

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 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 97. PLANNING AND ACCOUNTABILITY

SUBCHAPTER EE. ACCREDITATION STATUS, STANDARDS, AND SANCTIONS

DIVISION 1. STATUS, STANDARDS, AND SANCTIONS

19 TAC §97.1071

The Texas Education Agency (TEA) adopts an amendment to §97.1071, concerning special program performance and monitoring, review, and supports. The amendment is adopted with changes to the proposed text as published in the May 24, 2024 issue of the *Texas Register* (49 TexReg 3692) and will be republished. The adopted amendment clarifies current practice and aligns with federal guidance related to state supervision requirements.

REASONED JUSTIFICATION: Section 97.1071 defines criteria for special program monitoring, review, and support that a school district or open-enrollment charter school must engage in with TEA.

New subsection (a) defines school districts to include open-enrollment charter schools.

Subsection (b) is amended to include 34 Code of Federal Regulations, §§300.600-300.609, as part of the compliance requirements that school districts are subject to for general supervision and monitoring. Based on public comment, the wording in subsection (b) was further revised at adoption to clarify that the federal regulations that are referenced are the responsibility of TEA. Subsection (b)(2) is amended to update a cross reference to include Texas Education Code (TEC), §39.003 and §39.004, as part of the activities for intensive or special investigative remote or on-site reviews.

New subsection (d) is added to provide compliance requirements for program effectiveness to include emergent bilingual students in TEC, §29.062. This TEC citation is also added to subsection (j).

The adopted changes to subsections (e), (f), and (j) update a cross reference to 19 TAC §97.1001, where provisions for Results Driven Accountability are addressed.

Subsection (h) is amended to change the cyclical monitoring process from discretionary to mandatory as required by federal guidance.

Subsection (k) is amended to include reference to 19 TAC §89.1076, which describes the system of interventions and sanctions established to ensure program effectiveness and compliance with federal and state requirements for special education and related services. Guidelines that were duplicative of those established in §89.1076 were removed.

To comply with current federal requirements as to how a state will address what is termed an "area of concern," new subsection (l) is added to establish a process that provides for the investigation and issuance of findings regarding alleged violations of Individuals with Disabilities Education (IDEA), Part B, or a state statute or administrative rule created to implement IDEA. Adopted new subsection (l) defines "area of concern"; provides guidelines that apply to the process of investigating and issuing findings for alleged violations of IDEA, Part B; and describes the actions TEA may take when receiving, investigating, substantiating, and acting on a substantiated area of concern. Based on public comment, additional revisions made at adoption clarify the process by defining "credible allegation" and providing more information concerning how an area of concern becomes a credible allegation and the processes involved with each investigation.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began May 24, 2024, and ended June 24, 2024, and included public hearings on May 30 and 31, 2024. Following is a summary of public comments received and agency responses.

Comment: The Texas Society of Interpreters for the Deaf, Policy and Advocacy Committee, commented that a new subsection should be added stating that TEA monitoring activities will include compliance for students who are deaf or hard of hearing under TEC, Chapter 29, Subchapter I. Disability Rights Texas submitted a similar comment with the suggestion to also add the relevant provisions of TEC, Chapter 30, regarding Regional Day School Programs for the Deaf.

Response: The agency disagrees to add this statement at this time, instead relying on TEA's broad supervisory and monitoring authority under federal regulations. However, in the coming months, the agency intends to engage a group of stakeholders in the issues raised in the comment submission, as the agency begins work on revising the Deaf and Hard of Hearing State Plan during the upcoming school year.

Comment: The Texas Classroom Teachers Association commented that a provision should be added to the rule that the identities of employees who report allegations of noncompliance with IDEA should be kept confidential with the exception of a law enforcement officer for the purposes of a criminal investigation.

Response: The agency disagrees. An area of concern and credible allegation, as described by this rule, is a very nuanced instance of how the agency becomes aware of a possible non-

compliance issue. Typically, allegations of noncompliance are handled through the established dispute resolution processes. As the agency can become aware of an area of concern through various ways, there is no inherent right to confidentiality in this case.

Comment: The Texas Council of Administrators of Special Education (TCASE) commented that subsection (b) should be reworded to clarify that the federal regulations mentioned pertain to the agency's authority rather than school districts.

Response: The agency agrees and has updated the language in subsection (b) at adoption to clarify that the agency is implementing the requirements of subsection (b).

Comment: TCASE commented on new subsection (I) that the terms "area of concern" and "credible allegation," and the process and investigations surrounding these, are misused or misapplied.

Response: The agency agrees that clarification is needed. The agency has made the following changes to subsection (I) at adoption: adding a definition of "credible allegation" so that it accompanies the definition of "area of concern"; clarifying that the process will first begin with determining if an area of concern results in a credible allegation; and adding detail about what occurs when an area of concern is determined to be a credible allegation.

Comment: TCASE commented that the area of concern will come from internal processes, rather than external sources, since external sources would use the typical dispute resolution processes if they have an allegation of IDEA noncompliance.

Response: The agency disagrees. Individuals cannot be forced to use dispute resolution methods, and the federal guidance is clear that if the agency is made aware of a credible allegation, the agency must do due diligence to determine if noncompliance occurred.

Comment: TCASE commented that the wording in this rule should clearly differentiate and delineate between general supervision responsibilities and dispute resolution methods.

Response: The agency disagrees that changes are necessary. While the area of concern process is part of the agency's supervision responsibilities, it cannot be completely severed from the dispute resolution processes.

Comment: TCASE commented that districts should always be contacted if the agency has determined that a credible allegation exists.

Response: The agency agrees and has updated the rule text to include subsection (I)(8) at adoption.

Comment: TCASE commented that allegations should align with the statute of limitations for complaints.

Response: The agency disagrees, as federal guidance does not require it. In the future, the agency intends to explore whether adding a time limit after which it will not engage in the investigative process would be beneficial.

Comment: TCASE commented that gathering evidence would be a more appropriate term to use in the agency's investigative process.

Response: The agency agrees and has updated this language in subsection (I)(7)(D) and (G) at adoption.

Comment: TCASE commented that the interventions and sanctions applied when noncompliance is found should only be cross referenced to subsection (h) of this rule and to 19 TAC §89.1076.

Response: The agency disagrees. As states continue to receive more guidance from the federal department of education, it is more appropriate to denote those actions that are within TEA's supervisory authority to implement.

Comment: TCASE commented that details around any findings and a written report should be included in this rule, along with a district's right to correct misinformation.

Response: The agency disagrees with adding this type of detail. Once noncompliance is found, the agency will follow the same processes as other instances of noncompliance that are discovered outside the area of concern process.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §7.028, which establishes limitations on compliance monitoring; TEC, §28.006, which establishes requirements for reading diagnostic instruments; TEC, §29.062, which establishes compliance requirements for programs designed for emergent bilingual students; TEC, §38.003, which establishes criteria for screening and treatment for dyslexia and related disorders; TEC, §39.003, which establishes the authority for special investigations; TEC, §39.004, which establishes the conduct of special investigations; TEC, §39.056, which establishes criteria for monitoring reviews; 34 Code of Federal Regulations (CFR), §300.149, which lists the state's responsibility for general supervision of the Individuals with Disabilities Education Act (IDEA), Part B; and 34 CFR, §§300.600-300.609, which describe the requirements for state monitoring and enforcement of IDEA, Part B.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§7.028, 28.006, 29.062, 38.003, 39.003, 39.004, and 39.056; and 34 Code of Federal Regulations, §§300.149 and 300.600-300.609.

§97.1071. Special Program Performance; Monitoring, Review, and Supports.

(a) For purposes of this section, school districts include open-enrollment charter schools.

(b) School districts are subject to general supervision and monitoring activities for compliance with state law and federal regulation, implemented by the Texas Education Agency (TEA) under 34 Code of Federal Regulations (CFR), §§300.600-300.609, and review of program implementation and effectiveness within certain special populations of students. Activities may include:

(1) random, targeted, or cyclical reviews authorized under Texas Education Code (TEC), §39.056, conducted remotely or on-site to identify problems implementing state and federal requirements and to provide support for development of reasonable and appropriate strategies to address identified problems; and/or

(2) intensive or special investigative remote or on-site reviews authorized under TEC, §39.003 and §39.004.

(c) Activities described in subsection (b) of this section are applicable for compliance with requirements for reading diagnosis in TEC, §28.006, and dyslexia and related disorders in TEC, §38.003, and §74.28 of this title (relating to Students with Dyslexia and Related Disorders).

(d) Activities described in subsection (b) of this section are applicable for compliance with requirements for program effectiveness for emergent bilingual students in TEC, §29.062.

(e) The commissioner of education shall assign school districts an annual determination level based on performance levels of certain special populations student groups under §97.1001 of this title (relating to Accountability Rating System) according to the following general criteria:

(1) the degree to which the district's performance reflects a need for targeted or intensive supports, as indicated by the seriousness, number, extent, and duration of the student performance, program effectiveness, and/or program compliance deficiencies identified by the Texas Education Agency (TEA);

(2) a comparison of the district's performance relative to aggregated state performance and state performance standards;

(3) a statistical distribution of districts exhibiting a comparable need for targeted support; and

(4) the length of time the performance standard has been in place and the length of time the district has exhibited deficiencies under the standard.

(f) In addition to performance levels determined under §97.1001 of this title, the commissioner may consider any other applicable information, such as:

- (1) complaints investigation results;
- (2) special education due process hearing decisions;
- (3) data validation activities;
- (4) integrity of assessment or financial data;
- (5) longitudinal intervention history; and
- (6) other federally required elements.

(g) The standards used to assign districts to specific determination levels under this section are established annually by the commissioner and communicated to all school districts. Determination level categories for assignment include:

- (1) meets requirements;
- (2) needs assistance;
- (3) needs intervention; and
- (4) needs substantial intervention.

(h) In addition to determination levels described in subsections (e) and (g) of this section, the commissioner shall develop a system of cyclical monitoring to ensure every district participates in general supervision activities. Based on a district's assigned determination level, as part of its cyclical monitoring process, or as part of compliance monitoring activities, a district may be required to implement and/or participate in:

- (1) focused self-analysis of district data and program effectiveness;
- (2) focused remote and/or on-site review;
- (3) required stakeholder engagement;
- (4) focused compliance reviews;
- (5) strategic support and continuous improvement planning; and/or
- (6) corrective action plan development.

(i) The commissioner shall notify in writing each district identified for review under this section as a result of assigned determination level or cyclical selection prior to requiring a district to implement or

participate in any activities included in subsection (h)(1)-(6) of this section.

(j) Actions taken under this section are intended to assist the district in raising its performance and/or achieving compliance under §97.1001 of this title, statutory requirements in TEC, § 28.006, 29.062, and 38.003, and §74.28 of this title and do not preclude or substitute for a sanction under another provision of this subchapter.

(k) Actions taken under this section do not preclude or substitute for other responses to or consequences of program ineffectiveness or noncompliance identified by TEA, such as those described in §89.1076 of this title (relating to Interventions and Sanctions) and expanded oversight, including, but not limited to, frequent follow-up contacts with the district, submission of documentation verifying implementation of intervention activities and/or an improvement plan, and submission of district/program data.

(l) In exercising its general supervision authority under 34 CFR, §300.149 and §300.600, TEA has established a process that provides for the investigation and issuance of findings regarding credible allegations of violations of the Individuals with Disabilities Education Act (IDEA), Part B, or a state statute or administrative rule created to implement IDEA, that arise from an area of concern. The following guidelines shall apply to this process.

(1) "Area of concern" means that TEA has been made aware of an allegation regarding a violation of, or noncompliance with, a requirement of IDEA, Part B, or a state special education law or administrative rule.

(2) "Credible allegation" means that TEA has determined that an allegation arising from an area of concern is credible enough to investigate further to determine if a violation or noncompliance has occurred.

(3) Information and awareness of an area of concern may arise directly from TEA or from external sources.

(4) TEA will engage in a process to determine if an area of concern is determined to be a credible allegation, and, if determined credible, TEA will initiate an investigation to determine if findings of noncompliance will be issued.

(5) TEA will generally not engage in the process described in paragraph (7) of this subsection to determine if an area of concern is a credible allegation if it is a media report, social media post, or an anonymous report, unless TEA receives corroborating information and facts that a specific violation of state or federal law or rule has occurred if the allegation were to be confirmed true.

(6) When an individual or organization reports a special education area of concern, TEA may direct the individual or organization to the established dispute resolution processes. Depending on the frequency or specificity of the type of allegation made, TEA may engage in the activities described in paragraph (4) of this subsection.

(7) The process to determine if an area of concern is a credible allegation, as described in paragraph (4) of this subsection, may include one or more of the following actions:

(A) reviewing existing citations of noncompliance or any noncompliance identified within the last two school years on the same or similar alleged violation;

(B) reviewing filed state complaints that are in process of being investigated or that have been substantiated within the last two school years on the same or similar alleged violation;

(C) reviewing due process hearing decisions issued within the last two years in which the hearing officer's final written

decision contains a finding of noncompliance on the same or similar alleged violation;

(D) gathering evidence from groups that represent or advocate for families and communities served by the district;

(E) reviewing and analyzing available student- or district-level data that relate to the alleged violation;

(F) reviewing and analyzing fiscal and program information, such as grant applications, contracts, self-assessments, and other special education documents submitted to TEA by the district; and

(G) any other activity or measure used to gather evidence within TEA's general supervision and monitoring authority.

(8) The investigation to determine if a credible allegation will result in the issuance of findings as described under paragraph (4) of this subsection will include contacting the school district that is the subject of the allegation and requesting a response from the school district. Additional investigative actions may include one or more of the following:

(A) conducting interviews with the district, staff, parents, or students;

(B) a referral for review or investigation by any other appropriate unit or division within TEA;

(C) utilizing the review and analysis of the activities conducted during the review under paragraph (7) of this subsection to determine if noncompliance is found; and

(D) any other activity or measure within TEA's general supervision and monitoring authority.

(9) TEA may apply any intervention or sanction within its authority if noncompliance or a violation is substantiated, including those described in subsection (h) of this section and §89.1076 of this title.

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 22. EXAMINING BOARDS

PART 14. TEXAS OPTOMETRY BOARD

CHAPTER 271. EXAMINATIONS

22 TAC §271.1

The Texas Optometry Board adopts the following repeal to 22 TAC Title 14 Chapter 271 Examinations. The Board adopts the repeal of §271.1 Definitions as published in the June 14, 2024, issue of the *Texas Register* (49 TexReg 4129). The repeal will not be republished.

The substance of the language found in the repealed rule is being adopted as a new section in Chapter 272 in a separate adoption with the *Texas Register*.

There was one public comment from the Texas Optometric Association supporting the changes proposed by the Board.

The Board adopts the repeal of this rule pursuant to the authority found in §351.151 of the Occupations Code which vests the Board with the authority to adopt rules necessary to perform its duties and implement Chapter 351 of the Occupations Code.

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, 2024.

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Janice McCoy

Executive Director

Texas Optometry Board

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For further information, please call: (512) 305-8500



22 TAC §§271.2, 271.6, 271.8 - 271.12

The Texas Optometry Board (Board) adopts amendments and new sections to 22 TAC Title 14 Chapter 271 Licensing. Sections 271.2 and §271.9 are adopted with changes to the proposed text as published in the June 14, 2024, issue of the *Texas Register* (49 TexReg 4130). These rules will be republished. Sections 271.6, 271.8, and 271.10 - 271.12 are adopted without changes to the proposed text as published in the June 14, 2024, issue of the *Texas Register* (49 TexReg 4130). These rules will not be republished. The Board updates the title of the chapter to Licensing.

The Board adopts amendments to §271.2 and §271.6. The Board adopts the following new rules: §§271.8 - 271.12. The Board updates the title of the chapter to Licensing.

The rules were reviewed as part of an effort by the Board's Administration and Licensing Committee to simplify the Board's application process. This review encompassed both Chapters 271 and 280. The Committee recommended that the Board combine the application for the Therapeutic license and Optometric Glaucoma Specialist designation as all graduates after 2008 qualify for the enhanced Optometric Glaucoma Specialist designation. The Board recognized that having the application in two steps was a deterrent to about 20 percent of the applicant pool who failed to complete the second application step although qualified to do so.

Additionally, the Committee recommended that the Board move all license requirements and application steps found in Chapter 280 to Chapter 271 for clarity to both staff and potential applicants.

There was one public comment from the Texas Optometric Association supporting the changes proposed by the Board.

The Board adopts §271.2 Applications for Licensure as Therapeutic Optometrist with changes to the rule as published simply to correct the rule reference. Change as follows:

Originally Proposed: §271.2(f) "... The optometry school transcript must show proof of the required education as set forth in §271.1 of this chapter (relating to Definitions) ..."

Adopted: §271.2(f) "... The optometry school transcript must show proof of the required education as set forth in §271.11 of this chapter (relating to Required Education for Therapeutic Licensure) ..."

The Board adopts §271.9(a)(2) Licensure as Optometric Glaucoma Specialist with changes to the rule as published simply to correct the rule reference. Change as follows:

Originally proposed: §271.9(a)(2) An applicant under §271.2 of this chapter who graduated before May 1, 2008 may apply for a therapeutic license unless the applicant meets the requirements set out under §271.11(b) of this chapter (relating to Applications for Licensure as a Therapeutic Optometrist) in which case they shall apply for licensure as an optometric glaucoma specialist.

Adopted: (2) An applicant under §271.2 of this chapter who graduated before May 1, 2008 may apply for a therapeutic license unless the applicant meets the requirements set out under §271.10(b) of this chapter (relating to Optometric Glaucoma Specialist: Required Education and Examination) in which case they shall apply for licensure as an optometric glaucoma specialist.

The Board adopts these adopted and new rules pursuant to the authority found in §351.151 of the Occupations Code which vests the Board with the authority to adopt rules necessary to perform its duties and implement Chapter 351 of the Occupations Code. The Board also adopts these rules under the authority found in Texas Optometry Act §§351.252, 351.253, 351.358, and 351.3581.

§271.2. Applications for Licensure as Therapeutic Optometrist.

(a) The applicant shall make application by providing to the Executive Director, on forms to be furnished by the Board, satisfactory evidence that the applicant has attended and graduated from a reputable school or college of optometry which meets with the requirements of the Board and such other information as the Board may deem necessary for the enforcement of the Act.

(b) The applicant shall report all felony and misdemeanor criminal convictions as outlined under Texas Occupations Code Chapter 53. Failure of an applicant to report every criminal conviction is deceit, dishonesty and misrepresentation in seeking admission to practice and authorizes the Board to take disciplinary action under §351.501 of the Act. An applicant is not required to report a Class C Misdemeanor traffic violation. The applicant shall furnish any document relating to the criminal conviction as requested by the Board. The applicant shall also provide a complete criminal history by submitting fingerprints to the authority authorized by the Department of Public Safety to take the fingerprints in the form required by that authority.

(c) In such application, the applicant shall state that the applicant will abide by the laws of this state regulating the practice of optometry and that all facts, statements and answers contained in the application are true and correct. Such application shall be signed (manually or digitally) and dated.

(d) Applicants shall submit a report of out-of-state disciplinary action prepared by an approved national databank.

(e) Any person furnishing false information in such application shall be denied the issuance of a license, or if the applicant has been licensed before it is made known to the Board of the falseness of

such information, such license shall be subject to suspension, revocation, or cancellation in accordance with §351.501 of the Act.

(f) Applications must contain a certified optometry school transcript, which shall show the total number of hours of attendance, the subjects studied, the grades or marks given, and the date of graduation of the applicant. The optometry school transcript must show proof of the required education as set forth in §271.11 of this chapter (related to Required Education for Therapeutic Licensure). Applicants must also submit a copy of the transcript from any undergraduate school attended which shall show the total number of hours of attendance, the subjects studied, the grades or marks given, and the date of graduation of the applicant.

(g) The Board may require other documentation not specified by this section be submitted with the application. All required documents must be received within one year of application; otherwise, the applicant must reapply and pay the application fee. A person may apply for licensure prior to graduation from a reputable school or college of optometry.

(h) The application must be accompanied by a fee as set forth in §273.4 of this title (relating to Fees (Not Refundable)).

(i) If applicable, the applicant must furnish a certificate of good standing from any jurisdiction where licensed or previously licensed. The certificate must establish that:

- (1) the applicant's license has never been suspended or revoked;
- (2) there are no pending disciplinary actions against the applicant; and
- (3) the applicant is presently authorized to practice therapeutic optometry without restrictions.

(j) If the certificate of good standing does not establish the items in subsection (i) of this section, the applicant will be required to submit additional information for further Board review.

§271.9. Licensure as Optometric Glaucoma Specialist.

(a) For licensure as an Optometric Glaucoma Specialist:

(1) Beginning January 1, 2025, an applicant under §271.2 of this chapter (relating to Applications for Licensure as a Therapeutic Optometrist) who graduated after May 1, 2008 shall concurrently apply for licensure as optometric glaucoma specialist on a joint application form promulgated by the Board.

(2) An applicant under §271.2 of this chapter who graduated before May 1, 2008 may apply for a therapeutic license unless the applicant meets the requirements set out under §271.10(b) of this chapter (relating to Optometric Glaucoma Specialist: Required Education and Examination) in which case they shall apply for licensure as an optometric glaucoma specialist.

(3) A therapeutic optometrist licensed prior to January 1, 2025 may submit an application to convert the license to an optometric glaucoma specialist if the applicant meets the requirements set out under §271.10(b) of this chapter (relating to Optometric Glaucoma Specialist: Required Education and Examination).

