determined by HHSC in accordance with §262.104 of this subchapter (relating to LOC Determination), the applicant or individual qualifies for an ICF/IID LOC I as defined in §261.238 of this title (relating to ICF/MR Level of Care I Criteria); or

(B) meets the following criteria:

(i) based on a DID and as determined by HHSC in accordance with §262.105 of this subchapter (relating to LON Assignment), qualifies for one of the following levels of care:

(I) an ICF/IID LOC I as defined in §261.238 of this title; or

(II) an ICF/IID LOC VIII as defined in §261.239 of this title (relating to ICF/MR Level of Care VIII Criteria);

(ii) meets one of the following:

(I) resides in a nursing facility immediately before enrolling in the TxHmL Program; or

(II) is at imminent risk of entering a nursing facility as determined by HHSC; and

(iii) is offered TxHmL Program services designated for a member of the reserved capacity group "Individuals with a level of care I or VIII residing in a nursing facility" included in Appendix B of the TxHmL Program waiver application approved by CMS and available on the HHSC website;

(3) the applicant or individual has been assigned an LON in accordance with §262.105 of this subchapter;

(4) the applicant or individual has an IPC cost that does not exceed 50 percent of the annualized cost of care in an ICF/IID using the current non-state operated small facility daily rate for LON 1, rounded to the nearest dollar, which as of September 1, 2025 is \$31,684;

(5) the applicant or individual is not enrolled in another waiver program and is not receiving a service that may not be received if the individual is enrolled in the TxHmL Program, as identified in the Mutually Exclusive Services table in Appendix I of the TxHmL Handbook available on the HHSC website;

(6) the applicant or individual has chosen, or the applicant's or individual's LAR has chosen, participation in the TxHmL Program over participation in the ICF/IID Program;

(7) the applicant's or individual's service planning team concurs that the TxHmL Program services and, if applicable, non-TxHmL Program services for which the applicant or individual may be eligible are sufficient to ensure the applicant's or individual's health and welfare in the community;

(8) the applicant or individual does not reside in:

(A) a hospital;

(B) an ICF/IID;

(C) a nursing facility;

(D) an assisted living facility licensed or subject to being licensed in accordance with THSC Chapter 247;

(E) a residential child care facility licensed by HHSC unless it is an agency foster home;

(F) an inpatient chemical dependency treatment facility;

(G) a mental health facility;

(H) a residential facility operated by the Texas Workforce Commission; or

(I) a residential facility operated by the Texas Juvenile Justice Department, a jail, or a prison; and

(9) the applicant or individual requires the provision of:

(A) at least one TxHmL Program service per month or a monthly monitoring visit by a service coordinator as described in §262.701(o) of this chapter (relating to LIDDA Requirements for Providing Service Coordination in the TxHmL Program); and

(B) at least one TxHmL Program service per IPC year.

(b) Except as provided in subsection (c) of this section, an applicant or individual is eligible for a CFC service under this subchapter if the applicant or individual:

(1) meets the criteria described in subsection (a) of this section; and

(2) requires the provision of the CFC service.

(c) To be eligible for a CFC service under this chapter, an applicant or individual receiving MAO Medicaid must, in addition to meeting the eligibility criteria described in subsection (b) of this section, receive a TxHmL Program service at least monthly, as required by 42 CFR §441.510(d), which may not be met by a monthly monitoring visit by a service coordinator as described in §262.701(o)(1) and (2) of this chapter.

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-2910



CHAPTER 263. HOME AND COMMUNITY-BASED SERVICES (HCS) PROGRAM AND COMMUNITY FIRST CHOICE (CFC)

SUBCHAPTER B. ELIGIBILITY, ENROLLMENT, AND REVIEW

26 TAC §236.101

The executive commissioner of the Texas Health and Human Services Commission (HHSC) adopts an amendment to §236.101, concerning Eligibility Criteria for HCS Program Services and CFC Services.

Section 263.101 is adopted with changes to the proposed text as published in the July 11, 2025, issue of the *Texas Register* (50 TexReg 3992). This rule will be republished.

BACKGROUND AND JUSTIFICATION

This amendment is necessary to increase the waiver cost limit for an individual's individual plan of care (IPC) in the Home and Community-based Services (HCS) waiver program. The 2026-2027 General Appropriations Act, Senate Bill 1, 89th Texas Legislature, Regular Session, 2025 (Article II, HHSC Rider 23) includes appropriations to increase the attendant wage for personal attendant services. This attendant wage increase impacts Medicaid personal attendant reimbursement rates.

As a result of this direction and prior reimbursement rate increases, the amendment increases the waiver cost limit for an individual's IPC in the HCS waiver program to off-set the cost of higher personal attendant reimbursement rates. The increase allows the individual to continue to qualify for services in the HCS waiver program without exceeding the cost limit for the IPC.

HHSC's amendments to the cost limit rules for an individual's IPC in the Community Living Assistance and Support Services, Deaf Blind with Multiple Disabilities, and Texas Home Living Programs, are published in this same issue of the *Texas Register*.

COMMENTS

The 21-day comment period ended August 1, 2025.

During this period, HHSC received one comment regarding the proposed rule from one individual. A summary of the comment relating to the rule and HHSC's response follows.

Comment: The commentor supported the rule amendment and recommended that HHSC conduct a biennial review of the HCS IPC cost limits.