(b) Proof of the required successfully completed education, examination, and clinical assessment as set forth in §271.10 of this chapter must accompany the application form.

(c) Proof of a two-hour continuing education course related to prescribing and monitoring controlled substances as required by Section 481.07635 of the Health and Safety Code must accompany the application form.

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, 2024.

TRD-202403982

Janice McCoy

Executive Director

Texas Optometry Board

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For further information, please call: (512) 305-8500



CHAPTER 272. ADMINISTRATION

22 TAC §§272.1 - 272.9

The Texas Optometry Board (Board) adopts amendments and new sections to 22 TAC Title 14 Chapter 272 Administration. Section 272.9 is adopted with changes to the proposed text as published in the June 14, 2024, issue of the *Texas Register* (49 TexReg 4133). The text of the rule will be republished. Sections 272.1 - 272.8 are adopted without changes to the proposed text as published in the June 14, 2024, issue of the *Texas Register* (49 TexReg 4133). These rules will not be republished.

The Board adopts amendments to §§272.1 - 272.3. The Board adds the following rules: §§272.4 - 272.9.

The majority of the changes made to Chapter 272 update the agency's rules to better comply with various statutes that require the agency to have administrative rules on these issues.

The Board adopts §272.9. Petition for Rulemaking with changes to the rule as published as follows:

Proposed: §272.9(d) "A petition for rulemaking which involves any of those matters set forth in §507.153(a) of the Occupations Code will be submitted to the Executive Director for initial review and consideration."

Adopted: §272.9(d) "A petition for rulemaking will be submitted to the Executive Director for initial review and consideration."

There was one public comment from the Texas Optometric Association supporting the changes proposed by the Board.

The Board adopts these amended and new rules pursuant to the authority found in §351.151 of the Occupations Code which vests the Board with the authority to adopt rules necessary to perform its duties and implement Chapter 351 of the Occupations Code. The Board also adopts these rules under the authority found in §574.003 Gov't Code; §656.048 Gov't Code; §661.002 Gov't Code; §661.022 Gov't Code; §2001.021 Gov't Code; §2155.076 Gov't Code; §2156.005 Gov't Code; §2161.003 Gov't Code; §2260.052 Gov't Code; §2261.202 Gov't Code; and §2261.253 Gov't Code.

§272.9. *Petition for Rulemaking.*

(a) Any interested person may petition for rulemaking in accordance with §2001.021 of the Government Code by submitting to the Board a written request for the adoption of a rule or rule change. The written request must contain a return mailing address for the agency's response.

(b) The written request must, at a minimum, set forth or identify the rule the petitioner wants the Board to adopt or change, reasons

why the petitioner believes the requested rulemaking is necessary, and include a copy of the proposed rule or any proposed changes with deletions crossed through and additions underlined. Additionally, the written request must affirmatively show that the requestor qualifies as an interested person under this rule. Requests which do not affirmatively show that the requestor qualifies as an interested person under this rule may be denied.

(c) The written request should also address the economic cost to persons required to comply with the rule, the effects of the rule on small or micro-businesses or rural communities, and the impact the rule would have on local employment or economics, if such information can be derived from available sources without undue cost or burden.

(d) A petition for rulemaking will be submitted to the Executive Director for initial review and consideration.

(e) The Board will respond to a written request for adoption of a rule from an interested person in accordance with §2001.021 of the Government Code.

(f) The term "interested person" as used in this rule, shall have the same meaning as that assigned by §2001.021(d) of the Government Code.

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, 2024.

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Janice McCoy

Executive Director

Texas Optometry Board

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For further information, please call: (512) 305-8500



CHAPTER 273. GENERAL RULES

22 TAC §§273.1, 273.4 - 273.10, 273.18

The Texas Optometry Board (Board) adopts amendments to 22 TAC Title 14 Chapter 273 General Rules. Section 273.6 is adopted with changes to the proposed text as published in the June 14, 2024, issue of the *Texas Register* (49 TexReg 4137). The text of the rule will be republished. Sections 273.1, 273.4, 273.5, 273.7 - 273.10, and 273.18 are adopted without changes to the proposed text as published in the June 14, 2024, issue of the *Texas Register* (49 TexReg 4137). The text of the rules will not be republished.

The Board is adopting amendments to §273.1 and §§273.4 - 273.10. The Board is adding the following rule: §273.18

The majority of the changes made to Chapter 273 provide non-substantive capitalization and grammatical changes to ensure consistency across the Board's rules. Additionally, the change to §273.8 Renewal of License clarifies that a person needs to be practicing as a therapeutic optometrist in another state in order to renew an expired license.

The Board adopts an increase in the application fee from \$150 to \$205 as a result of changes made to Chapter 271 that require all applicants to concurrently apply as a therapeutic optometrist and an optometric glaucoma specialist.

The Board adopts §273.6 Licenses for a Limited Period with changes to the rule as published as follows:

Originally Proposed: §273.6(a)(1)(C) "... The applicant must have satisfied the educational requirement of §271.1 of this title (relating to Required Education for Therapeutic Optometrist) ..."

Adopted: §273.6(a)(1)(C) "... The applicant must have satisfied the educational requirement of §271.11 of this title (relating to Required Education for Therapeutic Licensure) ..."

There was one public comment from the Texas Optometric Association supporting the changes proposed by the Board.

The Board adopts these amended rules and new rule pursuant to the authority found in §351.151 of the Tex. Occ. Code which vests the Board with the authority to adopt rules necessary to perform its duties and implement Chapter 351 of the Tex. Occ. Code. The Board also adopts this rule under the authority found in Texas Occupations Code §§351.152 Fees and 351.302 License Renewal; and §232.0135 of the Family Code.

No other sections are affected by the amendments.

§273.6. Licenses for a Limited Period.

(a) Provisional License.

(1) Requirements for Provisional License. On application for examination, a candidate may apply for a provisional license under the following circumstances:

(A) The applicant must be licensed in good standing as a therapeutic optometrist in another state, the District of Columbia, or a territory of the United States that has licensing requirements that are substantially equivalent to the requirements of the Texas Optometry Act, and must furnish proof of such licensure on board forms provided.

(B) The applicant must have passed the National Board of Examiners in Optometry (NBEO) Examination Parts I and II, after January 1, 1984, and Part III after June of 1994, as well as the Treatment and Management of Ocular Disease (TMOD) Examination after January of 1985 and must submit a true and correct copy of the applicant's score report.

(C) The applicant must have satisfied the educational requirement of §271.11 of this title (relating to Required Education for Therapeutic Licensure).

(D) The applicant must not have failed an examination for a license conducted by the Board.

(E) The applicant's license to practice optometry must not have been revoked or suspended by any jurisdiction.

(2) Sponsorship. A candidate for provisional licensure must be sponsored by a therapeutic optometrist who is currently licensed by the Board with the following conditions applicable.

(A) Prior to practice in Texas, on forms provided by the Board, the sponsor licensee will certify to the Board the following:

(i) that such candidate will be working within the same office as the licensee, under direct supervision of the sponsor licensee; and

(ii) that such sponsor licensee is aware of the Act and rules governing provisional licensure and that the sponsorship will cease upon the invalidity of the provisional license.

(B) Sponsor licensee will be held responsible for the unauthorized practice of optometry should such provisional license expire.

(3) Hardship. An applicant for a provisional license may be excused from the requirements of sponsorship if the Board determines that compliance constitutes a hardship to the applicant.

(4) Application and fee.

(A) The candidate for provisional licensure will be subject to all application requirements required by Chapter 271 of this title (relating to Licensing) and subject to the applicable fees established under §273.4 of this chapter (relating to Fees (Not Refundable)). In addition, the candidate will be subject to a fee for issuance of a provisional license, as established under §273.4 of this chapter.

(B) No provisional license can be issued until all application forms and fees are received and the application is approved.

(C) A provisional license expires upon the earlier to occur of the passage of 180 days or notice by the Board of the candidate's successful passage or failure of all examinations required by Chapter 271 of this title. It shall be the responsibility of the candidate and sponsor to return the provisional license to the Board upon expiration.

(D) Each candidate for provisional license shall receive only one nonrenewable license prior to the issuance of a therapeutic optometry license.

(5) If at any time during the provisional licensure period it is determined that the holder of such provisional license has violated the Optometry Act or Board rules, such provisional license will be subject to termination.

(b) Military Limited Volunteer License.

(1) Pursuant to §351.266 of the Texas Optometry Act, the Board may issue a military limited volunteer license to practice optometry or therapeutic optometry to an applicant who:

(A) is licensed and in good standing, or was licensed and retired in good standing, as an optometrist or therapeutic optometrist in another state;

(B) is or was authorized as an optometrist or therapeutic optometrist to treat personnel enlisted in a branch of the United States armed forces or veterans; and

(C) meets all other requirements prescribed by Board Rule.

(2) The Board may not issue a license under this section to an applicant who:

(A) holds an optometry or therapeutic optometry license that:

(i) is currently under investigation by a state or territory of the United States, or a uniformed service of the United States;

(ii) is or was restricted, cancelled, suspended, revoked, or subject to other discipline or denial of licensure by a state or territory of the United States, or a uniformed service of the United States;

(B) holds a license issued by the Drug Enforcement Agency or a state public safety agency to prescribe, dispense, administer, supply, or sell a controlled substance that:

(i) is currently under investigation by a state or territory of the United States, or a uniformed service of the United States;

(ii) is or was restricted, cancelled, suspended, revoked, or subject to other discipline or denial by a state or territory of the United States, or a uniformed service of the United States; or

(C) is currently under investigation or has been convicted of, or placed on deferred adjudication, community supervision, or deferred disposition for a felony or a misdemeanor involving moral turpitude.

(3) An optometrist or therapeutic optometrist who practices optometry or therapeutic optometry under a license issued under this section may:

(A) only practice at a clinic that primarily treats indigent populations; and

(B) not receive direct or indirect compensation or payment of anything of monetary value in exchange for the optometric services rendered by the optometrist or therapeutic optometrist to the indigent patients at the clinic.

(4) A military limited volunteer license holder is subject to Board rules, including rules regarding disciplinary action, license registration and renewal.

(5) A military limited volunteer license shall be issued for a period of one year and may be renewed and maintained according to registration requirements as prescribed by Board Rules.

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, 2024.

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Janice McCoy

Executive Director

Texas Optometry Board

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For further information, please call: (512) 305-8500



22 TAC §273.11

The Texas Optometry Board adopts the following repeal to 22 TAC Title 14 Chapter 273 General Rules. The Board adopts the repeal of §273.11 Public Participation in Meetings as published in the June 14, 2024, issue of the *Texas Register* (49 TexReg 4142). The repeal will not be republished.

The substance of the language found in the repealed rule is being adopted as a new section in Chapter 272 in a separate adoption with the *Texas Register*.

There was one public comment from the Texas Optometric Association supporting the changes proposed by the Board.

The Board adopts the repeal of this rule pursuant to the authority found in §351.151 of the Occupations Code which vests the Board with the authority to adopt rules necessary to perform its duties and implement Chapter 351 of the Occupations Code.

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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Janice McCoy

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CHAPTER 280. THERAPEUTIC OPTOMETRY

22 TAC §§280.1, 280.5, 280.9

The Texas Optometry Board (Board) adopts amendments to 22 TAC Title 14 Chapter 280 Therapeutic Optometry without changes to the proposed text as published in the June 14, 2024, issue of the *Texas Register* (49 TexReg 4144). The rules will not be republished.

The Board is amending §§280.1, 280.5, and 280.9. In a separate adoption, the Board is repealing §§280.2, 280.3, and 280.8.

The rules were reviewed as part of an effort by the Board's Administration and Licensing Committee to simplify the Board's application process. This review encompassed both Chapters 271 and 280. The Committee recommended that the Board combine the application for the Therapeutic license and Optometric Glaucoma Specialist designation as all graduates after 2008 qualify for the enhanced Optometric Glaucoma Specialist designation. The Board recognized that having the application in two steps was a deterrent to about 20 percent of the applicant pool who failed to complete the second application step although qualified to do so.

Additionally, the Committee recommended that the Board move all license requirements and application steps found in Chapter 280 to Chapter 271 for clarity to both staff and potential applicants.

Finally, the Board is adopting clarifications to §280.5(f) as the Board realized the language adopted in 2023 was not clear in that therapeutic optometrists only have prescriptive authority for over the counter oral medications.

There was one public comment from the Texas Optometric Association supporting the changes proposed by the Board.

The Board adopts these amended rules pursuant to the authority found in §351.151 of the Occupations Code which vests the Board with the authority to adopt rules necessary to perform its duties and implement Chapter 351 of the Occupations Code. The Board also adopts these rules under the authority found in Texas Optometry Act §§351.252, 351.253, 351.358, and 351.3581.

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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Janice McCoy

Executive Director

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22 TAC §§280.2, 280.3, 280.8

The Texas Optometry Board adopts the following repeal to 22 TAC Title 14 Chapter 280 - Therapeutic Optometry. The Board adopts the repeal of §280.2 Required Education; §280.3 Certified Therapeutic Optometrist Examination; and §280.8 Optometric Glaucoma Specialist: Required Education, Examination and Clinical Skills Evaluation as published in the June 14, 2024, issue of the *Texas Register* (49 TexReg 4143) and corrected in the June 21, 2024, issue of the *Texas Register* (49 TexReg 4630). The repeal will not be republished.

The substance of the language found in the repealed rules is being adopted as new sections of Chapter 271 in a separate adoption with the *Texas Register*.

There was one public comment from the Texas Optometric Association supporting the changes proposed by the Board.

The Board adopts the repeal of this rule pursuant to the authority found in §351.151 of the Occupations Code which vests the Board with the authority to adopt rules necessary to perform its duties and implement Chapter 351 of the Occupations Code.

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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Executive Director

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 229. FOOD AND DRUG

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), adopts amendments to §§229.40, 229.41, 229.241 - 229.252, and 229.419 - 229.430. The amendments to §§229.40, 229.41, 229.241 - 229.252, and 229.419 - 229.430 are adopted without changes to the proposed text as published in the June 14, 2024, issue of the *Texas Register* (49 TexReg 4177), and therefore will not be republished.

BACKGROUND AND JUSTIFICATION

The amendments to Texas Administrative Code, Title 25, Chapter 229, Subchapters D, O, and W reflect current federal law, statute, and rule references since the rules were last adopted. The amendments revise and add definitions to clarify intent and improve compliance, update agency addresses and websites, and include clarifying language to ensure consistency in interpretation of the rules.

COMMENTS

The 31-day comment period ended July 15, 2024. During this period, DSHS did not receive any comments regarding the proposed rules.

SUBCHAPTER D. REGULATION OF COSMETICS

25 TAC §§229.40, §229.41

STATUTORY AUTHORITY

The amendments are adopted under Texas Health and Safety Code §431.241 and §431.244, which provide the Executive Commissioner of HHSC with authority to adopt rules enforcing the Texas Food, Drug, and Cosmetic Act, and adopt specific rules under the Code of Federal Regulations, Title 21, as a rule under this chapter; and Texas Government Code §531.0055, and Texas Health and Safety Code §1001.075, which authorize the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code Chapter 1001, including Chapter 431, the Texas Food, Drug, and Cosmetic Act.

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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Cynthia Hernandez

General Counsel

Department of State Health Services

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For further information, please call: (512) 864-6755

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SUBCHAPTER O. LICENSING OF WHOLESALE DISTRIBUTORS OF NONPRESCRIPTION DRUGS--INCLUDING GOOD MANUFACTURING PRACTICES

25 TAC §§229.241 - 229.252

STATUTORY AUTHORITY

The amendments are adopted under Texas Health and Safety Code §431.241 and §431.244, which provide the Executive Commissioner of HHSC with authority to adopt rules enforcing the Texas Food, Drug, and Cosmetic Act, and adopt specific rules under the Code of Federal Regulations, Title 21, as a rule under this chapter; and Texas Government Code §531.0055, and Texas Health and Safety Code §1001.075, which authorize the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code Chapter 1001, including Chapter 431, the Texas Food, Drug, and Cosmetic Act.

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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Cynthia Hernandez

General Counsel

Department of State Health Services

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For further information, please call: (512) 864-6755

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SUBCHAPTER W. LICENSING OF WHOLESALE DISTRIBUTORS OF PRESCRIPTION DRUGS--INCLUDING GOOD MANUFACTURING PRACTICES

25 TAC §§229.419 - 229.430

STATUTORY AUTHORITY

The amendments are adopted under Texas Health and Safety Code §431.241 and §431.244, which provide the Executive Commissioner of HHSC with authority to adopt rules enforcing the Texas Food, Drug, and Cosmetic Act, and adopt specific rules under the Code of Federal Regulations, Title 21, as a rule under this chapter; and Texas Government Code §531.0055, and Texas Health and Safety Code §1001.075, which authorize the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code Chapter 1001, including Chapter 431, the Texas Food, Drug, and Cosmetic Act.

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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Cynthia Hernandez

General Counsel

Department of State Health Services

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For further information, please call: (512) 864-6755

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 363. COUNTY INDIGENT HEALTH CARE PROGRAM

The Texas Health and Human Services Commission (HHSC) adopts amendments to §363.1, concerning State Assistance Fund; §363.3, concerning Eligibility Dispute; §363.53, concerning Residence; §363.59, concerning Resources; and §363.101, concerning Basic and Optional Services; and new §363.5, concerning Eligibility of a County for State Assistance.

Section 363.101 is adopted with changes to the proposed text as published in the June 7, 2024, issue of the *Texas Register* (49 TexReg 4015). This rule will be republished. Sections 363.1, 363.3, 363.5, 363.53, and 363.59 are adopted without changes to the proposed text as published in the June 7, 2024, issue of the *Texas Register* (49 TexReg 4015). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

The adopted rules are necessary to comply with House Bill 4510, 88th Legislature, Regular Session, 2023, which authorized HHSC to require a county to provide certain tax information for the purpose of determining eligibility for state assistance under the County Indigent Health Care Program (CIHCP). The adopted rules also reflect the previous transfer of program administration from the Department of State Health Services (DSHS) to HHSC and improve clarity throughout the chapter.

COMMENTS

The 31-day comment period ended July 7, 2024.

During this period, HHSC received comments regarding the proposed rules from three commenters, including the Texas Conference of Urban Counties (CUC), the Texas County Judges and Commissioners Association (CJCAT), and the Texas Medical Association (TMA). A summary of comments relating to the rules and HHSC's responses follows.

Comment: TMA voiced concern about the removal of references to the Board of Nursing (BON) rules in several subsections of proposed §363.101. TMA recommended that the rules include a reference to the BON's rules and a reference to the Nursing Practice Act to describe more accurately the scope of practice for advanced practice registered nurses (APRNs).

Response: HHSC agrees with the recommendation and revised §363.101(a)(11) and (b)(5) - (8) as recommended.

Comment: TMA questioned the proposed changes in §363.101(b)(9) that would expand the clinicians to a physician assistant (PA) and an APRN who may determine a plan of care for home and community health care services. TMA recommended that the proposed changes not be adopted because it is not clear that determining a plan of care is within the respective scope of licenses for a PA or an APRN. TMA also commented that the rulemaking preamble did not provide a statutory basis for the proposed changes to §363.101(b)(9).

Response: HHSC disagrees with the recommendation not to adopt the proposed changes. The proposed preamble included the authority of the Executive Commissioner, set forth in Texas Government Code §531.0055 and Texas Health and Safety Code §1001.075, to adopt rules for the operation and provision of services by the health and human services agencies. In addition, this change will make the language in this rule consistent with requirements in 42 Code of Federal Regulations §484.60 for a certified home health agency and the Texas Medicaid home health services rules in Title 1 Texas Administrative Code §354.1037, relating to Written Plan of Care. HHSC did not make any changes in response to the comment.

Comment: CUC and CJCAT commented that the proposed amendments are essential for the efficient and fair distribution of state assistance funds to eligible counties under the Texas Indigent Health Care and Treatment Act. CUC and CJCAT described a detailed process for counties applying for state assistance and provided recommendations for improving the

process, such as creating an online portal for sharing necessary documents and information, offering regular training sessions, and establishing a new support team within HHSC to assist with applications. CUC and CJCAT also suggested permitting counties to submit their reports to the comptroller and HHSC in the same format and publishing annual reports on which counties receive County Indigent Health Care Program (CIHCP) funds and the amount received.

Response: HHSC reviewed the comments and recommendations but could not determine that they were related to the proposed rules. HHSC appreciates the feedback and recommendations and will determine where CIHCP policies and procedures may be updated in the future. HHSC did not make any changes in response to the comments.

SUBCHAPTER A. PROGRAM ADMINISTRATION

26 TAC §§363.1, 363.3, 363.5,

STATUTORY AUTHORITY

The amendments and new section are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code §1001.075, which authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the administration of Texas Health and Safety Code Chapter 1001; Texas Health and Safety Code §§61.006 - 61.009, which require the establishment of eligibility standards and application, documentation, verification, and reporting procedures for counties in determining eligibility under the program; and Texas Health and Safety Code §61.040(a), which provides that HHSC may require a county to provide certain information for determining eligibility for state assistance under Texas Health and Safety Code Chapter 61 and §61.040(b), which requires HHSC to prescribe the manner in which a county must provide such information.

The amendments and new section affect Texas Government Code §531.0055 and Texas Health and Safety Code §1001.075 and §§61.006 - 61.009 and §61.040.

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) 438-2350



SUBCHAPTER B. DETERMINING ELIGIBILITY

26 TAC §363.53, §363.59

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code §1001.075, which authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the administration of Texas Health and Safety Code Chapter 1001; Texas Health and Safety Code §§61.006 - 61.009, which require the establishment of eligibility standards and application, documentation, verification, and reporting procedures for counties in determining eligibility under the program; and Texas Health and Safety Code §61.040(a), which provides that HHSC may require a county to provide certain information for determining eligibility for state assistance under Texas Health and Safety Code Chapter 61 and §61.040(b), which requires HHSC to prescribe the manner in which a county must provide such information.

The amendments affect Texas Government Code §531.0055 and Texas Health and Safety Code §1001.075 and §§61.006 - 61.009 and §61.040.

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

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SUBCHAPTER C. PROVIDING SERVICES

26 TAC §363.101

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code §1001.075, which authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the administration of Texas Health and Safety Code Chapter 1001; Texas Health and Safety Code §§61.006 - 61.009, which require the establishment of eligibility standards and application, documentation, verification, and reporting procedures for counties in determining eligibility under the program; and Texas Health and Safety Code §61.040(a), which provides that HHSC may require a county to provide certain information for determining eligibility for state assistance under Texas Health and Safety Code Chapter 61 and §61.040(b), which requires HHSC to prescribe the manner in which a county must provide such information.

The amendment affects Texas Government Code §531.0055 and Texas Health and Safety Code §1001.075 and §§61.006 - 61.009 and §61.040.

§363.101. *Basic and Optional Services.*

(a) Except as specified in the Health and Human Services Commission-established service exclusions and limitations, counties are required to provide the following basic health care services to eligible households by reimbursing providers of services who meet the requirements of this chapter and the responsible county.

(1) Inpatient hospital services. Services must be medically necessary and:

- (A) provided in an acute care hospital;
- (B) provided to hospital inpatients;
- (C) provided by or under the direction of a physician;
- (D) provided for the care and treatment of patients.

(2) Outpatient hospital services. Services must be medically necessary and:

- (A) provided in an acute care hospital or hospital-based ambulatory surgical center;
- (B) provided to hospital outpatients;
- (C) provided by or under the direction of a physician;
- (D) are diagnostic, therapeutic, or rehabilitative.

(3) Physician services. Services must be medically necessary and provided by a physician in the doctor's office, a hospital, a skilled nursing facility, or elsewhere.

(4) Up to three prescriptions for drugs per recipient per month. New and refilled prescriptions count equally toward this total prescription limit. Drugs must be prescribed by a physician or other practitioner within the scope of practice under law. The quantity of drugs prescribed depends on the prescribing practice of the physician or other practitioner and the needs of the patient.

(5) Skilled nursing facility services (SNF). Services must be medically necessary, ordered by a physician, and provided in a SNF that provides daily services on an inpatient basis.

(6) Rural health clinic services. Rural health clinic services must be provided in a rural health clinic by a physician, a physician assistant (PA), an advanced practice registered nurse (APRN) licensed by the Texas Board of Nursing, such as a certified nurse practitioner, a certified nurse midwife, or other specialized nurse practitioner.

(7) Family planning services. These are preventive health and medical services that assist an individual in controlling fertility and achieving optimal reproductive and general health.

(8) Laboratory and x-ray services. These are technical laboratory and radiological services ordered and provided by, or under the direction of, a physician in an office or a similar facility other than a hospital outpatient department or clinic.

(9) Immunizations. These are given when appropriate.

(10) Medical screening services. These medical services include blood pressure, blood sugar, and cholesterol screening.

(11) Annual physical examinations. These are examinations provided once per calendar year by a physician or a PA. Associated testing, such as mammograms, can be covered with a physician's referral. These services may also be provided by an APRN if the services are within the scope of practice of the APRN in accordance with the standards established by the Texas Board of Nursing in Title 22, Texas Administrative Code, Part 11 and the Nursing Practice Act in Title 3, Texas Occupations Code Chapter 301.

(b) The following services are optional health care services.

(1) Ambulatory surgical center (ASC) services. These services must be provided in a freestanding ASC, and are limited to items and services provided in reference to an ambulatory surgical procedure, including those services on the Center for Medicare & Medicaid Services-approved list and selected Medicaid-only procedures.

(2) Federally Qualified Health Center (FQHC) services. These services must be provided in an FQHC by a physician, a PA, an APRN, a clinical psychologist, or a clinical social worker.

(3) PA services. These services must be medically necessary and provided by a PA under the direction of a physician and may be billed by and paid to the supervising physician.

(4) APRN services. These services must be provided by an APRN licensed by the Texas Board of Nursing as a certified nurse practitioner, a clinical nurse specialist, a certified nurse midwife, or a certified registered nurse anesthetist. APRN services must be medically necessary, provided within the scope of practice of an APRN, and covered in the Texas Medicaid Program.

(5) Counseling services. Psychotherapy services must be medically necessary based on a physician referral, and provided by a licensed professional counselor, a licensed master social worker-advanced clinical practitioner, a licensed marriage family therapist, or a doctorate-level psychologist. These services may also be provided based on an APRN referral if the referral is within the scope of the APRN's practice in accordance with the standards established by the Texas Board of Nursing in Title 22, Texas Administrative Code, Part 11 and the Nursing Practice Act in Title 3, Texas Occupations Code Chapter 301.

(6) Diabetic medical supplies and equipment. These supplies and equipment must be medically necessary and prescribed by a physician. The county may require the supplier to receive prior authorization. Items covered are lancets, alcohol prep pads, syringes, test strips, Humulin pens, and glucometers. These supplies and equipment may also be prescribed by an APRN if this is within the scope of the APRN's practice in accordance with the standards established by the Texas Board of Nursing in Title 22, Texas Administrative Code, Part 11 and the Nursing Practice Act in Title 3, Texas Occupations Code Chapter 301.

(7) Colostomy medical supplies and equipment. These supplies and equipment must be medically necessary and prescribed by a physician. The county may require the supplier to receive prior authorization. Items covered are colostomy bags/pouches; cleansing irrigation kits, paste, or powder; and skin barriers with flange (wafers). These supplies and equipment may also be prescribed by an APRN if this is within the scope of the APRN's practice in accordance with the standards established by the Texas Board of Nursing in Title 22, Texas Administrative Code, Part 11 and the Nursing Practice Act in Title 3, Texas Occupations Code Chapter 301.

(8) Durable medical equipment. This equipment must be medically necessary; meet the Medicare/Medicaid requirements; and provided under a written, signed, and dated physician's prescription. The county may require the supplier to receive prior authorization. Items can be rented or purchased, whichever is the least costly. Items covered are crutches, canes, walkers, standard wheel chairs, hospital beds, home oxygen equipment (including masks, oxygen hose, and nebulizers), and reasonable and appropriate appliances for measuring blood pressure. These supplies and equipment may also be prescribed by an APRN if this is within the scope of the APRN's practice in accordance with the standards established by the Texas Board of Nursing in

Title 22, Texas Administrative Code, Part 11 and the Nursing Practice Act in Title 3, Texas Occupations Code Chapter 301.

(9) Home and community health care services. These services must be medically necessary; meet the Medicare/Medicaid requirements; and provided by a certified home health agency. A plan of care must be recommended, signed, and dated by the recipient's attending physician prior to care being given. A plan of care may also be recommended, signed, and dated by a PA or APRN who is licensed by the Texas Board of Nursing as a certified nurse practitioner or clinical nurse specialist. The county may require prior authorization. Items covered are registered nurse (RN) visits for skilled nursing observation, assessment, evaluation, and treatment provided a physician specifically requests the RN visit for this purpose. A home health aide to assist with administering medication is also covered. Visits made for performing housekeeping services are not covered.

(10) Dental care. These services must be medically necessary and provided by a doctor of dental surgery, a doctor of medicine in dentistry, or a doctor of dental medicine. The county may require prior authorization. Items covered are an annual routine dental exam and the least costly service for emergency dental conditions for the removal or filling of a tooth due to abscess, infection, or extreme pain.

(11) Vision care, including eyeglasses. The county may require prior authorization. Items covered are one examination of the eyes by refraction and one pair of prescribed glasses every 24 months.

(12) Emergency medical services. These services are ground ambulance transport services. When the client's condition is life-threatening and requires the use of special equipment, life support systems, and close monitoring by trained attendants while en route to the nearest appropriate facility, ground ambulance transport is an emergency service.

(13) Physical therapy services. These services must be medically necessary and may be covered if provided in a physician's office, a therapist's office, in an outpatient rehabilitation or free-standing rehabilitation facility, or in a licensed hospital. Services must be within the provider's scope of practice, as defined by Texas Occupations Code Chapter 453.

(14) Occupational therapy services. These services must be medically necessary and may be covered if provided in a physician's office, a therapist's office, in an outpatient rehabilitation or free-standing rehabilitation facility, or in a licensed hospital. Services must be within the provider's scope of practice, as defined by Texas Occupations Code Chapter 454.

(15) Other medically necessary services or supplies that the local governmental municipality/entity determines to be cost effective.

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) 438-2350



CHAPTER 554. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

The Texas Health and Human Services Commission (HHSC) adopts amendments to §554.101, concerning Definitions; §554.405, concerning Additional Requirements for Trust Funds in Medicaid-certified Facilities; §554.601, concerning Freedom from Abuse, Neglect, and Exploitation; and §554.1920, concerning Operating Policies and Procedures.

The amendments to §554.101 and §554.1920 are adopted without changes to the proposed text as published in the March 15, 2024, issue of the *Texas Register* (49 TexReg 1638). These rules will not be republished.

The amendments to §554.405 and §554.601 are adopted with changes to the proposed text as published in the March 15, 2024, issue of the *Texas Register* (49 TexReg 1638). These rules will be republished.

BACKGROUND AND JUSTIFICATION

The amended rules implement two bills from the 88th Legislature, Regular Session, 2023. House Bill (H.B.) 1009 relates to employment suspension for nursing facility employees accused of committing reportable conduct such as abuse, neglect, or exploitation. Senate Bill (S.B.) 240 relates to health facility employee workplace violence prevention in facilities, including nursing facilities. Non-substantive edits update references in the rules.

COMMENTS

The 31-day comment period ended April 15, 2024.

During this period, HHSC received comments regarding the proposed rules from five commenters: a nursing facility (NF) provider, the Texas Nurses Association, the Texas Health Care Association, Disability Rights Texas, and the Texas Hospital Association. A summary of comments relating to the rules and responses from HHSC follows.

Comment: One commenter suggested HHSC review definitions used in H.B. 4696, 88th Legislature, Regular Session, 2023, which was passed after the enrollment of H.B. 1009, to determine if changes to definitions are necessary.

Response: No changes to rule were necessary. H.B. 1009 adds a definition for "reportable conduct" that encompasses abuse, neglect, and exploitation (ANE) in Texas Government Code §531.02486. H.B. 4696 does not add a definition for "reportable conduct" and does not include definitions for ANE. H.B. 4696 does describe the process to investigate a report of ANE, but it is outside the scope of this rule.

Comment: One commenter recommended that the definition of "abuse" as it appears in §554.101(1) be modified to be consistent with the definition of abuse in Title 26, Texas Administrative Code, Chapter 711 (26 TAC Chapter 711) and Title 25, Texas Administrative Code, Chapter 417 (25 TAC Chapter 417), which regulate settings other than a NF, such as home and community support services agencies or mental health facilities. The commenter further stated that revising the definition of "abuse" would make it consistent with the definition of an "adverse event" in §554.101(9) and the definition used for "reportable conduct" in §554.101(123).

Response: HHSC declines to make the change. Definitions used in the NF rules must be consistent with Texas Health and Safety Code, Chapters 242 and 260A, as well as align with Title 42, Code of Federal Regulations, Part 483. The definitions in 26 TAC Chapter 417 and 25 TAC Chapter 711 are not specific to NFs and are not consistent with these state statutes or federal regulations applicable to NFs.

Comment: One commenter recommended modifying the definition of "incident" in §554.101(53) to be proactive and not limit incidents to situations in which accidents or injuries occurred.

Response: HHSC declines to make this change as the recommended change would affect other sections that are not open in this project. HHSC will consider making the change in future rule projects.

Comment: One commenter was supportive of the definition of "reportable conduct" but pointed out the inconsistency between the definition of "abuse," which is limited to harm, and "reportable conduct," which allows for situations that may have caused harm.

Response: HHSC declines to make this change as the definition of "reportable conduct" is specified by H.B. 1009.

Comment: One commenter stated that the definition of "restraint hold" in §554.101(130) fails to differentiate between a manual and a mechanical restraint and does not provide the necessary protections related to the use of mechanical restraints. The commenter recommended using language from 25 TAC §415.253 and §415.260, which address initiation, evaluations, releases, and §415.261 for time limitations.

Response: HHSC declines to make this change as 25 TAC §§415.253, 425.260, and 415.261 do not apply to NFs.

Comment: Ten commenters were not in favor of decreasing the number of days to complete corrective action actions from 60 to 30 days as it appears in §554.405(s)(6) and (7).

Response: HHSC agrees and reverted rule language back to 60 days to complete corrective actions.

Comment: One commenter expressed support for the new language in §554.601(c)(1)(D) and stated that it increases protections to vulnerable residents.

Response: HHSC appreciates the support of the rule. No changes to the rule are necessary.

Comment: One commenter suggested clarifying language in §554.601(c)(1)(D), specifically identifying and referencing the appeals process that an employee may undertake.

Response: HHSC declines to make the change as the appeal process may be different for each individual depending on the type of license the individual holds. HHSC notifies the employer and each individual staff member of the applicable appeals process.

Comment: One commenter recommended moving the definition of "behavioral emergency" from §554.601(d) to §554.101 and asked HHSC to consider using the definition found in 25 TAC §415.253(2).

Response: HHSC declines to make the change. The definition of "behavioral emergency" is only used in 26 TAC §554.601.

Comment: One commenter recommended adding language to stipulate that use of a mechanical restraint must be ordered by a

physician, entered into the treatment plan, and include the clinical justification for the use of the restraint and a timeframe for re-evaluation of the order.

Response: HHSC agrees and revised the rule at §554.601(d).

Comment: One commenter voiced support for the proposed amendment to §554.1920(g), requiring a NF to adopt workplace violence prevention policies and procedures.

Response: HHSC appreciates the support of the rule. No changes to rule are necessary.

Comment: One commenter suggested that §554.1920(g) should provide an alternative for the composition of the workplace violence prevention committee. The commenter also stated that the required workplace violence prevention policies and plan required by S.B. 240 must take into consideration that workplace violence in NFs often occurs as a result of residents who have violent or aggressive tendencies and that HHSC should provide detailed rules as contemplated by S.B. 240 to address such situations. Finally, the commenter suggested that the rules should not go into effect any earlier than September 1, 2024.

Response: HHSC declines to make the change since HHSC cannot change statute through rulemaking. HHSC will issue policy guidance to assist providers in implementing the rule.

Comment: One commenter suggested clarifying the language in §554.1920(g), that a facility must "establish or authorize an existing committee to operate as its workplace violence committee." The commenter also stated that it is the commenter's interpretation that the law does not require a health care facility to hire security service employees.

Response: HHSC declines to make the change as statute defines the composition of the committee.

SUBCHAPTER B. DEFINITIONS

26 TAC §554.101

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Human Resources Code §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program; and Texas Health and Safety Code §242.001, which states that the goal of Chapter 242 is to ensure that NFs in Texas deliver the highest possible quality of care and establish the minimum acceptable levels of care for individuals who are living in a NF.

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 29, 2024.

TRD-202404065



SUBCHAPTER E. RESIDENT RIGHTS

26 TAC §554.405

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Human Resources Code §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program; and Texas Health and Safety Code §242.001, which states that the goal of Chapter 242 is to ensure that NFs in Texas deliver the highest possible quality of care and establish the minimum acceptable levels of care for individuals who are living in a NF.

§554.405. Additional Requirements for Trust Funds in Medicaid-certified Facilities.

(a) Deposit of funds. The facility must keep funds received from a resident for holding, safeguarding, and accounting, separate from the facility's funds.

(1) This separate account must be identified "(Name of Facility), Resident's Trust Fund Account," or by a similar designation that shows a fiduciary relationship exists between a resident and the facility.

(2) A facility may commingle the trust funds of Medicaid residents and private-pay residents.

(3) If the funds are commingled, the facility must provide, upon request, the following records to HHSC, the Texas Office of the Attorney General Medicaid Fraud Control Unit, and the U.S. Department of Health and Human Services:

(A) copies of release forms signed and dated by each private-pay resident or resident representative whose funds are commingled; and

(B) legible copies of the trust fund records of private-pay residents whose funds are commingled.

(4) The facility must maintain the forms and records described in paragraph (3) of this subsection in the same manner as the financial records of Medicaid residents as specified in this section.

(5) A facility must ensure that a release form described in paragraph (3)(A) of this subsection:

(A) includes permission for the facility to maintain trust fund records of private-pay residents in the same manner as those of Medicaid residents;

(B) is obtained from a private-pay resident upon admission or at the time of request for trust fund services; and

(C) includes a provision allowing inspection of the private-pay resident's trust fund records by the agencies described in paragraph (3) of this subsection.

(b) Funds in excess of \$50. The facility must deposit any residents' personal funds in excess of \$50 in an interest-bearing account (or accounts) that is separate from any of the facility's operating accounts and that credits all interest earned on the residents' funds to that account. In pooled accounts, there must be a separate accounting for each resident's share.

(c) Funds less than \$50. The facility may maintain a resident's personal funds that do not exceed \$50 in a noninterest-bearing account, interest-bearing account, or petty cash fund.

(d) Accounting and records.

(1) The facility must:

(A) establish and maintain current, written, individual records of all financial transactions involving a resident's personal funds that the facility is holding, safeguarding, and accounting;

(B) keep these records in accordance with:

(i) the American Institute of Certified Public Accountants' Generally Accepted Accounting Principles; and

(ii) the requirements of law for a fiduciary relationship; and

(C) include at least the following in these records:

(i) resident's name;

(ii) identification of the resident's representative payee and resident representative, and payor source;

(iii) valid letter of guardianship, if any;

(iv) valid power of attorney, if any;

(v) resident's admission and discharge dates;

(vi) resident's trust fund ledger containing the following:

(I) description of each transaction;

(II) the date and amount of each deposit and withdrawal;

(III) the name of the person who accepted any withdrawn funds;

(IV) the balance after each transaction; and

(V) amount of interest earned, posted at least quarterly;

(vii) receipts for purchases and payments, including cash-register tapes or sales statements from a seller;

(viii) written requests for personal funds from the trust fund account; and

(ix) written requests for specific brands, items, or services.

(2) The facility must maintain the following as general trust fund records:

(A) valid trust fund trial balance;

(B) petty cash logs;

(C) bank statements for trust fund and operating accounts;

- (D) trust fund checkbook and register;
- (E) trust fund account monthly reconciliations;
- (F) trust fund bank account agreement form;
- (G) applied income ledgers;
- (H) applied income payment plans from HHSC;
- (I) proof of surety bond;
- (J) written agreements (e.g., bed hold, private room);

and

- (K) facility census, admission, discharge, and leave records.

(3) A resident must approve a withdrawal from the resident's personal funds by signing a document that shows the resident's approval and the date of the approval.

(4) Except as provided in subparagraph (B) of this paragraph, a facility must obtain a receipt for the purchase of an item or service.

- (A) The receipt must contain:

- (i) the resident's name;
- (ii) the date the receipt was written or created;
- (iii) the amount of funds spent;
- (iv) the specific item or service purchased;
- (v) the name of the business from which the purchase was made; and
- (vi) the signature of the resident.

- (B) A receipt is not required if:

- (i) a purchase is made with funds withdrawn in accordance with paragraph (3) of this subsection;
- (ii) a purchase is made by the resident, a resident representative, or an individual, other than facility personnel, authorized in writing by the resident; or
- (iii) the item purchased costs one dollar or less.

(5) If a facility cannot obtain the signature of a resident as required by paragraph (3) or (4)(A)(vi) of this subsection, the facility must obtain the signature of a witness. The witness may not be the person responsible for accounting for the resident's trust funds, that person's supervisor, or the person who accepts the withdrawn funds or who sells the item being purchased. The facility and HHSC staff must be able to identify the witness's name, address, and relationship to the resident or facility.

(e) Notice of certain balances. The facility must notify each resident that receives Medicaid benefits:

(1) if the amount in the resident's account reaches \$200 less than Supplemental Security Income (SSI) resource limit for one person, specified in §1611(a)(3)(B) of the Social Security Act; and

(2) that, if the amount in the account, in addition to the value of the resident's other nonexempt resources, reaches the SSI resource limit for one person, the resident may lose eligibility for Medicaid or SSI.

- (f) Conveyance upon death.

(1) Upon the death of a resident with a personal fund deposited with the facility, the facility must convey, within 30 days af-

ter the date of the death, the resident's funds and a final accounting of those funds to the individual or probate jurisdiction administering the resident's estate, or make a bona fide effort to locate the resident representative or heir to the estate.

(2) If a facility is not able to convey funds in accordance with paragraph (1) of this subsection, the facility must, within 30 days after the resident's death;

(A) hold the funds by depositing them in a separate account or maintaining them in an existing account, designating on the account records that the resident is deceased; or

(B) submit funds to HHSC in accordance with paragraph (4) of this subsection.