Response: HHSC thanks the commentor for the commentor's support and recommendation to conduct a biennial review of the CLASS IPC cost limit. However, HHSC clarifies that biennial waiver cost limit reviews fall outside the scope of this rule project and are dependent on available levels of appropriated state and federal funds. HHSC did not revise the rule in response to this comment.

HHSC revised §263.101(a)(3)(A) - (C) to add the new dollar amounts of the IPC cost limits in the HCS Program, which are \$169,182, \$211,822, and \$392,318 respectively. These dollar amounts, added to the rules for clarity, are based on the final September 1, 2025 reimbursement rates for Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions. HHSC also revised these rules to correctly spell "non-state operated."

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, and Texas Human Resources Code §32.021, which provides HHSC with the authority to administer the federal medical assistance program in Texas and to adopt rules and standards for program administration.

§263.101. Eligibility Criteria for HCS Program Services and CFC Services.

(a) An applicant or individual is eligible for HCS Program services if the applicant or individual:

(1) meets the financial eligibility criteria as described in Appendix B of the HCS Program waiver application approved by CMS and available on the HHSC website;

(2) meets one of the following criteria:

(A) based on a DID and as determined by HHSC in accordance with §263.105 of this subchapter (relating to LOC Determination), qualifies for an ICF/IID LOC I, as defined in §261.238 of this title (relating to ICF/MR Level of Care I Criteria);

(B) as determined by HHSC in accordance with §263.105 of this subchapter, qualifies for an ICF/IID LOC I as defined in §261.238 of this title or ICF/IID LOC VIII, as defined in §261.239

of this title (relating to ICF/MR Level of Care VIII Criteria), and has been determined by HHSC:

(i) to have an intellectual disability or a related condition;

(ii) to need specialized services; and

(iii) to be inappropriately placed in a Medicaid certified nursing facility based on an annual resident review conducted in accordance with the requirements of Chapter 303 of this title (relating to Preadmission Screening and Resident Review (PASRR)); or

(C) meets the following criteria:

(i) based on a DID and as determined by HHSC in accordance with §261.237 of this title (relating to Level of Care) qualifies for one of the following levels of care:

(I) an ICF/IID LOC I as defined in §261.238 of this title; or

(II) an ICF/IID LOC VIII as defined in §261.239 of this title;

(ii) meets one of the following:

(I) resides in a nursing facility immediately before enrolling in the HCS Program; or

(II) is at imminent risk of entering a nursing facility as determined by HHSC; and

(iii) is offered HCS Program services designated for a member of the reserved capacity group "Individuals with a level of care I or VIII residing in a nursing facility" included in Appendix B of the HCS Program waiver application approved by CMS and available on the HHSC website;

(3) has an IPC cost that does not exceed:

(A) 210 percent of the annualized cost of care in an ICF/IID using the current non-state operated small facility daily rate for LON 8, rounded to the nearest dollar for an applicant or individual with an LON 1, LON 5, or LON 8, which as of September 1, 2025, is \$169,182;

(B) 210 percent of the annualized cost of care in an ICF/IID using the current non-state operated small facility daily rate for LON 6, rounded to the nearest dollar for an applicant or individual with an LON 6, which as of September 1, 2025, is \$211,822; or

(C) 210 percent of the annualized cost of care in an ICF/IID using the current non-state operated small facility daily rate for LON 9, rounded to the nearest dollar for an applicant or individual with an LON 9, which as of September 1, 2025, is \$392,318;

(4) is not enrolled in another waiver program and is not receiving a service that may not be received if the individual is enrolled in the HCS Program as identified in the Mutually Exclusive Services table in Appendix II of the HCS Handbook available on the HHSC website;

(5) does not reside in:

(A) a hospital;

(B) an ICF/IID;

(C) a nursing facility;

(D) an ALF;

(E) a residential child care facility licensed by HHSC unless it is an agency foster home;

(F) an inpatient chemical dependency treatment facility;

(G) a mental health facility;

(H) a residential facility operated by the Texas Workforce Commission; or

(I) a residential facility operated by the Texas Juvenile Justice Department, a jail, or a prison; and

(6) requires the provision of:

(A) at least one HCS Program service per month or a monthly monitoring visit by a service coordinator as described in §263.901(e)(40) of this chapter (relating to LIDDA Requirements for Providing Service Coordination in the HCS Program); and

(B) at least one HCS Program service per IPC year.

(b) For applicants or individuals with spouses who live in the community, the income and resource eligibility requirements are determined according to the spousal impoverishment provisions in §1924 of the Social Security Act and as specified in the Medicaid State Plan.

(c) Except as provided in subsection (d) of this section, an applicant or individual is eligible for a CFC service under this chapter if the applicant or individual:

(1) meets the criteria described in subsection (a) of this section;

(2) requires the provision of the CFC service; and

(3) is not receiving host home/companion care, supervised living, or residential support.

(d) To be eligible for a CFC service under this chapter, an applicant or individual receiving MAO Medicaid must, in addition to meeting the eligibility criteria described in subsection (c) of this section, receive an HCS Program service at least monthly, as required by 42 CFR §441.510(d), which may not be met by a monthly monitoring visit by a service coordinator as described in §263.901(e)(40) of this chapter.

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

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