(3) If the facility holds funds in accordance with paragraph (2)(A) of this subsection:

(A) the facility must provide HHSC with a notarized affidavit that contains:

- (i) the resident's name;
- (ii) the amount of funds being held;
- (iii) a description of the facility's efforts to locate a resident representative or heir;
- (iv) a statement acknowledging that the funds are not the property of the facility, but the property of the deceased resident's estate; and

(v) a statement that the facility will hold the funds until they are conveyed to a resident representative or heir or submitted to HHSC in accordance with paragraph (4) of this subsection;

(B) the facility must submit the funds to HHSC in accordance with paragraph (4) of this subsection within 180 days after the resident's death; and

(C) funds held by a facility in accordance with this paragraph may be monitored or reviewed by HHSC or the Office of Inspector General.

(4) A facility must submit unclaimed funds to HHSC, Accounts Receivable.

(A) The funds must be identified as money that will escheat to the state.

(B) If the facility held the funds in accordance with paragraph (3) of this subsection, the facility must include the notarized affidavit described in paragraph (3)(A) of this subsection.

(g) Assurance of financial security. The facility must purchase a surety bond, or otherwise provide assurance satisfactory to the Secretary of Health and Human Services to ensure the security of all personal funds of residents deposited with the facility.

(1) The amount of a surety bond must equal the average monthly balance of all the facility's resident trust fund accounts for the 12-month period preceding the bond issuance or renewal date.

(2) Resident trust fund accounts are specific only to the single facility purchasing a resident trust fund surety bond.

(3) If a facility employee is responsible for the loss of funds in a resident's trust fund account, the resident, the resident's family, and the resident representative are not obligated to make any payments to the facility that would have been made out of the trust fund had the loss not occurred.

(h) Items and services that may not be charged to a resident's personal funds.

(1) The facility may not impose a charge against the personal funds of a resident for any item or service for which payment is made under Medicaid or Medicare.

(2) Items or services included in Medicare or Medicaid payment that may not be billed to the resident's personal funds by the facility include:

(A) nursing services as required in §554.1001 of this chapter (relating to Nursing Services);

(B) dietary services as required in §554.1101 of this chapter (relating to Food and Nutrition Services);

(C) an activities program as required in §554.702 of this chapter (relating to Activities);

(D) room and bed maintenance services;

(E) routine personal hygiene items and services as required to meet the needs of the resident, including:

(i) hair hygiene supplies, including shampoo, comb, and brush;

(ii) bath soaps, disinfecting soaps, or specialized cleansing agents when indicated to treat special skin problems or to fight infection;

(iii) razor and shaving cream;

(iv) toothbrush, toothpaste, and dental floss;

(v) denture adhesive and denture cleanser;

(vi) moisturizing lotion;

(vii) tissues, cotton balls, and cotton swabs;

(viii) deodorant;

(ix) incontinent care and supplies, to include cloth or disposable incontinent briefs;

(x) sanitary napkins and related supplies;

(xi) towels and washcloths;

(xii) hospital gowns;

(xiii) over-the-counter drugs;

(xiv) hair and nail hygiene services; and

(xv) personal laundry; and

(F) medically-related social services as required in §554.703 of this chapter (relating to Social Services General Requirements).

(3) A facility must base necessity for, and type of incontinent brief described in paragraph (2)(E)(ix) of this subsection on an assessment of the resident's medical and psychosocial condition and resulting determination.

(i) Items and services that may be charged to a resident's personal funds. The facility may charge a resident for requested services that are more expensive than or in excess of covered services in accordance with §554.2601 of this chapter (relating to Vendor Payment (Items and Services Included)). The following list contains general categories and examples of items and services that the facility may charge to a resident's personal funds if they are requested by a resident, if the facility informs the resident that there will be a charge, and if payment is not made by Medicare or Medicaid:

(1) telephone;

(2) television or radio for personal use;

(3) personal comfort items, including smoking materials, notions and novelties, and confections;

(4) cosmetics and grooming items and services in excess of those for which payment is made under Medicare or Medicaid;

(5) personal clothing;

(6) personal reading material;

(7) gifts purchased on behalf of a resident;

(8) flowers and plants;

(9) social events and entertainment offered outside the scope of the activities program, provided under §554.702 of this chapter;

(10) noncovered special care services, such as privately hired nurses and aides;

(11) private room, except when therapeutically required, such as isolation for infection control;

(12) specially-prepared or alternative food requested instead of the food generally prepared by the facility, as required in §554.1101 of this chapter; and

(13) incontinent briefs if the resident representative submits a written request to the facility and the attending physician and director of nurses (DON) determine and document in the clinical record that there is no medical or psychosocial need for supplies.

(j) Request for items or services that may be charged to a resident's personal funds.

(1) The facility can only charge a resident for an item or service not included under §554.2601 of this chapter if the resident or the resident representative specifically requests the item or service.

(2) The facility must not require a resident or resident representative to request any item or service as a condition of admission or continued stay.

(3) The facility must inform, orally and in writing, the resident or resident representative, when the resident or resident representative requests an item or service for which a charge will be made, that there will be a charge for the item or service and the amount of the charge.

(k) Access to financial record. The individual financial record must be available on request to the resident, resident representative, and representative.

(l) Quarterly statement.

(1) The individual financial record must be available, through quarterly statements and on request, to the resident, representative payee, and resident representative.

(2) The statement must reflect any resident's funds that the facility has deposited in an account as well as any resident's funds held by the facility in a petty cash account.

(3) The statement must include at least the following:

(A) balance at the beginning of the statement period;

(B) total deposits and withdrawals;

(C) interest earned, if any;

(D) bank name and location of any account in which the resident's personal funds have been deposited; and

(E) ending balance.

(m) Banking charges.

(1) Charges for checks, deposit slips, and services for pooled checking accounts are the responsibility of the facility and may not be charged to the resident or resident representative.

(2) Bank service charges and charges for checks and deposit slips may be deducted from the individual checking accounts if it is the resident's written, individual choice to have this type of account.

(3) Bank fees on individual accounts established solely for the convenience of the facility are the responsibility of the facility and may not be charged to the resident or resident representative.

(4) The facility may not charge the resident or resident for the administrative handling of either type of account.

(5) If the facility places any part of the resident's funds in savings accounts, certificates of deposit, or any other plan whereby interest or other benefits are accrued, the facility must distribute the interest or benefit to participating residents on an equitable basis. If pooled accounts are used, interest must be prorated on the basis of actual earnings or end-of-quarter balances.

(n) Access to funds.

(1) Disbursements from the trust fund.

(A) A request for funds from the trust fund or trust fund petty cash box may be made, either orally or in writing, by the resident, or resident representative to cover a resident's expenses.

(B) The facility must respond to a request received during normal business hours at the time of the request.

(C) The facility must respond to a request received during hours other than normal business hours immediately at the beginning of the next normal business hours.

(2) Discontinuing trust fund participation.

(A) If a resident or resident representative requests that the facility discontinue managing the resident's personal funds, the facility must return to the resident or resident representative all the resident's personal funds held by the facility, including any interest accrued.

(B) If the request is made during normal business hours, the facility must immediately return the funds.

(C) If the request is made during hours other than normal business hours, the facility must return the funds immediately during the next normal business hours.

(3) Transfer or discharge. If a resident is transferred or discharged from a facility, the facility must, within five working days after the transfer or discharge, return to the resident or resident representative all the resident's personal funds held by the facility, including any interest accrued.

(4) For purposes of this subsection, normal business hours are 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding national holidays.

(o) Handling of monthly benefits. If the Social Security Administration has determined that a Title II and Title XVI SSI benefit to which the resident is entitled should be paid through a representative payee, the provisions in 20 CFR §§404.2001- 404.2065, for Old Age,

Survivors, and Disability Insurance benefits and 20 CFR §§416.601 - 416.665, for SSI benefits apply.

(p) Change of ownership. If the ownership of a facility changes, the former owner must transfer the bank balances or trust funds to the new owner with a list of the residents and their balances. The former owner must get a receipt from the new owner for the transfer of these funds. The former owner must keep this receipt for monitoring or audit purposes.

(q) Alternate forms of documentation. Without HHSC's prior written approval, a facility may not submit alternate forms of documentation, including affidavits, to verify a resident's personal fund expenditures or as proof of compliance with any requirements specified in these requirements for the resident's personal funds.

(r) Limitation on certain charges. A nursing facility may not impose charges for certain Medicaid-eligible individuals, for nursing facility services that exceed the per diem amount established by HHSC for such services. "Certain Medicaid-eligible individuals" means an individual who is entitled to medical assistance for nursing facility services, but for whom such benefits are not being paid because, in determining the individual's income to be applied monthly to the payment for the costs of nursing facility services, the amount of such income exceeds the payment amounts established by HHSC.

(s) Trust fund monitoring and audits.

(1) HHSC may periodically monitor all trust fund accounts to ensure compliance with this section. HHSC notifies a facility of monitoring plans and gives a report of the findings to the facility.

(2) HHSC may, as a result of monitoring, refer a facility to the Office of Inspector General (OIG) for an audit.

(3) The facility must provide all records and other documents required by subsection (d) of this section to HHSC upon request.

(4) HHSC provides the facility with a report of the findings, which may include corrective actions that the facility must take and internal control recommendations that the facility may follow.

(5) The facility may request an informal review in accordance with subsection (t) of this section or a formal hearing in accordance with subsection (u) of this section to dispute the report of findings.

(6) If the facility does not request an informal review or a formal hearing and the report of findings requires corrective actions, the facility must complete corrective actions within 60 days after receiving the report of findings.

(7) If the facility does not complete corrective actions required by HHSC within 60 days after receiving the report of findings, HHSC may impose a vendor hold on payments due to the facility under the provider agreement until the facility completes corrective actions.

(8) If HHSC imposes a vendor hold in accordance with paragraph (7) of this subsection, the facility may request a formal hearing in accordance with subsection (u)(5) of this section. If the failure to correct is upheld, HHSC continues the vendor hold until the facility completes the corrective actions.

(t) Informal review.

(1) A facility that disputes the report of findings described in subsection (s)(4) of this section may request an informal review under this section. The purpose of an informal review is to provide for the informal and efficient resolution of the matters in dispute and is conducted according to the following procedures.

(A) HHSC must receive a written request for an informal review by United States mail, hand delivery, special mail delivery, or fax no later than 15 days after the date on the written notification of the report of findings described in subsection (s)(4) of this section. If the 15th day is a Saturday, Sunday, national holiday, or state holiday, then the first day following the 15th day is the final day the written request will be accepted. A request for an informal review that is not received by the stated deadline is not granted.

(B) A facility must submit a written request for an informal review to the HHSC Trust Fund Monitoring Unit.

(C) A facility must, with its request for an informal review:

(i) submit a concise statement of the specific findings it disputes;

(ii) specify the procedures or rules that were not followed;

(iii) identify the affected cases;

(iv) describe the reason the findings are being disputed; and

(v) include supporting information and documentation that directly demonstrates that each disputed finding is not correct.

(D) HHSC does not grant a request for an informal review that does not meet the requirements of this subsection.

(2) Informal review process. Upon receipt of a request for an informal review, the Trust Fund Monitoring Unit Manager coordinates the review of the information submitted.

(A) Additional information may be requested by HHSC and must be received in writing no later than 15 days after the date the facility receives the written request for additional information. If the 15th day is a Saturday, Sunday, national holiday, or state holiday, then the first day following the 15th day is the final day the additional information will be accepted.

(B) HHSC sends its written decision to the facility by certified mail, return receipt requested.

(i) If the original findings are upheld, HHSC continues the schedule of deficiencies and requirement for corrective action.

(ii) If the original findings are reversed, HHSC issues a corrected schedule of deficiencies with the written decision.

(iii) If the original findings are revised, HHSC issues a revised schedule of deficiencies including any revised corrective action.

(iv) If the original findings are upheld or revised, the facility may request a formal hearing in accordance with subsection (u) of this section.

(v) If the original findings are upheld or revised and the facility does not request a formal hearing, the facility has 60 days from the date of receipt of the written decision to complete the corrective actions. If the facility does not complete the corrective actions by that date, HHSC may impose a vendor hold. If HHSC imposes a vendor hold, the facility may request a formal hearing in accordance with subsection (u)(5) of this section. If the failure to correct is upheld, HHSC continues the vendor hold until the facility completes the corrective action.

(u) Formal hearing.

(1) The facility must submit a written request for a formal hearing under this section to the HHSC Appeals Division.

(2) The written request for a formal hearing must be received within 15 days after:

(A) the date on the written notification of the report of findings described in subsection (s)(4) of this section; or

(B) the facility receives the written decision sent as described in subsection (t)(2)(B) of this section.

(3) A formal hearing is conducted in accordance with Texas Administrative Code, Title 1, Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act).

(4) No later than 60 days after a final determination is issued as a result of a formal hearing requested by a facility under subsection (s)(8) or (t)(2)(B)(iv) of this section, the facility must complete any corrective action required by HHSC or be subject to a vendor hold on payments due to the facility under the provider agreement until the facility completes corrective action. If HHSC imposes a vendor hold, the facility may request a formal hearing in accordance with paragraph (5) of this subsection. If the failure to correct is upheld, HHSC continues the vendor hold until the facility completes the corrective action.

(5) If HHSC imposes a vendor hold under subsections (s)(7), (t)(2)(B)(v), or (u)(4) of this section, the facility may request a formal hearing within 15 days after receiving notice of the correction failure and the vendor hold. The formal hearing is limited to the issue of whether the facility completed the corrective action.

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

Filed with the Office of the Secretary of State on August 29, 2024.

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Karen Ray
Chief Counsel

Health and Human Services Commission

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Proposal publication date: March 15, 2024

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

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**SUBCHAPTER G. FREEDOM FROM ABUSE,
NEGLECT, AND EXPLOITATION**

26 TAC §554.601

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Human Resources Code §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program; and Texas Health and Safety Code §242.001, which states that the goal of Chapter 242 is to ensure that NFs in Texas deliver the highest possible quality of care and establish the minimum acceptable levels of care for individuals who are living in a NF.

§554.601. *Freedom from Abuse, Neglect, and Exploitation.*

(a) General. The resident has the right to be free from abuse, neglect, misappropriation of resident property, and exploitation as defined in §554.101 of this chapter (relating to Definitions). This includes freedom from any physical or chemical restraint not required to treat the resident's medical symptoms.

(b) Abuse. The resident has the right to be free from verbal, sexual, physical, and mental abuse, corporal punishment, and involuntary seclusion.

(c) Policies and procedures. The facility must develop and implement written policies and procedures that prohibit and prevent mistreatment, abuse, neglect, and exploitation of a resident, and misappropriation of a resident's property.

(1) The facility must:

(A) not use verbal, mental, sexual, or physical abuse, corporal punishment, or involuntary seclusion;

(B) not employ or otherwise engage an individual who has:

(i) been found guilty of abuse, neglect, exploitation, misappropriation of property, or mistreatment of a resident by a court of law;

(ii) had a finding entered into the state nurse aide registry concerning abuse, neglect, exploitation or mistreatment of a resident, or misappropriation of a resident's property;

(iii) been convicted of any crime contained in §250.006, Texas Health and Safety Code; or

(iv) a disciplinary action in effect against the individual's professional license by a state licensure body as a result of a finding of abuse, neglect, exploitation, mistreatment of a resident or misappropriation of a resident's property;

(C) report any knowledge it has of actions by a court of law against an employee that would indicate unfitness for service as a nurse aide or other staff to the state nurse aide registry or licensing authority; and

(D) suspend the employment of an employee who HHSC finds has engaged in reportable conduct, as defined in section §554.101 of this chapter, while the employee exhausts any applicable appeals process, including informal and formal appeals and any hearing or judicial review, pending a final decision by an administrative law judge. A facility must not reinstate the employee's employment or contract during any applicable appeals process.

(2) The written policies and procedures must:

(A) establish protocols to investigate any such allegations; and

(B) include training as required by §554.1929 of this chapter (relating to Staff Development).

(d) Restraints. The facility must ensure that the resident is free from physical or chemical restraints imposed for purposes of discipline or convenience and that are not required to treat the resident's medical symptoms. If the use of restraints is indicated, the facility must use the least restrictive alternative for the least amount of time and document ongoing re-evaluation of the need for restraints.

(1) If physical restraints are used because they are required to treat the resident's medical condition, the restraints must be released and the resident repositioned as needed to prevent deterioration in the resident's condition. Residents must be monitored hourly and, at a min-

imum, restraints must be released every two hours for a minimum of ten minutes, and the resident repositioned.

(2) A facility must not administer to a resident a restraint that:

(A) obstructs the resident's airway, including a procedure that places anything in, on, or over the resident's mouth or nose;

(B) impairs the resident's breathing by putting pressure on the resident's torso;

(C) interferes with the resident's ability to communicate; or

(D) places the resident in a prone or supine hold.

(3) A behavioral emergency is a situation in which severely aggressive, destructive, violent, or self-injurious behavior exhibited by a resident:

(A) poses a substantial risk of imminent probable death of, or substantial bodily harm to, the resident or others;

(B) has not abated in response to attempted preventive de-escalatory or redirection techniques;

(C) could not reasonably have been anticipated; and

(D) is not addressed in the resident's comprehensive care plan.

(4) If restraint is used in a behavioral emergency, the facility must use only an acceptable restraint hold. An acceptable restraint hold is a hold in which the resident's limbs are held close to the body to limit or prevent movement and that does not violate the provisions of paragraph (2) of this subsection.

(5) A staff person may use a restraint hold only for the shortest period of time necessary to ensure the protection of the resident or others in a behavioral emergency.

(6) A facility may adopt policies that allow less use of restraint than allowed by the rules of this chapter.

(7) A resident, or the resident's legally authorized representative, must agree to the use of a physical restraint in accordance with §554.402 of this chapter (relating to Exercise of Rights) and §554.406 of this chapter (relating to Free Choice).

(8) A physical restraint must be ordered by a physician. The order must include why the restraint is necessary to treat the resident's medical condition and the specified timeframe for re-evaluation of the order.

(9) Use of restraints and their release must be documented in the resident's clinical record and in the resident's care plan in accordance with §554.802 of this chapter (relating to Comprehensive Person-Centered Care Planning).

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) 438-3161

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SUBCHAPTER T. ADMINISTRATION

26 TAC §554.1920

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Human Resources Code §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program; and Texas Health and Safety Code §242.001, which states that the goal of Chapter 242 is to ensure that NFs in Texas deliver the highest possible quality of care and establish the minimum acceptable levels of care for individuals who are living in a NF.

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

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CHAPTER 555. NURSING FACILITY ADMINISTRATORS

The Texas Health and Human Services Commission (HHSC) adopts amendments to §555.2, concerning Definitions; §555.3, concerning Schedule of Fees; §555.11, concerning Application Requirements; §555.12, concerning Licensure Requirements; §555.13, concerning Internship Requirements; §555.14, concerning Preceptor Requirements; §555.15, concerning Preceptor Certification; §555.16, concerning Preceptor Certification Renewal; §555.18, concerning Examinations and Requirements to Take the Examinations; §555.31, concerning Initial License; §555.32, concerning Provisional License; §555.33, concerning Duplicate License; §555.34, concerning License Renewal; §555.35, concerning Continuing Education Requirements for License Renewal; §555.36, concerning Late Renewals; §555.38, concerning Inactive Status; §555.39, concerning Voluntary Surrender of a License; §555.40, concerning Reinstatement; §555.41, concerning Licensure of Persons with Criminal Backgrounds; §555.42, concerning Alternate Licensing Requirements for Military Service Personnel; §555.51, concerning Referral and Complaint Procedures; §555.53, concerning Formal Hearings; §555.54, concerning Rule of Statutory Violations; §555.55, concerning Violations of Standards of Conduct; §555.56, concerning Violations by Unlicensed Persons; and §555.57, concerning Schedule of Sanctions.

The amendments to §§555.2, 555.3, 555.11 - 555.16, 555.18, 555.31 - 555.36, 555.38 - 555.42, 555.53, 555.54, 555.56, and 555.57 are adopted without changes to the proposed text as published in the March 15, 2024, issue of the *Texas Register* (49 TexReg 1652). These rules will not be republished.

The amendments to §555.51 and §555.55 are adopted with changes to the proposed text as published in the March 15, 2024, issue of the *Texas Register* (49 TexReg 1652). These rules will be republished.

BACKGROUND AND JUSTIFICATION

The amended rules implement two bills from the 88th Texas Legislature, Regular Session, 2023. House Bill (H.B.) 4123 relates to HHSC obtaining criminal history information from the Federal Bureau of Investigation (FBI) and Texas Department of Public Safety for nursing facility administrator (NFA) applicants. Senate Bill (S.B.) 681 relates to Texas Occupation Code, Chapter 53, exemption for HHSC Long-Term Care Regulation (LTCR)-regulated Nursing Facility Administrators. This rule project adopts revisions related to the Texas Unified Licensure Information Portal (TULIP), with the purpose of changing from a paper process to a digital process. Non-substantive edits update references in the rules.

COMMENTS

The 31-day comment period ended April 15, 2024.

During this period, HHSC received comments regarding the proposed rules from two commenters: the Texas Health Care Association and Disability Rights Texas. A summary of comments relating to the rules and responses from HHSC follows.

Comment: One commenter suggested that the proposed rule does not provide any alternatives to the electronic process for application and other licensure and certification provisions under TULIP.

Response: HHSC declines to make any changes in response to this comment. TULIP is the authorized system for applications.

Comment: One commenter recommended that, depending on whether the form referenced in §555.51(c) is intended for administrators or for use by anyone, language should be added to clarify that intent and delineate how the form will be sent and the timeframe in which it will be sent.

Response: HHSC partially agrees. HHSC revised §555.51(c) to specify the title and form number, as well as that the form is available on the HHSC website.

Comment: One commenter suggested that HHSC always notify the person filing the complaint of the status and outcome of a complaint or referral in §555.51(j).

Response: HHSC declines to make the change. HHSC informs the complainant when the complainant is known, but some complaints are anonymous.

Comment: One commenter recommended adding intimidation or retaliation to the current language at §555.55(23) related to prohibited actions to interfere with or impede an HHSC investigation.

Response: HHSC agrees and revised the rule to include "intimidation or retaliation."

SUBCHAPTER A. GENERAL INFORMATION

26 TAC §555.2, §555.3

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 §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Human Resources Code §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program; Texas Health and Safety Code §242.302, which grants HHSC the general authority to establish rules consistent with that subchapter and directs HHSC to establish qualifications of applicants for licenses and renewal of licenses issued under that subchapter, as well as set reasonable and necessary administration and implementation fees and continuing education hours required to renew a license under that subchapter.

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

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SUBCHAPTER B. REQUIREMENTS FOR LICENSURE

26 TAC §§555.11 - 555.16, 555.18

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 §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Human Resources Code §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program; Texas Health and Safety Code §242.302, which grants HHSC the general authority to establish rules consistent with that subchapter and directs HHSC to establish qualifications of applicants for licenses and renewal of licenses issued under that subchapter, as well as set reasonable and necessary administration and implementation fees and continuing education hours required to renew a license under that subchapter.

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SUBCHAPTER C. LICENSES

26 TAC §§555.31 - 555.36, 555.38 - 555.42

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 §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Human Resources Code §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program; Texas Health and Safety Code §242.302, which grants HHSC the general authority to establish rules consistent with that subchapter and directs HHSC to establish qualifications of applicants for licenses and renewal of licenses issued under that subchapter, as well as set reasonable and necessary administration and implementation fees and continuing education hours required to renew a license under that subchapter.

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SUBCHAPTER D. REFERRALS, COMPLAINT PROCEDURES, AND SANCTIONS

26 TAC §§555.51, 555.53 - 555.57

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 §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Human Resources Code §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program; Texas Health and Safety Code §242.302, which grants HHSC the general author-

ity to establish rules consistent with that subchapter and directs HHSC to establish qualifications of applicants for licenses and renewal of licenses issued under that subchapter, as well as set reasonable and necessary administration and implementation fees and continuing education hours required to renew a license under that subchapter.

§555.51. Referral and Complaint Procedures.

(a) The Texas Health and Human Services Commission (HHSC) receives and investigates referrals and complaints.

(b) Persons wanting to file a complaint against a licensee may contact HHSC by:

- (1) calling HHSC at the telephone numbers on the HHSC website;
- (2) emailing the complaint to HHSC using the email address on the HHSC website;
- (3) faxing the complaint to HHSC using the fax number on the HHSC website; or
- (4) mailing the complaint to HHSC at the mailing address on the HHSC website.

(c) HHSC sends HHSC Form 5521-NFA, Complaints, to persons wanting to file a complaint. HHSC Form 5521-NFA, Complaints, is also available on the HHSC web page. The complainant must complete, sign, and return the form to HHSC.

(d) If a referral or complaint is received, HHSC notifies the licensee and, if applicable, the person filing the complaint of the:

- (1) alleged rule violation;
- (2) assigned case number; and
- (3) investigator contact information.

(e) HHSC investigates referrals and complaints by first determining if a complaint is within HHSC's authority to investigate and, if it is, by engaging in one or more of the following investigative activities:

- (1) reviewing pertinent documentation maintained by the facility, including financial and resident medical records;
- (2) gathering additional evidence, including licensee and witness statements;
- (3) determining licensee culpability for survey or investigative findings; and
- (4) utilizing the services of a private investigator when special circumstances exist.

(f) HHSC keeps records confidential in accordance with state and federal law.

(g) HHSC prioritizes complaints as follows.

- (1) Priority one complaints allege physical abuse, sexual abuse, neglect, serious injury, death, or immediate jeopardy to resident health or safety. Investigations are initiated within 24 hours of receipt or by the next working day.
- (2) Priority two complaints allege all other types of misconduct by the licensee. Investigations are initiated within 30 days after receipt.

(h) After the investigation is complete, a final report with supporting documentation is given to the Nursing Facility Administrators Advisory Committee (NFAAC) for review and a recommendation on the appropriate action.

(i) After evaluating the NFAAC's recommendation, HHSC decides to:

- (1) impose a sanction;
- (2) collect additional information; or
- (3) dismiss the case.

(j) HHSC notifies the licensee and, if applicable, the person filing a complaint of the status and final outcome of a complaint or referral.

§555.55. Violations of Standards of Conduct.

(a) The Texas Health and Human Services Commission (HHSC) may impose a sanction listed in §555.57 of this subchapter (relating to Schedule of Sanctions) against a licensee for violations of the following nursing facility administrator (NFA) Standards of Conduct.

(1) A licensee must employ sufficient staff to adequately meet the needs of nursing facility residents as determined by care outcomes.

(2) A licensee must ensure that sufficient resources are present to provide adequate nutrition, medications, and treatments to nursing facility residents in accordance with physician orders as determined by care outcomes.

(3) A licensee must promote and protect the rights of nursing facility residents and ensure that employees, contractors, and others respect the rights of residents.

(4) A licensee must ensure that nursing facility residents remain free of chemical and physical restraints unless required by a physician's order to protect a nursing facility resident's health and safety.

(5) A licensee must report and direct nursing facility staff to report to the appropriate government agency any suspected case of abuse, neglect, or misappropriation of resident property as defined in §555.2 of this chapter (relating to Definitions).

(6) A licensee must ensure that the nursing facility is physically maintained in a manner that protects the health and safety of the residents and the public.

(7) A licensee must notify and direct employees to notify an appropriate government agency of any suspected cases of criminal activity as defined by state and federal laws.

(8) A licensee must post in the nursing facility where the licensee is employed the notice provided by HHSC that gives the address and telephone number for reporting complaints against an NFA. The notice must be posted in a conspicuous place and in clearly legible type.

(9) A licensee must not knowingly or through negligence commit, direct, or allow actions that result or could result in inadequate care, harm, or injury to a nursing facility resident.

(10) A licensee must not knowingly or through negligence allow a nursing facility employee to harm a nursing facility resident by coercion, threat, intimidation, solicitation, harassment, theft of personal property, or cruelty.

(11) A licensee must not knowingly or through negligence allow or direct an employee to contradict or alter in any manner the orders of a physician regarding a nursing facility resident's medical or therapeutic care.

(12) A licensee must not knowingly commit or through negligence allow another individual to commit an act of abuse, neglect,

or misappropriation of resident property as defined in §555.2 of this chapter.

(13) A licensee must not permit another individual to use his or her license or allow a nursing facility to falsely post his or her license.

(14) A licensee must not advertise or knowingly participate in the advertisement of nursing facility services in a manner that is fraudulent, false, deceptive, or misleading in form or content.

(15) A licensee must not knowingly allow, aid, or abet a violation by another NFA of the Texas Health and Safety Code, Chapter 242, Subchapter I (text of Subchapter I effective until federal determination of failure to comply with federal regulations), or the agency's rules adopted under that subchapter and must report such violations to HHSC.

(16) A licensee must not make or knowingly allow an employee, contractor, or volunteer to make misrepresentations or fraudulent statements about the operation of a nursing facility.

(17) A licensee must not knowingly allow an employee's, a contractor's, or another person's action or inaction to result in harassment or intimidation of any person for purposes of coercing that person to use the services or equipment of a particular health agency or facility.

(18) A licensee must not falsely bill for goods or services or allow another person to bill for goods or services other than those that have actually been delivered.

(19) A licensee must not make or file a false report or allow an employee, contractor, or volunteer to make or file a report that the licensee knows to be false.

(20) A licensee must not intentionally fail to file a report or record required by state or federal law, impede or obstruct such filings, or induce another person to impede or obstruct such filings.

(21) A licensee must not use or knowingly allow employees or others to use alcohol, narcotics, or other drugs in a manner that interferes with the performance of the licensee's or other person's duties.

(22) A licensee must not knowingly or through negligence violate any confidentiality provisions prescribed by state or federal law concerning a nursing facility resident.

(23) A licensee must not interfere with or impede an investigation by withholding or misrepresenting facts to HHSC representatives, or by using threats, harassment, intimidation, or retaliation against any person involved or participating in the investigation.

(24) A licensee must not display a license issued by HHSC that is reproduced, altered, expired, suspended, or revoked.

(25) A licensee must not, knowingly or through negligence, allow an employee or other individual to mismanage a resident's personal funds deposited with the nursing facility.

(26) A licensee must not harass or intimidate an employee or other representative of HHSC, other government agencies, or their representatives.

(27) A licensee must not offer or give any gift, loan, or other benefit to a person working for HHSC unless the benefit is offered or given on account of kinship or a personal relationship independent of the official status of the person working for HHSC.

(b) Negligence, as referenced in the Standards of Conduct in subsection (a) of this section, means the failure of a licensee to use such

care as a reasonably prudent and careful licensee would use in similar circumstances, or failure to act as a reasonably prudent licensee would in similar circumstances.

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

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CHAPTER 556. NURSE AIDES

The Texas Health and Human Services Commission (HHSC) adopts amendments to §556.2, concerning Definitions; §556.3, concerning NATCEP Requirements; §556.4, concerning Filing and Processing an Application for a Nurse Aide Training and Competency Evaluation Program (NATCEP); §556.5, concerning Program Director, Program Instructor, Supplemental Trainers, and Skills Examiner Requirements; §556.6, concerning Competency Evaluation Requirements; §556.7, concerning Review and Reapproval of a Nurse Aide Training and Competency Evaluation Program (NATCEP); and §556.8, concerning Withdrawal of Approval of a NATCEP; §556.9, concerning Certificate of Registration, Nurse Aide Registry, and Renewal; new §556.10, concerning Certification of Individuals with Criminal Convictions in Their Backgrounds; §556.11, concerning Expiration of the Certificate of Registration and Active Status; §556.12, concerning Waiver, Reciprocity, and Exemption Requirements; §556.13, concerning Findings and Inquiries; and §556.14, concerning Alternative Licensing Requirements for Military Service Personnel; and the repeal of §556.10, concerning Expiration of the Certificate of Registration and Active Status; §556.11, concerning Waiver, Reciprocity, and Exemption Requirements; §556.12, concerning Findings and Inquiries; §556.13, concerning Alternate Licensing Requirements for Military Service Personnel; and §556.100, concerning Nurse Aide Transition from Temporary Status.

The amendments to §§556.4, 556.5, 556.7, and 556.8; new §§556.11, 556.13, and 556.14; and the repeal of §§556.10 - 556.13 and 556.100 are adopted without changes to the proposed text as published in the March 29, 2024, issue of the *Texas Register* (49 TexReg 2039). These rules will not be republished.

The amendments to §§556.2, 556.3, 556.6, 556.9, 556.10, and 556.12 are adopted with changes to the proposed text as published in the March 29, 2024, issue of the *Texas Register* (49 TexReg 2039). These rules will be republished.

BACKGROUND AND JUSTIFICATION

The amendments, new sections, and repeals implement one bill from the 88th Texas Legislature, Regular Session, 2023. Senate Bill (S.B.) 681 relates to the Texas Occupations Code, Chapter 53, exemption for HHSC Long-Term Care Regulation (LTCR)-regulated Certified Nurse Aides (CNAs). Implementation of House Bill (H.B.) 4123 was removed from this project.

Implementation of this bill would allow HHSC to pursue Federal Bureau of Investigation (FBI)-based fingerprinting of certified nurse aides. It was removed from this project because HHSC is currently pursuing FBI approval of its processes; however, that approval was not received prior to the deadline for rule adoption implementation. Once approved, HHSC will re-initiate rulemaking to implement this legislation. The amendments specify form numbers in addition to form names to ensure stakeholders understand which form is being referenced. This rule project adopts revisions related to the Texas Unified Licensure Information Portal (TULIP), with the purpose of changing from a paper process to a digital process. Non-substantive edits update references in the rules.

COMMENTS

The 31-day comment period ended April 29, 2024.

During this period, HHSC received comments regarding the proposed rules from three commenters: two from HHSC and one from Texas Health Care Association.

Comment: One commenter expressed general concern related to Chapter 556 and the costs incurred by a CNA by requiring fingerprinting, stating that a voucher or pass through system should be provided and that statute does not give HHSC the authority to require fingerprinting.

Response: HHSC removed the fingerprint requirement from §§556.6, 556.9, and 556.10 for reasons unrelated to this comment and will propose revisions later. HHSC invites the commenter to resubmit comments at that time.

Comment: One commenter stated that the definition of "facility" and specifically a nursing facility in §556.2(12)(A) does not include facilities that are exempt from licensure, such as those operated by the Department of Veterans Affairs.

Response: HHSC agrees and revised the definitions in §556.2 to include facilities exempt from licensure including facilities operated by the Department of Veterans Affairs.

Comment: One commenter stated that a hospital is defined as a "facility" but that the rule does not clearly state a hospital can be used as a clinical site.

Response: HHSC agrees. HHSC erroneously removed hospitals from the rule and has revised the rule in §556.3 to add hospitals back as a potential clinical site.

26 TAC §§556.2 - 556.14

STATUTORY AUTHORITY

The amendments and new sections are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Human Resources Code §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program; Texas Health and Safety Code §250.0035(d), which provides that the Executive Commissioner of HHSC shall adopt rules necessary to implement §250.0035, related to issuance and renewal of certificates of registration and the regulation of nurse aides as necessary to protect the public health and safety; and Texas Health

and Safety Code, Chapter 250, which requires HHSC to maintain a Nurse Aide Registry.

§556.2. 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 (relating to Indecent Exposure) or Texas Penal Code, Chapter 22 (relating to Assaultive Offenses), sexual harassment, sexual coercion, or sexual assault.

(2) Act--The Social Security Act, codified at United States Code, Title 42, Chapter 7.

(3) Active duty--Current full-time military service in the armed forces of the United States or as a member of the Texas military forces, as defined in Texas Government Code §437.001, or similar military service of another state.

(4) Active status--The designation given to a nurse aide listed on the NAR who is eligible to work in a nursing facility.

(5) Armed forces of the United States--The Army, Navy, Air Force, Space Force, Coast Guard, or Marine Corps of the United States, including reserve units of those military branches.

(6) Classroom training--The teaching of curriculum components through in-person instruction taught in a physical classroom location, which may include skills practice through online instruction taught in a virtual classroom location, or through an HHSC-approved computer-based training (CBT).

(7) Clinical training--The teaching of hands-on care of residents in a nursing facility under the required level of supervision of a licensed nurse, which may include skills practice prior to performing the skills through hands-on care of a resident. The clinical training provides the opportunity for a trainee to learn to apply the classroom training to the care of residents with the assistance and required level of supervision of the instructor.

(8) Competency evaluation--A written or oral examination and a skills demonstration administered by a skills examiner to test the competency of a trainee.

(9) Competency evaluation application--HHSC Form 5507-NAR, Request for Waiver of Nurse Aide Training and Competency Evaluation, used to request HHSC approval to take a competency evaluation.

(10) Direct supervision--Observation of a trainee performing skills in a NATCEP.

(11) Employee misconduct registry (EMR)--The registry maintained by HHSC in accordance with Texas Health and Safety Code, Chapter 253, to record findings of reportable conduct by certain unlicensed employees.

(12) Facility--Means:

(A) a nursing facility licensed or exempt from licensure under Texas Health and Safety Code, Chapter 242;

(B) a licensed intermediate care facility for an individual with an intellectual disability or related condition licensed under Texas Health and Safety Code, Chapter 252;

(C) a type B assisted living facility licensed under Texas Health and Safety Code, Chapter 247;

(D) a general or special hospital licensed under Texas Health and Safety Code, Chapter 241; or

(E) a hospice inpatient unit licensed under Texas Health and Safety Code, Chapter 142.

(13) Facility-based NATCEP--A NATCEP offered by or in a nursing facility.

(14) General supervision--Guidance and ultimate responsibility for another person in the performance of certain acts.

(15) HHSC--The Texas Health and Human Services Commission or its designee.

(16) Infection control--Principles and practices that prevent or stop the spread of infections in the facility setting.

(17) Informal Review (IR)--An opportunity for a nurse aide to dispute a finding of misconduct by providing testimony and supporting documentation to an impartial HHSC staff person.

(18) Licensed health professional--A person licensed to practice healthcare in the state of Texas including:

- (A) a physician;
- (B) a physician assistant;
- (C) a physical, speech, or occupational therapist;
- (D) a physical or occupational therapy assistant;
- (E) a registered nurse;
- (F) a licensed vocational nurse; or
- (G) a licensed social worker.

(19) Licensed nurse--A registered nurse or licensed vocational nurse.

(20) Licensed vocational nurse (LVN)--An individual licensed by the Texas Board of Nursing to practice as a licensed vocational nurse.

(21) Military service member--A person who is on active duty.

(22) Military spouse--A person who is married to a military service member.

(23) Military veteran--A person who has served on active duty and who was discharged or released from active duty.

(24) Misappropriation of resident property--The deliberate misplacement, exploitation, or wrongful, temporary or permanent, use of a resident's belongings or money without the resident's consent.

(25) NATCEP--Nurse Aide Training and Competency Evaluation Program.

(26) Neglect--The failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness.

(27) Non-facility-based NATCEP--A NATCEP not offered by or in a nursing facility.

(28) Nurse aide--An individual who provides nursing or nursing-related services to residents in a facility under the supervision of a licensed nurse and who has successfully completed a NATCEP or has been determined competent by waiver or reciprocity and who has been issued a certificate of registration. This term does not include an individual who is a licensed health professional or a registered dietitian or who volunteers services without monetary compensation.

(29) Nurse aide curriculum--The publication titled Texas Curriculum for Nurse Aides in Long Term Care Facilities, developed by HHSC.

(30) Nurse Aide Registry (NAR)--A listing of nurse aides, maintained by HHSC, that indicates if a nurse aide has active status, revoked status, or is unemployable based on a finding of having committed an act of abuse, neglect, or misappropriation of resident property.

(31) Nurse aide training and competency evaluation program (NATCEP)--A program approved by HHSC to train and evaluate an individual's ability to work as a nurse aide in a nursing facility.

(32) Nurse aide training and competency evaluation program (NATCEP) application--An HHSC form in the online portal used to request HHSC initial approval to offer a NATCEP, to renew approval to offer a NATCEP, or to request HHSC approval of changed information in an approved NATCEP application.

(33) Nursing services--Services provided by nursing personnel that include, but are not limited to:

- (A) promotion and maintenance of health;
- (B) prevention of illness and disability;
- (C) management of health care during acute and chronic phases of illness;
- (D) guidance and counseling of individuals and families; and
- (E) referral to other health care providers and community resources when appropriate.

(34) Online portal--The Texas Unified Licensure Information Portal (TULIP), through which licensing application activities are completed.

(35) Performance record--An evaluation of a trainee's performance of major duties and skills taught by a NATCEP and documented on HHSC Form 5497-NATCEP, Texas Nurse Aide Performance Record.

(36) Person--A corporation, organization, partnership, association, natural person, or any other entity that can function legally.

(37) Personal protective equipment (PPE)--Specialized clothing or equipment, worn by an employee for protection against infectious materials.

(38) Program director--An individual who is approved by HHSC and meets the requirements in §556.5(b) and (d) of this chapter (relating to Program Director, Program Instructor, Supplemental Trainers, and Skills Examiner Requirements).

(39) Program instructor--An individual who is approved by HHSC to conduct the training in a NATCEP and who meets the requirements in §556.5(c) and (d) of this chapter.

(40) Resident--An individual accepted for care or residing in a facility.

(41) Registered nurse (RN)--An individual licensed by the Texas Board of Nursing to practice professional nursing.

(42) Skills examiner--An individual who is approved by HHSC and meets the requirements in §556.5(h) of this chapter.

(43) Trainee--An individual who is enrolled in and attending, but has not completed, a NATCEP.

§556.3. *NATCEP Requirements.*

(a) To train nurse aides, a nursing facility must apply for and obtain approval from HHSC to offer a NATCEP or contract with another entity offering a NATCEP. The nursing facility must participate in Medicare, Medicaid, or both, to apply for approval to be a NATCEP.

(b) A person who wants to offer a NATCEP must file a complete NATCEP application with HHSC through the online portal.

(c) A person applying to offer a NATCEP must submit a separate NATCEP application through the online portal for each location at which training is delivered or administered.

(d) A NATCEP application must identify one or more facilities that the NATCEP uses as a clinical site. The clinical site must have all necessary equipment needed to practice and perform skills training.

(e) A NATCEP may offer clinical training hours in a laboratory setting under the following circumstances:

(1) no appropriate and qualified clinical site is located within 20 miles of the location of the NATCEP; or

(2) HHSC has determined that clinical training provided in a facility poses a risk to an individual's health or safety based on the existence of a disaster declared at the federal or state level. A NATCEP must request the ability to complete clinical training hours in a laboratory setting under the circumstances described in subsection (e)(1) of this section. HHSC will alert the public of the availability of laboratory training under the circumstances described in subsection (e)(2) of this section.

(f) HHSC does not approve a NATCEP offered by or in a nursing facility if, within the previous two years, the nursing facility:

(1) has operated under a waiver concerning the services of a registered nurse under §1819(b)(4)(C)(ii)(II) or §1919(b)(4)(C)(i) - (ii) of the Act;

(2) has been subjected to an extended or partially extended survey under §1819(g)(2)(B)(i) or §1919(g)(2)(B)(i) of the Act;

(3) has been assessed a civil money penalty of not less than \$5,000 as adjusted annually under 45 Code of Federal Regulations (CFR) Part 102 for deficiencies in nursing facility standards, as described in §1819(h)(2)(B)(ii) or §1919(h)(2)(A)(ii) of the Act;

(4) has been subjected to denial of payment under Title XVIII or Title XIX of the Act;

(5) has operated under state-appointed temporary management to oversee the operation of the facility under §1819(h) or §1919(h) of the Act;

(6) had its participation agreement terminated under §1819(h)(4) or §1919(h)(1)(B)(i) of the Act; or

(7) pursuant to state action, closed or had its residents transferred under §1919(h)(2) of the Act.

(g) Clinical training provided by a NATCEP in a facility other than a nursing facility must be provided under the direct supervision of the NATCEP instructor and cannot be delegated to any staff of the facility.

(h) A NATCEP using an assisted living facility as a clinical site may provide clinical training only in those services that are authorized to be provided to residents under Texas Health and Safety Code, Chapter 247.

(i) A NATCEP using an intermediate care facility for an individual with an intellectual disability or related conditions as a clinical site may provide clinical training only in those services that are au-

thorized to be provided to individuals under Texas Health and Safety Code, Chapter 252.

(j) A NATCEP using a hospice inpatient unit as a clinical site may provide clinical training only in those services that are authorized to be provided to clients under Texas Health and Safety Code, Chapter 142.

(k) A NATCEP using a general or special hospital as a clinical site may provide clinical training only in those services that are authorized to be provided to patients under Texas Health and Safety Code, Chapter 241.

(l) A nursing facility that is prohibited from offering a NATCEP under subsection (f) of this section may contract with a person to offer a NATCEP in accordance with §1819(f)(2)(C) and §1919(f)(2)(C) of the Act so long as the person has not been employed by the nursing facility or by the nursing facility's owner and:

(1) the NATCEP is offered to employees of the nursing facility that is prohibited from training nurse aides under subsection (e) of this section;

(2) the NATCEP is offered in, but not by, the prohibited nursing facility;

(3) there is no other NATCEP offered within a reasonable distance from the nursing facility; and

(4) an adequate environment exists for operating a NATCEP in the nursing facility.

(m) A person who wants to contract with a nursing facility in accordance with subsection (l) of this section must submit a completed application to HHSC through the online portal in accordance with §556.4 of this chapter (relating to Filing and Processing an Application for a Nurse Aide Training and Competency Evaluation Program (NATCEP)) and include the name of the prohibited nursing facility in the application. HHSC may withdraw the application within two years of approving it if HHSC determines that the nursing facility is no longer prohibited from offering a NATCEP.

(n) A nursing facility that is prohibited from offering a NATCEP under subsection (f)(3) of this section may request a Centers for Medicare and Medicaid Services waiver of the prohibition related to the civil money penalty in accordance with §1819(f)(2)(D) and §1919(f)(2)(D) of the Act and 42 CFR §483.151(c) if:

(1) the civil money penalty was not related to the quality of care furnished to residents;

(2) the NATCEP submits a request to HHSC for the waiver; and

(3) the Centers for Medicare and Medicaid Services approves the waiver.

(o) A NATCEP must ensure the trainee has completed 100 hours of training. The 100 hours must include:

(1) 60 hours of classroom training:

(A) taught by the NATCEP either in-person or virtually;

or

(B) completed by the trainee through HHSC's computer-based training (CBT) within the preceding 12 months; and

(2) 40 hours of clinical training provided by the NATCEP with at least one program instructor for every 10 trainees.

(p) A NATCEP that provides online training must:

(1) maintain records in accordance with subsection (z) of this section and otherwise comply with this chapter;

(2) adopt, implement, and enforce a policy and procedures for establishing that a trainee who registers in an online training is the same trainee who participates in and completes the course and that describe the procedures the NATCEP uses to:

- (A) verify a trainee's identity;
- (B) ensure protection of a trainee's privacy and personal information; and
- (C) document the hours completed by each trainee; and

(3) verify on the NATCEP application that the online course has the security features required under paragraph (2) of this subsection.

(q) A NATCEP must teach the curriculum established by HHSC and described in 42 CFR §483.152. Except as provided in subsection (r) of this section, the NATCEP must include at least 16 introductory hours of classroom training in the following areas before a trainee has any direct contact with a resident:

- (1) communication and interpersonal skills;
- (2) infection control;
- (3) safety and emergency procedures, including ways to assist someone who is choking, such as the Heimlich maneuver;
- (4) promoting a resident's independence;
- (5) respecting a resident's rights;
- (6) basic nursing skills, including:
 - (A) taking and recording vital signs;
 - (B) measuring and recording height and weight;
 - (C) caring for a resident's environment;
 - (D) recognizing abnormal changes in body functioning and the importance of reporting such changes to a supervisor; and
 - (E) caring for a resident when death is imminent;
- (7) personal care skills, including:
 - (A) bathing;
 - (B) grooming, including mouth care;
 - (C) dressing;
 - (D) toileting;
 - (E) assisting with eating and hydration;
 - (F) proper feeding techniques;
 - (G) skin care; and
 - (H) transfers, positioning, and turning;
- (8) mental health and social service needs, including:
 - (A) modifying the aide's behavior in response to a resident's behavior;
 - (B) awareness of developmental tasks associated with the aging process;
 - (C) how to respond to a resident's behavior;
 - (D) allowing a resident to make personal choices, providing and reinforcing other behavior consistent with the resident's dignity; and

(E) using a resident's family as a source of emotional support;

(9) care of cognitively impaired residents, including:

- (A) techniques for addressing the unique needs and behaviors of a resident with a dementia disorder including Alzheimer's disease;
- (B) communicating with a cognitively impaired resident;
- (C) understanding the behavior of a cognitively impaired resident;
- (D) appropriate responses to the behavior of a cognitively impaired resident; and
- (E) methods of reducing the effects of cognitive impairments;

(10) basic restorative services, including:

- (A) training a resident in self-care according to the resident's abilities;
- (B) use of assistive devices in transferring, ambulation, eating, and dressing;
- (C) maintenance of range of motion;
- (D) proper turning and positioning in bed and chair;
- (E) bowel and bladder training; and
- (F) care and use of prosthetic and orthotic devices; and

(11) a resident's rights, including:

- (A) providing privacy and maintenance of confidentiality;
- (B) promoting the resident's right to make personal choices to accommodate their needs;
- (C) giving assistance in resolving grievances and disputes;
- (D) providing needed assistance in getting to and participating in resident, family, group, and other activities;
- (E) maintaining care and security of the resident's personal possessions;
- (F) promoting the resident's right to be free from abuse, mistreatment, and neglect and the need to report any instances of such treatment to appropriate facility staff; and
- (G) avoiding the need for restraints in accordance with current professional standards.

(r) If a trainee completes HHSC's 60-hour classroom training CBT, a NATCEP must accept proof of completion of the CBT in lieu of the 16 introductory hours of classroom training in subsection (q) of this section and the eight hours of infection control training in subsection (u) of this section. The NATCEP must ensure that the trainee:

- (1) only performs services for which the trainee has been trained and has been found to be proficient by a program instructor;
- (2) is under the direct supervision of a licensed nurse when performing skills as part of a NATCEP until the trainee has been found competent by the program instructor to perform that skill;
- (3) is under the general supervision of a licensed nurse when providing services to a resident after a trainee has been found competent by the program instructor; and

(4) is clearly identified as a trainee during the clinical training portion of the NATCEP.

(s) A NATCEP that fails to accept proof of completion of the classroom training in accordance with subsection (o)(1)(B) of this chapter may be subject to §556.8 of this chapter (relating to Withdrawal of Approval of a NATCEP).

(t) A NATCEP must have a program director and a program instructor when the NATCEP applies for initial approval by HHSC in accordance with §556.7 of this chapter (relating to Review and Reapproval of a Nurse Aide Training and Competency Evaluation Program (NATCEP)) and to maintain HHSC approval. The program director and program instructor must meet the requirements of §556.5(b) - (d) of this chapter (relating to Program Director, Program Instructor, Supplemental Trainers, and Skills Examiner Requirements).

(u) Except as provided in subsection (r) of this section, a NATCEP must teach eight hours of infection control that includes the proper use of personal protective equipment (PPE) before a trainee has any direct contact with a resident.

(v) A NATCEP must verify that a trainee:

- (1) is not listed on the NAR in revoked status;
- (2) is not listed as unemployable on the EMR; and

(3) has not been convicted of a criminal offense listed in Texas Health and Safety Code (THSC) §250.006(a) or convicted of a criminal offense listed in THSC §250.006(b) within the five years immediately before participating in the NATCEP.

(w) A NATCEP must ensure that a trainee:

(1) completes the first 16 introductory hours of training (Section I of the curriculum) before having any direct contact with a resident;

(2) only performs services for which the trainee has been trained and has been found to be proficient by a program instructor;

(3) is under the direct supervision of a licensed nurse when performing skills as part of the NATCEP until the trainee has been found competent by the program instructor to perform that skill;

(4) is under the general supervision of a licensed nurse when providing services to a resident after a trainee has been found competent by the program instructor; and

(5) is clearly identified as a trainee during the clinical training portion of the NATCEP.

(x) A NATCEP must submit a NATCEP application through the online portal to HHSC if the information in an approved NATCEP application changes. The NATCEP may not continue training or start new training until HHSC approves the change. HHSC conducts a review of the NATCEP information if HHSC determines the changes are substantive.

(y) A NATCEP must use HHSC Form 5497-NATCEP, Texas Nurse Aide Performance Record, to document major duties or skills taught, trainee performance of a duty or skill, satisfactory or unsatisfactory performance, and the name of the instructor supervising the performance. At the completion of the NATCEP, the trainee and the employer, if applicable, will receive a copy of the performance record. The NATCEP must maintain a copy of the performance record.

(z) A NATCEP must maintain records for each session of classroom training, whether offered in person or online, and of clinical training, and must make these records available to HHSC or its designees at any reasonable time.

(1) The classroom and clinical training records must include:

(A) dates and times of all classroom and clinical training;

(B) the full name and social security number of each trainee;

(C) a record of the date and time of each classroom and clinical training session a trainee attends;

(D) a final course grade that indicates pass or fail for each trainee; and

(E) a physical or electronic sign-in record for each classroom and clinical training session. An electronic sign-in must include a form of identity verification for the trainee conducted in compliance with the requirements of subsection (p)(2) of this section.

(2) If a trainee completes the classroom training by successfully completing HHSC's CBT, a NATCEP must retain records that include a copy of the trainee's certification of completion for the CBT. The certificate of completion must be issued by HHSC and include the date the trainee completed the CBT.

(3) A NATCEP must provide to HHSC, on the NATCEP application through the online portal, the physical address where all records are maintained and must notify HHSC of any change in the address provided.

(aa) A nursing facility must not charge a nurse aide for any portion of a NATCEP, including any fees for textbooks or other required course materials, if the nurse aide is employed by or has received an offer of employment from a facility on the date the nurse aide begins the NATCEP.

(bb) HHSC reimburses a nurse aide for a portion of the costs incurred by the nurse aide to complete a NATCEP if the nurse aide is employed by or has received an offer of employment from a nursing facility within 12 months of completing the NATCEP.

(cc) HHSC must approve a NATCEP before the NATCEP solicits or enrolls trainees.

(dd) HHSC approval of a NATCEP only applies to the required curriculum and hours. HHSC does not approve additional content or hours.

(ee) A new employee or trainee orientation given by a nursing facility to a nurse aide employed by the facility does not constitute a part of a NATCEP.

(ff) A NATCEP that provides training to renew a nurse aide's listing on the NAR must include training in geriatrics and the care of residents with a dementia disorder, including Alzheimer's disease.

§556.6. *Competency Evaluation Requirements.*

(a) Only HHSC, or an entity HHSC approves, may provide a competency evaluation, which must be administered by a skills examiner at an approved evaluation site.

(b) A trainee is eligible to take a competency evaluation if the trainee has successfully completed the training portion of a NATCEP, as determined by the program director, or is eligible under §556.12 of this chapter (relating to Waiver, Reciprocity, and Exemption Requirements).

(c) If a trainee cannot take a competency evaluation at the NATCEP location where the trainee received training, the trainee may take a competency evaluation at another location approved to offer the evaluation.

(d) An eligible trainee must obtain from the program director a signed competency evaluation application and a certificate or letter of completion of training. The trainee must arrange to take the competency evaluation at an approved location and must follow the instructions on the competency evaluation application.

(e) A NATCEP must:

(1) promptly, after one of its trainees successfully completes the NATCEP training, approve the trainee to take a competency evaluation;

(2) provide the trainee with information regarding scheduling a competency evaluation; and

(3) ensure that the trainee accurately completes the competency evaluation applications.

(f) A trainee must:

(1) take a competency evaluation within 24 months after completing the training portion of a NATCEP;

(2) apply to take the competency evaluation through the online portal;

(3) verify the arrangements for a competency evaluation;

(4) complete a competency evaluation application and submit the application in accordance with application instructions;

(5) request another competency evaluation if the trainee fails a competency evaluation; and

(6) meet any other procedural requirements specified by HHSC or its designated skills examiner.

(g) A competency evaluation must consist of:

(1) a skills demonstration that requires the trainee to demonstrate five randomly selected skills drawn from a pool of skills that are generally performed by nurse aides, including all personal care skills listed in the curriculum; and

(2) a written or oral examination, which includes 60 scored multiple-choice questions selected from a pool of test items that address each course requirement in the curriculum. Written examination questions may be printed in a test booklet with a separate answer sheet or provided in an online testing format as approved by HHSC. An oral examination must be a recorded presentation read from a prepared text in a neutral manner that includes questions to test reading comprehension.

(h) A trainee with a disability, including a trainee with dyslexia as defined in Texas Education Code §51.970 (relating to Instructional Material for Blind and Visually Impaired Students and Students with Dyslexia), may request a reasonable accommodation for the competency evaluation under the Americans with Disabilities Act.

(i) To successfully complete the competency evaluation, a trainee must achieve a score HHSC designates as a passing score on:

(1) the skills demonstration; and

(2) the written or oral examination.

(j) A trainee who fails the skills demonstration or the written or oral examination may retake the competency evaluation twice.

(1) A trainee must be advised of the areas of the competency evaluation that the trainee did not pass.

(2) If a trainee fails a competency evaluation three times, the trainee must complete the training portion of a NATCEP before taking a competency evaluation again.

(k) HHSC informs a trainee before the trainee takes a competency evaluation that HHSC issues a certificate of registration and records successful completion of the competency evaluation on the Nurse Aide Registry (NAR).

(l) HHSC issues the certificate of registration through the online portal and records successful completion of the competency evaluation on the NAR within 30 days after the date the trainee passes the competency evaluation.

(m) A nursing facility must not offer or serve as a competency evaluation site if the nursing facility is prohibited from offering a NATCEP under the provisions of §556.3(f) of this chapter (relating to Nurse Aide Training and Competency Evaluation Program (NATCEP) Requirements).

(n) A trainee may not be charged for any portion of a competency evaluation if the trainee is employed by or has received an offer of employment from a nursing facility on the date the trainee takes the competency evaluation.

(o) HHSC reimburses a nurse aide for a portion of the costs incurred by the individual to take a competency evaluation if the individual is employed as a nurse aide by, or has received an offer of employment from, a nursing facility within 12 months after taking the competency evaluation.

§556.9. Certificate of Registration, Nurse Aide Registry, and Renewal.

(a) HHSC is the agency responsible for issuing individuals a certificate of registration and listing them on the Nurse Aide Registry (NAR).

(b) To be issued a certificate of registration and be listed on the NAR as having active status, a nurse aide must successfully complete a NATCEP, as described in §556.6(i) of this chapter (relating to Competency Evaluation Requirements) and apply for certificate of registration through the online portal.

(c) HHSC does not charge a fee to issue the certificate of registration or list a nurse aide on the NAR or to renew the certificate of registration and the nurse aide's listing of active status on the NAR.

(d) A nurse aide listed on the NAR must inform HHSC of the nurse aide's current address and telephone number through the online portal.

(e) The certificate of registration and the listing of active status on the NAR expires 24 months after the certificate of registration was issued and the nurse aide was listed on the NAR or 24 months after the last date of verified employment as a nurse aide, whichever is earlier. To renew the certificate of registration and active status on the NAR, the following requirements must be met:

(1) A nursing facility must submit a HHSC Form 5506-NAR, Employment Verification, renewal to HHSC through the online portal that documents that the nurse aide has performed paid nursing or nursing-related services at the nursing facility during the preceding year.

(2) A nurse aide must submit a HHSC Form 5506-NAR, Employment Verification, renewal to HHSC through the online portal to document that the nurse aide has performed paid nursing or nursing-related services, if documentation is not submitted in accordance with paragraph (1) of this subsection by the nursing facility or facilities where the nurse aide was employed.

(3) A nurse aide must complete an HHSC course in infection control and proper use of PPE every year.

(4) A nurse aide must complete at least 24 hours of in-service education every two years. The in-service education must include training in geriatrics and the care of residents with a dementia disorder, including Alzheimer's disease. The in-service education must be provided by:

- (A) a nursing facility;
- (B) an approved NATCEP;
- (C) HHSC; or

(D) a healthcare entity, other than a nursing facility, licensed or certified by HHSC, the Texas Department of State Health Services, or the Texas Board of Nursing.

(5) No more than 12 hours of the in-service education required by paragraph (4) of this subsection may be provided by an entity described in paragraph (4)(D) of this subsection.

§556.10. Certification of Individuals with Criminal Convictions in Their Backgrounds.

HHSC may suspend or revoke an existing certification, deny a certification, or deny a person the opportunity to take the examination for certification if the person has any conviction barring employment listed in Texas Health and Safety Code §250.006.

§556.12. Waiver, Reciprocity, and Exemption Requirements.

(a) HHSC may waive the requirement for a nurse aide to take the NATCEP specified in §556.3 of this chapter (relating to Nurse Aide Training and Competency Evaluation Program (NATCEP) Requirements) and issue a certificate of registration and place a nurse aide on the Nurse Aide Registry (NAR) on active status if the nurse aide:

(1) submits proof of completing a nurse aide training course of at least 100 hours duration before July 1, 1989, through the online portal;

(2) submits HHSC Form 5506-NAR, Employment Verification, to HHSC through the online portal to document that the nurse aide performed nursing or nursing-related services for monetary compensation at least once every two years since July 1, 1989;

(3) is not listed as unemployable on the EMR;

(4) has not been convicted of a criminal offense listed in Texas Health and Safety Code (THSC) §250.006(a) and (c), or convicted of a criminal offense listed in THSC §250.006(b) within the preceding five years; and

(5) completes HHSC Form 5507-NAR, Waiver of Nurse Aide Training and Competency Evaluation Program, and submits it to HHSC through the online portal.

(b) HHSC issues the certificate of registration through the online portal and places a nurse aide on the NAR by reciprocity if:

(1) the nurse aide is listed as having active status on another state's registry of nurse aides;

(2) the other state's registry of nurse aides is in compliance with the Act;

(3) the nurse aide is not listed as unemployable on the EMR;

(4) the nurse aide has not been convicted of a criminal offense listed in THSC §250.006(a) and (c), or convicted of a criminal offense listed in THSC §250.006(b) within the preceding five years; and

(5) the nurse aide completes a Request for Entry on the Texas Nurse Aide Registry Through Reciprocity, via the online portal.

(c) A person is eligible to take a competency evaluation with an exemption from the nurse aide training specified in §556.3 of this chapter if the individual:

(1) meets one of the following requirements for eligibility:

(A) is seeking renewal under §556.9 of this chapter (relating to Certificate of Registration, Nurse Aide Registry, and Renewal);

(B) has successfully completed at least 100 hours of training at a NATCEP in another state within the preceding 24 months but has not taken the competency evaluation or been placed on an NAR in another state;

(C) has successfully completed at least 100 hours of military training, equivalent to civilian nurse aide training, on or after July 1, 1989;

(D) has successfully completed an RN or LVN program at an accredited school of nursing in the United States within the preceding 24 months;

(i) is not licensed as an RN or LVN in the state of Texas; and

(ii) has not held a license as an RN or LVN in another state that has been revoked; or

(E) is enrolled or has been enrolled within the preceding 24 months in an accredited school of nursing in the United States and demonstrates competency in providing basic nursing skills in accordance with the school's curriculum;

(2) is not listed as unemployable on the EMR;

(3) has not been convicted of a criminal offense listed in THSC §250.006(a) and (c), or convicted of a criminal offense listed in THSC §250.006(b) within the preceding five years;

(4) submits documentation to verify at least one of the requirements in paragraph (1) of this subsection;

(5) arranges for a nursing facility or NATCEP to serve as a competency evaluation site; and

(6) before taking the competency evaluation, presents to the skills examiner an original letter from HHSC authorizing the person to take the competency evaluation.

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 29, 2024.

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Karen Ray

Chief Counsel

Health and Human Services Commission

Effective date: September 18, 2024

Proposal publication date: March 29, 2024

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



26 TAC §§556.10 - 556.13, 556.100

STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Human Resources Code §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program; Texas Health and Safety Code §250.0035(d), which provides that the Executive Commissioner of HHSC shall adopt rules necessary to implement §250.0035, related to issuance and renewal of certificates of registration and the regulation of nurse aides as necessary to protect the public health and safety; and Texas Health and Safety Code, Chapter 250, which requires HHSC to maintain a Nurse Aide Registry.

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

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CHAPTER 557. MEDICATION AIDES-- PROGRAM REQUIREMENTS

26 TAC §§557.101, 557.103, 557.105, 557.107, 557.109, 557.111, 557.113, 557.115, 557.117, 557.119, 557.121, 557.123, 557.125, 557.127 - 557.129

The Texas Health and Human Services Commission (HHSC) adopts amendments to §557.101, concerning Introduction; §557.103, concerning Requirements for Administering Medications; §557.105, concerning Allowable and Prohibited Practices of a Medication Aide; §557.107, concerning Training Requirements; Nursing Graduates; Reciprocity; §557.109, concerning Application Procedures; §557.111, concerning Examination; §557.113, concerning Determination of Eligibility; §557.115, concerning Permit Renewal; §557.117, concerning Changes; §557.119, concerning Training Program Requirements; §557.121, concerning Permitting of Persons with Criminal Backgrounds; §557.123, concerning Violations, Complaints, and Disciplinary Actions; §557.125, concerning Requirements for Corrections Medication Aides; §557.127, concerning Application Processing; §557.128, concerning Home Health Medication Aides; and §557.129, concerning Alternate Licensing Requirements for Military Service.

The amendments to §§557.101, 557.103, 557.105, 557.107, 557.109, 557.111, 557.113, 557.115, 557.117, 557.119, 557.121, 557.123, 557.125, 557.127, 557.128 and 557.129 are adopted without changes to the proposed text as published in the March 15, 2024, issue of the *Texas Register* (49 TexReg 1667). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

The amended rules implement two bills from the 88th Texas Legislature, Regular Session, 2023. House Bill (H.B.) 4123 relates to HHSC obtaining criminal history information from the Federal Bureau of Investigation (FBI) and Texas Department of Public Safety for medication aide (MA) applicants. Senate Bill (S.B.) 681 relates to the Texas Occupations Code, Chapter 53, exemption for HHSC Long-Term Care Regulation (LTCR)-regulated MAs. This rule project adopts revisions related to the Texas Unified Licensure Information Portal (TULIP), with the purpose of changing from a paper process to a digital process. Non-substantive edits update references in the rules.

COMMENTS

The 31-day comment period ended April 15, 2024.

During this period, HHSC received comments regarding the proposed rule from three commenters: Texas New Mexico Hospice Organization, Texas Health Care Association, and Disability Rights Texas.

Comment: One commenter made a general comment regarding Chapter 557, stating that the proposed rules do not provide any alternatives to the electronic process for applications and other licensure and certification processes through TULIP and suggesting an alternative be provided whenever the TULIP system fails to work properly.

Response: HHSC declines to make the change. TULIP is the authorized system for applications.

Comment: One commenter recommended that language be added to §557.119(c)(1) to stipulate that continuing education training must be competency-based.

Response: HHSC declines to make the change. Medication aides have the right to choose any continuing education programs that meet the specified educational objective in rule. Implementing the recommended change has the potential to reduce the number of medication aides in Texas, which could affect the quality of care received by people living in nursing facilities and other long-term care settings.

Comment: One commenter suggested replacing the term "home health medication aide" in §557.128(a)(2) with "home and community support services agencies medication aide" as Texas Health and Safety Code Chapter 142 applies to both home health and hospice.

Response: HHSC declines to make the changes. Statute specifies "home health medication aide." Other settings, such as hospice, can utilize medication aides that meet the requirements of this chapter.

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 §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Human Resources Code §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program; and Texas Health and Safety Code §142.023 and §242.608, which provide that the Executive Commissioner of HHSC shall adopt rules to estab-

lish standards for the permitting medication aides and for training programs, as well as the acts and practices allowed or prohibited to medication aides.

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 29, 2024.

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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 744. MINIMUM STANDARDS FOR SCHOOL-AGE AND BEFORE OR AFTERSCHOOL PROGRAMS

The Texas Health and Human Services Commission (HHSC) adopts amendments to §§744.123, 744.605, 744.1301, 744.1309, 744.1311, 744.1403, 744.1901, 744.1907, 744.1911, 744.1913, 744.2601, 744.3351, 744.3401, 744.3411, and 744.3415; new §§744.1318, 744.3409, and 744.3410; and repeal of §744.1613.

New §744.1318 and §744.3409 are adopted with changes to the proposed text as published in the April 26, 2024, issue of the *Texas Register* (49 TexReg 2630). These rules will be republished.

Amendments to §§744.123, 744.605, 744.1301, 744.1309, 744.1311, 744.1403, 744.1901, 744.1907, 744.1911, 744.1913, 744.2601, 744.3351, 744.3401, 744.3411, and 744.3415; new §744.3410; and repeal of §744.1613 are adopted without changes to the proposed text as published in the April 26, 2024, issue of the *Texas Register* (49 TexReg 2630). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

The amendments, new sections, and repeal are necessary to comply with House Bill (H.B.) 59, 88th Legislature, Regular Session, 2023. H.B. 59 amended Texas Health and Safety Code (HSC), Subchapter D, Chapter 341, by adding §341.0646 to require certain organizations, including child day care facilities, to implement specific child water safety requirements if the operation authorizes a child to engage in an organized water activity.

HHSC Child Care Regulation (CCR) is adopting new and amended rules in Chapter 744 that will (1) add definitions and requirements related to water safety, including (A) water safety training for employees, substitutes, volunteers, and contractors, and (B) the use of a personal flotation device for children who access swimming pools via their licensed child-care operation; and (2) update references to bodies of water and wading pools to be consistent with HSC §341.0646(a). CCR is also repealing one rule that established a grandfather clause related to child to caregiver ratios and group sizes because the need for the grandfather clause has expired.

COMMENTS

The 31-day comment period ended May 28, 2024. During this period, HHSC received comments regarding the proposed rules from one commenter representing a school-age program, the Spilled Milk Social Club; three water safety advocacy groups, including Live Like Cati, Remembering Wyatt Dale Water Safety, and Colin's Hope; one water safety educator; one water safety advocate; four organizations or businesses, including Austin Public Health, the Association of Aquatic Professionals, SPS PoolCare, and Aqua-Tots Swim Schools; one state agency, the Texas Department of Family and Protective Services; and one individual. A summary of comments relating to the rules and responses from HHSC follows.

Comment: Regarding §§744.1301(a)(8)(A), 744.1318, and 744.1403(a)(7)(A), nine commenters recommended HHSC require two hours of water safety training. One of the nine commenters specifically recommended that the training be two hours instead of one hour.

Response: HHSC disagrees with the comment and declines to revise the rule. The rule does not specify the number of required water safety training hours. Requiring a set number of training hours would require child-care operations to incur a cost that was not accounted for in the proposed rule.

Comment: Regarding §744.1318, 10 commenters recommended HHSC provide a specific definition and description of the type of water safety training that the rule requires. One commenter stated the training must be aligned with the specific task child-care staff is doing, i.e., taking children to a swimming pool. The other nine commenters recommended that training align with the safety of taking children to the pool during a planned field trip.

Response: HHSC agrees with the comment and has updated the rules to reflect that the training must be specific to water safety in and around swimming pools. HHSC declines to require the training align with field trips because it is unnecessary to specify the location of the swimming pool.

Comment: Regarding §744.3409, one commenter asked if the child-care operation could require parents to provide a personal flotation device (PFD) for their child. The commenter also asked if there are additional resources regarding where a child-care operation can obtain free PFDs for children in care. The commenter recommended HHSC clarify rule language or provide child-care operations with resources regarding how to obtain acceptable PFDs en masse.

Response: HHSC agrees that clarifying the responsibility for providing children in care with PFDs is important but declines to revise the rule because the rule states that the child-care operation must provide PFDs. This requirement is consistent with HSC §341.0646. HHSC will add links to resources that provide PFDs at no cost in a Technical Assistance (TA) box that follows the rule in the minimum standards. HHSC will also clarify in a TA box that the rule does not preclude a child's parent from giving the operation a PFD that meets the requirements in the rule for the child to use.

Comment: Regarding §744.3410, one commenter recommended that the rule clarify that swim instruction is instruction provided by a certified swim instructor.

Response: HHSC disagrees with the comment and declines to revise the rule. HSC §341.0646 does not address whether swim instruction is instruction provided by a certified swim instructor

and this clarification would expand the rule requirements beyond what the statute requires.

In addition, HHSC received comments on parallel rules in Chapter 746, Minimum Standards for Child-Care Centers, published in the April 26, 2024 issue of the *Texas Register* (49 TexReg 2650). HHSC is amending the proposed text related to PFDs in new §744.3409 to ensure the minimum standards are congruent throughout Chapters 744 and 746. For a more detailed description of comments received for Chapter 746, and the response from HHSC, please see the preamble for Chapter 746, which is published elsewhere in this issue of the *Texas Register*.

SUBCHAPTER A. PURPOSE, SCOPE, AND DEFINITIONS

DIVISION 3. DEFINITIONS

26 TAC §744.123

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out the duties of HHSC under Chapter 531 of the Texas Government Code. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of HRC.

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

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SUBCHAPTER C. RECORD KEEPING

DIVISION 1. RECORDS OF CHILDREN

26 TAC §744.605

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out the duties of HHSC under Chapter 531 of the Texas Government Code. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of HRC.

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SUBCHAPTER D. PERSONNEL

DIVISION 4. PROFESSIONAL DEVELOPMENT

26 TAC §§744.1301, 744.1309, 744.1311, 744.1318

STATUTORY AUTHORITY

The amendments and new section are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out the duties of HHSC under Chapter 531 of the Texas Government Code. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of HRC.

§744.1318. *What additional training must an employee and director have if the operation allows a child to access a swimming pool at or away from the operation?*

(a) If the operation allows a child to access a swimming pool at or away from the operation, annual water safety training is required for:

(1) Each employee prior to accompanying a child to a swimming pool; and

(2) Each site director and program director or operation director.

(b) The training must be specific to water safety in and around swimming pools.

(c) Water safety training is exclusive of any requirements for orientation, pre-service training, and annual training.

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DIVISION 5. SUBSTITUTES, VOLUNTEERS, AND CONTRACTORS

26 TAC §744.1403

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out the duties of HHSC under Chapter 531 of the Texas Government Code. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of HRC.

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**SUBCHAPTER E. CHILD/CAREGIVER RATIOS AND GROUP SIZES
DIVISION 2. CLASSROOM RATIOS AND GROUP SIZES**

26 TAC §744.1613

STATUTORY AUTHORITY

The repeal is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out the duties of HHSC under Chapter 531 of the Texas Government Code. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of HRC.

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DIVISION 5. RATIOS FOR WATER ACTIVITIES

26 TAC §§744.1901, 744.1907, 744.1911, 744.1913

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out the duties of HHSC under Chapter 531 of the Texas Government Code. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of HRC.

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

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**SUBCHAPTER L. SAFETY PRACTICES
DIVISION 1. SAFETY PRECAUTIONS**

26 TAC §744.2601

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out the duties of HHSC under Chapter 531 of the Texas Government Code. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of HRC.

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**SUBCHAPTER N. INDOOR AND OUTDOOR ACTIVE PLAY SPACE AND EQUIPMENT
DIVISION 6. INFLATABLES**

26 TAC §744.3351

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out the duties of HHSC under Chapter 531 of the Texas Government Code. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of HRC.

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**SUBCHAPTER O. SWIMMING POOLS,
WADING/SPLASHING POOLS, AND
SPRINKLER PLAY**

26 TAC §§744.3401, 744.3409 - 744.3411, 744.3415

STATUTORY AUTHORITY

The amendments and new sections are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out the duties of HHSC under Chapter 531 of the Texas Government Code. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of HRC.

§744.3409. *What additional safety precautions must I take for a child in care who is unable to swim competently or who is at risk of injury or death when swimming?*

(a) Before a child who is unable to swim competently or who is at risk of injury or death when swimming enters a swimming pool, you must:

- (1) Provide the child with a Type I, II, or III United States Coast Guard approved personal flotation device (PFD);
- (2) Ensure the child is wearing the PFD; and
- (3) Ensure the PFD is properly fitted and fastened for the child.

(b) A PFD must be in good repair to meet the requirements in subsection (a) of this section.

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

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**CHAPTER 746. MINIMUM STANDARDS FOR
CHILD-CARE CENTERS**

The Texas Health and Human Services Commission (HHSC) adopts amendments to §§746.123, 746.605, 746.1301, 746.1309, 746.1403, 746.1801, 746.2101, 746.2105, 746.2109, 746.2113, 746.2115, 746.3701, 746.4971, 746.5001, 746.5013, and 746.5017; new §§746.1325, 746.5009, and 746.5011; and repeal of §746.2103.

New §746.1325 and §746.5009 are adopted with changes to the proposed text as published in the in the April 26, 2024, issue of the *Texas Register* (49 TexReg 2650). These rules will be republished.

Amendments to §§746.123, 746.605, 746.1301, 746.1309, 746.1403, 746.1801, 746.2101, 746.2105, 746.2109, 746.2113, 746.2115, 746.3701, 746.4971, 746.5001, 746.5013, and 746.5017; new §746.5011; and repeal of §746.2103 are adopted without changes to the proposed text as published in the April 26, 2024, issue of the *Texas Register* (49 TexReg 2650). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

The amendments, new sections, and repeal are necessary to comply with House Bill (H.B.) 59, 88th Legislature, Regular Session, 2023. H.B. 59 amended Texas Health and Safety Code (HSC), Subchapter D, Chapter 341, by adding §341.0646 to require certain organizations, including child day care facilities, to implement specific child water safety requirements if the operation authorizes a child to engage in an organized water activity.

HHSC Child Care Regulation (CCR) is adopting new and amended rules in Chapter 746 that (1) add definitions and requirements related to water safety, including (A) water safety training for employees, substitutes, volunteers, and contractors, and (B) the use of a personal flotation device for children who access swimming pools via their licensed child-care center; and (2) update references to bodies of water and wading pools to be consistent with HSC §341.0646(a). CCR is also repealing one rule that established a grandfather clause related to child to caregiver ratios for splashing and wading activities because the need for the grandfather clause has expired.

COMMENTS

The 31-day comment period ended May 28, 2024. During this period, HHSC received comments regarding the proposed rules from four commenters representing licensed child-care centers, including First Friends Preschool at TBC, Live Oaks Childcare, Just Kidding Around, and Wonderland Montessori; and one state agency, the Texas Department of Family and Protective Services. A summary of comments relating to the rules and responses from HHSC follows.

Comment: Regarding §746.123(9) and §746.123(62), one commenter stated that the definitions are presented in a way that requires additional research for caregivers. The commenter recommended HHSC include the entire definition for each term in the definition, rather than referencing the HSC statute. The commenter stated that HHSC does this in other rules regarding personal flotation devices and can logically do so in this location as well.

Response: HHSC disagrees with the comment and declines to revise the rule. HHSC has included the statutory language from HSC and links to the relevant sections of HSC in the Technical Assistance (TA) box that follows the rule in the minimum standards courtesy publication. This presentation allows HHSC to maintain definitions that are consistently congruent with the definitions in HSC without a corresponding rule change in the event HSC rules are amended in the future.

Comment: Regarding §746.123(59), one commenter stated she does not think it is necessary to minimize the depth of water in a swimming pool from two feet to 18 inches. She stated this change will require more training and time spent implementing new standards for a depth that has a difference of a few inches. The commenter recommended maintaining the current common depth of two feet because it is easier to manage and implement.

Response: HHSC disagrees with the comment and declines to revise the rule. HHSC must update the depth of a swimming pool from two feet to 18 inches because the depth of a wading pool, previously two feet or less, is now 18 inches or less, per HSC Chapter 341, Subchapter D. HHSC must update the definition of a swimming pool accordingly to establish the delineation between a wading pool and swimming pool.

Comment: Regarding §746.123(62), one commenter stated that the language of splash and wade only matter due to the applied depth of water. She stated that splashing and wading are two different things and should apply to separate activities that take place in less than two feet of water.

Response: HHSC disagrees with the comment and declines to revise the rule. HHSC removed references to "splashing" in the rules to be consistent with the definition of "wading pool" established by the Texas Department of State Health Services in 25 TAC Chapter 265, Subchapter L, Public Swimming Pools and Spas, which incorporates activities related to splashing into the definition. Regarding the commenter's assertion regarding the depth of water for splashing, both 25 TAC Chapter 265 and HSC Chapter 341 provide that the depth of a wading pool is 18 inches or less and HHSC must maintain a definition congruent with existing statutes.

Comment: Regarding §746.123(62), one commenter requested HHSC verify that a wading pool does not include interactive water features that have no standing water, such as a splash pad or sprinkler system.

Response: HHSC disagrees with the comment and declines to revise the rule. A wading pool may include an interactive water feature that does not hold standing water, such as a splash pad, spray pad, or water deck, per Texas Department of State Health Services in 25 TAC, Chapter 265, Subchapter L, Public Swimming Pools and Spas, which is the rule HSC Chapter 341 refers to in its definition of a wading pool. There are no different requirements if a child is playing in a wading pool with or without standing water with regards to water safety rules; neither activity requires the child-care center provide a personal flotation device (PFD) to the child. HHSC has included information related to in-

teractive water features, as well as links to the related rules, in the TA box that follows the rule in the minimum standards courtesy publication.

Comment: Regarding §§746.1301(a)(8)(a), 746.1325, and 746.1403(a)(7)(a), one commenter stated that it is important that people receive quality water training, especially if students have access to a pool. The commenter asked how long the proposed training would be and recommended that a couple hours would be sufficient.

Response: HHSC agrees that quality water safety training for staff is important when children in care have access to a swimming pool. The rule does not specify the number of required water safety training hours. However, HHSC has provided resources for free water safety training in the TA box that follows the rule in the minimum standards courtesy publication.

Comment: Regarding §746.5009, one commenter recommended that the rule clarify that the Type 1, 2, or 3 personal flotation device must be unexpired, and that operations have a process in place to track and replace personal flotation devices to ensure they are unexpired.

Response: HHSC disagrees with the comment because there is no consistent evidence that a PFD has an expiration date. However, the U.S. Coast Guard recommends an individual stop using a PFD when it is no longer in good repair. HHSC updated the rule accordingly to reflect that a PFD must be in good repair to meet the requirements of the rule.

Comment: Regarding the rules in general, one commenter indicated the rules are unreasonable. The commenter stated that the new rules are starting to get out of control and child-care centers can barely keep employees in the industry and the employees don't get paid enough. The commenter asked why anyone would want to stay in the industry run by people who sit around and think of rules that have nothing to do with childcare. The commenter stated that child-care centers have no control over water.

Response: HHSC disagrees with the comment and declines to revise the rules. The Texas Legislature created the water safety rules in HSC §341.0646. HHSC must align the rules with the statutory requirements.

In addition, HHSC received comments on parallel rules in Chapter 744, Minimum Standards for School-Age and Before or After-School Programs, published in the April 26, 2024, issue of the *Texas Register* (49 TexReg 2630). HHSC is amending the proposed text related to water safety training in new §746.1325 to ensure the minimum standards remain congruent throughout Chapters 744 and 746. For a more detailed description of comments received for Chapter 744, and the response from HHSC, please see the preamble for Chapter 744, which is published elsewhere in this issue of the *Texas Register*.

SUBCHAPTER A. PURPOSE, SCOPE, AND DEFINITIONS

DIVISION 3. DEFINITIONS

26 TAC §746.123

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, as well as

Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out the duties of HHSC Chapter 531 of the Texas Government Code. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of HRC.

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Karen Ray

Chief Counsel

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SUBCHAPTER C. RECORD KEEPING DIVISION 1. RECORDS OF CHILDREN

26 TAC §746.605

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out the duties of HHSC Chapter 531 of the Texas Government Code. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of HRC.

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SUBCHAPTER D. PERSONNEL DIVISION 4. PROFESSIONAL DEVELOPMENT

26 TAC §§746.1301, 746.1309, 746.1325

STATUTORY AUTHORITY

The amendments and new section are adopted under Texas Government Code §531.0055, which provides that the Executive

Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out the duties of HHSC Chapter 531 of the Texas Government Code. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of HRC.

§746.1325. What additional training must an employee and director have if the child-care center allows a child to access a swimming pool at or away from the center?

(a) If the child-care center allows a child to access a swimming pool at or away from the center, annual water safety training is required for:

(1) Each employee prior to accompanying a child to a swimming pool; and

(2) Each child-care center director.

(b) The training must be specific to water safety in and around swimming pools.

(c) Water safety training is exclusive of any requirements for orientation, pre-service training, and annual training.

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

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For further information, please call: (512) 438-3269



DIVISION 5. SUBSTITUTES, VOLUNTEERS, AND CONTRACTORS

26 TAC §746.1403

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out the duties of HHSC Chapter 531 of the Texas Government Code. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of HRC.

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
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**SUBCHAPTER E. CHILD/CAREGIVER
RATIOS AND GROUP SIZES
DIVISION 4. RATIOS FOR FIELD TRIPS**

26 TAC §746.1801

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out the duties of HHSC Chapter 531 of the Texas Government Code. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of HRC.

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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**DIVISION 7. RATIOS FOR WATER
ACTIVITIES**

26 TAC §§746.2101, 746.2105, 746.2109, 746.2113, 746.2115

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out the duties of HHSC Chapter 531 of the Texas Government Code. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of HRC.

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26 TAC §746.2103

STATUTORY AUTHORITY

The repeal is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out the duties of HHSC Chapter 531 of the Texas Government Code. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of HRC.

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**SUBCHAPTER S. SAFETY PRACTICES
DIVISION 1. SAFETY PRECAUTIONS**

26 TAC §746.3701

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out the duties of HHSC Chapter 531 of the Texas Government Code. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of HRC.

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**SUBCHAPTER U. INDOOR AND OUTDOOR
ACTIVE PLAY SPACE AND EQUIPMENT
DIVISION 7. INFLATABLES**

26 TAC §746.4971

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out the duties of HHSC Chapter 531 of the Texas Government Code. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of HRC.

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

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**SUBCHAPTER V. SWIMMING POOLS,
WADING/SPLASHING POOLS, AND
SPRINKLER PLAY**

26 TAC §§746.5001, 746.5009, 746.5011, 746.5013, 746.5017

STATUTORY AUTHORITY

The amendments and new sections are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out the duties of HHSC Chapter 531 of the Texas Government Code. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of HRC.

§746.5009. What additional safety precautions must I take for a child in care who is unable to swim competently or who is at risk of injury or death when swimming?

(a) Before a child who is unable to swim competently or who is at risk of injury or death when swimming enters a swimming pool, you must:

- (1) Provide the child with a Type I, II, or III United States Coast Guard approved personal flotation device (PFD);
- (2) Ensure the child is wearing the PFD; and
- (3) Ensure the PFD is properly fitted and fastened for the child.

(b) A PFD must be in good repair to meet the requirements in subsection (a) of this section.

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

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**CHAPTER 747. MINIMUM STANDARDS FOR
CHILD-CARE HOMES**

The Texas Health and Human Services Commission (HHSC) adopts amendments to §§747.123, 747.605, 747.1303, 747.1305, 747.1309, 747.2001, 747.2005, 747.2009, 747.2013, 747.2015, 747.3501, 747.4751, 747.4801, 747.4813, and 747.4817; and new §§747.1323, 747.4811, and 747.4812.

New §747.1323 and §747.4811 are adopted with changes to the proposed text as published in the April 26, 2024, issue of the *Texas Register* (49 TexReg 2661). These rules will be republished.

Amendments to §§747.123, 747.605, 747.1303, 747.1305, 747.1309, 747.2001, 747.2005, 747.2009, 747.2013, 747.2015, 747.3501, 747.4751, 747.4801, 747.4813, and 747.4817; and new §747.4812 is adopted without changes to the proposed text as published in the April 26, 2024, issue of the *Texas Register* (49 TexReg 2661). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

The amendments and new sections are necessary to comply with House Bill (H.B.) 59, 88th Legislature, Regular Session, 2023. H.B. 59 amended Texas Health and Safety Code (HSC), Subchapter D, Chapter 341, by adding §341.0646 to require certain organizations, including child day care facilities, to implement specific child water safety requirements if the operation authorizes a child to engage in an organized water activity.

HHSC Child Care Regulation (CCR) is adopting new and amended rules in Chapter 747 that (1) add definitions and requirements related to water safety, including (A) water safety training for caregivers, and (B) the use of a personal flotation device for children who access swimming pools via their licensed or registered child-care home; and (2) update references to bodies of water and wading pools to be consistent with HSC §341.0646(a).

COMMENTS

The 31-day comment period ended May 28, 2024. During this period, HHSC did not receive any comments regarding the proposed rules.

HHSC did receive comments on parallel rules in Chapter 744, Minimum Standards for School-Age and Before or After-School Programs, published in the April 26, 2024, issue of the *Texas Register* (49 TexReg 2630) and Chapter 746, Minimum Standards for Child-Care Centers, published in the April 26, 2024, issue of the *Texas Register* (49 TexReg 2650). HHSC is amending the proposed text related to (1) water safety training in new §747.1323 and (2) PFDs in new §747.4811 to ensure the minimum standards remain congruent throughout Chapters 744, 746, and 747. For a more detailed description of comments received for Chapter 744 and Chapter 746, and the response from HHSC, please see the preambles for Chapters 744 and 746, which are published elsewhere in this issue of the *Texas Register*.

SUBCHAPTER A. PURPOSE, SCOPE, AND DEFINITIONS

DIVISION 3. DEFINITIONS

26 TAC §747.123

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out the duties of HHSC under Chapter 531 of the Texas Government Code. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of HRC.

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

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SUBCHAPTER C. RECORD KEEPING

DIVISION 1. RECORDS OF CHILDREN

26 TAC §747.605

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out the

duties of HHSC under Chapter 531 of the Texas Government Code. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of HRC.

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SUBCHAPTER D. PERSONNEL

DIVISION 4. PROFESSIONAL DEVELOPMENT

26 TAC §§747.1303, 747.1305, 747.1309, 747.1323

STATUTORY AUTHORITY

The amendments and new section are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out the duties of HHSC under Chapter 531 of the Texas Government Code. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of HRC.

§747.1323. *What additional training must an employee and caregiver have if the child-care home allows a child to access a swimming pool at or away from the home?*

(a) If the child-care home allows a child to access a swimming pool at or away from the home, annual water safety training is required for:

(1) Each substitute or assistant caregiver prior to accompanying a child to a swimming pool; and

(2) The primary caregiver.

(b) The training must be specific to water safety in and around swimming pools.

(c) Water safety training is exclusive of any requirements for orientation, pre-service training, and annual training.

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

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SUBCHAPTER E. CHILD/CAREGIVER
RATIOS AND GROUP SIZES
DIVISION 5. RATIOS FOR WATER
ACTIVITIES

26 TAC §§747.2001, 747.2005, 747.2009, 747.2013, 747.2015
STATUTORY AUTHORITY

The amendments and new section are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out the duties of HHSC under Chapter 531 of the Texas Government Code. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of HRC.

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SUBCHAPTER S. SAFETY PRACTICES
DIVISION 1. SAFETY PRECAUTIONS

26 TAC §747.3501
STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out the duties of HHSC under Chapter 531 of the Texas Government Code. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of HRC.

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

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SUBCHAPTER U. INDOOR AND OUTDOOR
ACTIVE PLAY SPACE AND EQUIPMENT
DIVISION 5. INFLATABLES

26 TAC §747.4751
STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out the duties of HHSC under Chapter 531 of the Texas Government Code. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of HRC.

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SUBCHAPTER V. SWIMMING POOLS,
WADING POOLS, AND SPRINKLER PLAY

26 TAC §§747.4801, 747.4811 - 747.4813, 747.4817
STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out the duties of HHSC under Chapter 531 of the Texas Government Code. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of HRC.

§747.4811. What additional safety precautions must I take for a child in care who is unable to swim competently or who is at risk of injury or death when swimming?

(a) Before a child who is unable to swim competently or who is at risk of injury or death when swimming enters a swimming pool, you must:

- (1) Provide the child with a Type I, II, or III United States Coast Guard approved personal flotation device (PFD);
- (2) Ensure the child is wearing the PFD; and
- (3) Ensure the PFD is properly fitted and fastened for the child.

(b) A PFD must be in good repair to meet the requirements in subsection (a) of this section.

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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Chief Counsel

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CHAPTER 904. CONTINUITY OF SERVICES--STATE FACILITIES

The Texas Health and Human Services Commission (HHSC) adopts amendments to §904.5, concerning Definitions; §904.25, concerning Criteria for Commitment, Commitment for Residential Services Without an Interdisciplinary Team Recommendation, and Regular Voluntary Admission of an Adult to a Residential Care Facility Under the PIDA; §904.29, concerning Criteria for Commitment and Commitment for Residential Services Without an Interdisciplinary Team Recommendation of a Minor to a Residential Care Facility Under the PIDA; §904.43, concerning LIDDA IDT Recommendation Concerning the Commitment of an Adult or a Minor or the Regular Voluntary Admission of an Adult to a Residential Care Facility Under the PIDA; and §904.45, concerning LIDDA Referral of an Applicant to a Residential Care Facility.

Sections 904.5 and 904.29 are adopted with changes to the proposed text as published in the May 3, 2024, issue of the *Texas Register* (49 TexReg 2956). These rules will be republished.

Sections 904.25, 904.43 and 904.45 are adopted without changes to the proposed text as published in the May 3, 2024, issue of the *Texas Register* (49 TexReg 2956). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

The amendments are necessary to comply with Senate Bill 944, 88th Legislature, Regular Session, 2023, that amended Texas Health and Safety Code Chapter 593, which requires HHSC to create a pathway to civil commitment to a state supported living center (SSLC) without a recommendation for placement by an interdisciplinary team (IDT). The amendments establish guidelines and processes for such a commitment. Additional amendments update language and agency information.

COMMENTS

The 31-day comment period ended June 3, 2024.

During this period, HHSC received comments regarding the proposed rules from two organizations, Texas Council of Community Centers and Disability Rights Texas. A summary of comments relating to the rules and HHSC's responses follows.

Comment: One commenter asked if HHSC intended to create two different standards between adults and minors about the "less restrictive setting" criteria.

Response: HHSC declines to revise the rules in response to this comment. While Texas Health and Safety Code §593.052(a)(3) applies to both adults and minors, additional statutory provisions apply to minors. The rule language as proposed addresses the additional criteria for minors required by Subchapter D-1, Texas Government Code Chapter 531, relating to Permanency Planning, the text of which will be transferred to Subchapter D, Texas Government Code Chapter 546 effective April 1, 2025.

Comment: One commenter stated the rules must address who is responsible for communicating to the individual, legally authorized representative (LAR), and court that the individual cannot be admitted to an SSLC in the event an SSLC cannot accept a civilly committed individual because the individual does not meet admission criteria or because the SSLC has no vacancy. Additionally, the commenter stated the rules must detail who is responsible for communicating to the individual, LAR, and court how the involved parties will address the individual's unmet needs.

Response: HHSC disagrees and declines to revise the rules in response to this comment. Guidance addressing activities following the issuance of a commitment order and prior to the individual's admission to an SSLC is addressed in §904.47.

Comment: One commenter stated the current rules and the rules as proposed require the local intellectual and developmental disability authorities (LIDDAs) to "compile and submit all information required to complete an application packet." The commenter recommended including to whom the application is to be submitted.

Response: HHSC disagrees and declines to revise the rules in response to this comment. Section 904.45(b)(2) addresses application submission procedures.

Comment: One commenter recommended changing the agency process for placement of an individual in an SSLC by submitting the application to a central office that then distributes the application to all SSLCs to allow for individuals to be admitted to an SSLC that has a current vacancy.

Response: HHSC disagrees and declines to revise the rules in response to this comment. The current process is designed to keep an individual in their current service area and closer to natural supports.

Comment: One commenter submitted three questions regarding §904.25(d) and the criteria for determining if an individual represents a substantial risk of physical impairment or injury to self or others or is unable to provide for and is not providing for the adult's most basic personal physical needs.

1. At what point in the commitment and admission process are these objective criteria applied and by whom?
2. If a court ordered a commitment for an individual whose characteristics fell outside these criteria, what would result?
3. What was the rationale for striking "the adult meets other objective measures as determined by the department" from the rule?

Response: No revision is made in response to this comment. In response to the first question, the rule outlines the criteria a judge must use when making this determination for commitment and the SSLC admission and placement team uses these criteria at the point of admission. In response to the second question, HHSC presumes the court will apply and follow the law as written. In response to the third question, HHSC determined criteria

outlined in rule is sufficient for making the required determination.

Comment: One commenter recommended removing the restriction of the Protection and Advocacy System (P&A system) participation in IDT meetings to only meetings for P&A system clients who do not have the ability to provide legally adequate consent.

Response: HHSC agrees and revises §904.5(24)(B)(v) and §904.5(40)(G) to allow for the P&A system to participate in IDT meetings for individuals it represents regardless of the individual's legal capacity.

Comment: One commenter recommended adding more context about the documentation of alternative settings, such as who completed the documentation, how recent alternative settings were explored, and any other specific documents needed.

Response: HHSC disagrees and declines to amend the rules. Documentation will be specific to an individual's circumstance and will vary. The judge will determine if the documentation is sufficient to meet the criteria.

HHSC revised §904.29(a) to update two Texas Government Code citations to implement HB 4611, 88th Legislature, Regular Session, 2023, which makes non-substantive revisions to the Texas Government Code that make the statute more accessible, understandable, and usable.

SUBCHAPTER A. GENERAL PROVISIONS

26 TAC §904.5

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §591.004, provides that the Executive Commissioner of HHSC shall adopt rules to ensure the implementation of the Persons with an Intellectual Disability Act, Subtitle D, Title 7, Texas Health and Safety Code.

§904.5. Definitions.

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

(1) Actively involved--Significant and ongoing involvement with the individual based on the following:

(A) observed interactions of the person with the individual;

(B) advocacy for the individual;

(C) knowledge of and sensitivity to the individual's preferences, values and beliefs; and

(D) availability to the individual for assistance or support when needed.

(2) Applicant--An individual seeking residential services in a residential care facility.

(3) CARE--A Texas Health and Human Services Commission (HHSC) data system with demographic and other data about an individual who is receiving services and supports or on whose behalf services and supports have been requested.

(4) CLOIP--Community living options information process. The activities described in §904.99(a)(2) of this chapter

(relating to Consideration of Living Options for Individuals Residing in State MR Facilities) performed by a contract local intellectual and developmental disability authority (LIDDA) to provide information and education about community living options to an individual who is 22 years of age or older residing in a residential care facility and to the individual's legally authorized representative (LAR), if the individual has an LAR.

(5) Commissioner--The executive commissioner of HHSC.

(6) Community-based Services--Services which include:

(A) a Medicaid waiver program in Title XIX, §1915(c) of the Social Security Act, including:

(i) the Community Living Assistance and Support Services Program;

(ii) the Deaf Blind with Multiple Disabilities Program;

(iii) the Home and Community-based Services Program; or

(iv) the Texas Home Living Program;

(B) an intermediate care facility licensed under the Texas Health and Safety Code (THSC) Chapter 252;

(C) services from a local school district;

(D) services from the local mental health authority or local behavioral health authority;

(E) a home and community support services agency licensed under THSC Chapter 142;

(F) local Aging and Disability Resource Center; or

(G) services from the local intellectual and developmental disability authority.

(7) Consensus--A negotiated agreement that all parties can and will support in implementation. The negotiation process involves the open discussion of ideas with all parties encouraged to express opinions.

(8) Contract LIDDA--A LIDDA that has a contract with HHSC to conduct the CLOIP.

(9) Contract mental retardation authority (MRA)-- A contract LIDDA.

(10) CRCG-- Community Resource Coordination Group. A local interagency group composed of public and private agencies that develops service plans for individuals whose needs can be met only through interagency coordination and cooperation. The group's role and responsibilities are described in the Memorandum of Understanding on Coordinated Services to Persons Needing Services from More Than One Agency, available on the Texas Health and Human Services Commission website at <https://crcg.hhs.texas.gov>.

(11) DADS--The Department of Aging and Disability Services. As a result of the reorganization of health and human services delivery in Texas, DADS was abolished, and its functions transferred to HHSC.

(12) Dangerous behavior--Physically aggressive, self-injurious, sexually aggressive, or seriously disruptive behaviors that require a written behavioral intervention plan to prevent or reduce serious physical injury or psychological injury to the person engaging in these behaviors or others.

(13) Department--Department of Aging and Disability Services, predecessor agency whose functions have been dissolved and transferred to HHSC.

(14) Designated LIDDA--The LIDDA assigned to an individual in the HHSC data system.

(15) Designated MRA-- A designated LIDDA.

(16) Discharge--The release by HHSC of an individual voluntarily admitted or committed by court order for residential care services from the custody and care of a residential care facility and termination of the individual's assignment to the residential care facility in the HHSC data system.

(17) Emergency admission and discharge agreement--A written agreement between the residential care facility, the individual or LAR, and the designated LIDDA that describes:

(A) the purpose of the emergency admission, including the circumstances that precipitated the need for the admission and the expected outcomes from the admission;

(B) the responsibilities of each party regarding the care, treatment, and discharge of the individual, including how the terms of the agreement are monitored;

(C) the length of time of the emergency admission, which is that amount of time necessary to accomplish the purpose of the admission; and

(D) the anticipated date of discharge.

(18) Facility of record--The residential care facility that serves the local service area assigned to the individual's designated-LIDDA.

(19) Family-based alternative--A family setting in which the family provider or providers are specially trained to provide support and in-home care for children with disabilities or children who are medically fragile.

(20) Head of the facility--The director of a residential care facility.

(21) HHSC--The Texas Health and Human Services Commission.

(22) ICAP--Inventory for Client and Agency Planning. A validated, standardized assessment that measures the level of supervision an individual requires and, thus, the amount and intensity of services and supports the individual needs.

(23) ICAP service level--A designation that identifies the level of services needed by an individual as determined by the ICAP.

(24) IDT--Interdisciplinary team. A team comprised of intellectual disability professionals, paraprofessionals, and other concerned persons, as appropriate, who assess an individual's treatment, training, and habilitation needs and make recommendations for services, including recommendations of whether the individual is best served in a residential care facility or in a community setting.

(A) The team must include:

(i) the individual;

(ii) the individual's LAR, if any; and

(iii) persons specified by a LIDDA or a residential care facility, as appropriate, who are professionally qualified or certified or licensed with special training and experience in the diagnosis, management, needs, and treatment of individuals with an intellectual disability.

(B) Other participants in IDT meetings may include:

(i) other concerned persons whose inclusion is requested by the individual or the LAR;

(ii) at the discretion of the LIDDA or residential care facility, persons who are directly involved in the delivery of services to individuals with an intellectual disability;

(iii) if the individual is eligible for public school services, representatives of the appropriate school district;

(iv) actively-involved family members or friends of the individual who has neither the ability to provide legally adequate consent nor an LAR; and

(v) when an individual is a client of the Protection and Advocacy System, a representative of the Protection and Advocacy System.

(25) Individual--A person who has or is believed to have an intellectual disability.

(26) Intellectual disability--Consistent with THSC §591.003, significantly subaverage general intellectual functioning that is concurrent with deficits in adaptive behavior and originated during the developmental period.

(27) Interstate transfer--The admission of an individual to a residential care facility directly from a similar facility in another state.

(28) IQ--Intelligence quotient. A score reflecting the level of an individual's intelligence as determined by the administration of a standardized intelligence test.

(29) LAR--Legally authorized representative. A person authorized by law to act on behalf of an individual regarding a matter described in this chapter, and may include a parent, guardian, or managing conservator of a minor, or the guardian of an adult.

(30) Legally adequate consent--Consent given by a person when each of the following conditions have been met.

(A) Legal status. The individual giving the consent:

(i) is 18 years of age or older, or younger than 18 years of age and is or has been married or had his or her disabilities of minority removed for general purposes by court order, as described in the Texas Family Code Chapter 31; and

(ii) has not been determined by a court to lack capacity to make decisions with regard to the matter for which consent is being sought.

(B) Comprehension of information. The individual giving the consent has been informed of and comprehends the nature, purpose, consequences, risks, and benefits of and alternatives to the procedure and the fact that withholding or withdrawal of consent shall not prejudice the future provision of care and services to the individual with an intellectual disability.

(C) Voluntariness. The consent has been given voluntarily and free from coercion and undue influence.

(31) Less restrictive setting--A setting which allows the greatest opportunity for the individual to be integrated into the community.

(32) LIDDA--Local intellectual and developmental disability authority. An entity to which HHSC's authority and responsibility described in THSC §531.002(12) has been delegated.

(33) Local service area--A geographic area composed of one or more Texas counties delimiting the population which may receive services from a LIDDA.

(34) Mental retardation--Terminology previously used to describe intellectual disability.

(35) Minor--An individual under the age of 18.

(36) MRA--Mental retardation authority. A LIDDA.

(37) Natural support network--Those persons, including family members, church members, neighbors, and friends, who assist and sustain an individual with supports that occur naturally within the individual's environment and that are not reimbursed or purposely developed by a person or system.

(38) Ombudsman--An employee of HHSC who is responsible for assisting an individual or a person acting on behalf of an individual with an intellectual or developmental disability (IDD) or a group of individuals with an IDD with a complaint or grievance regarding the infringement of the rights of an individual with an IDD or the delivery of intellectual disability services submitted under THSC §592.039. The ombudsman must explain and provide information on HHSC and LIDDA services, facilities, and programs, and the rules, procedures, and guidelines applicable to the individual denied services, and refer the individual to the appropriate entity to assist the individual in gaining access to an appropriate program or in placing the individual on an appropriate interest list.

(39) Permanency planning--A philosophy and planning process that focuses on the outcome of family support for an individual under 22 years of age by facilitating a permanent living arrangement in which the primary feature is an enduring and nurturing parental relationship.

(40) Planning team--A team convened by the LIDDA and composed of:

(A) the individual;

(B) the individual's LAR, if any;

(C) actively-involved family members or friends of the individual who has neither the ability to provide legally adequate consent nor an LAR;

(D) other concerned persons whose inclusion is requested by the individual with the ability to provide legally adequate consent or the LAR;

(E) a representative from the designated LIDDA;

(F) a representative from the individual's provider; and

(G) when an individual is a client of the Protection and Advocacy System, a representative of the Protection and Advocacy System.

(41) PIDA--Persons with an Intellectual Disability Act, Texas Health and Safety Code, Title 7, Subtitle D.

(42) PMRA--PIDA.

(43) Provider--A public or private entity that delivers services and supports for individuals as an alternative to a residential care facility, including an intermediate care facility for individuals with an intellectual disability or related conditions (ICF/IID), a nursing facility, or an entity that provides waiver services.

(44) Related services--Services for school eligible individuals, as defined in Title 34 Code of Federal Regulations §300.34.

(45) Residential care facility--A state supported living center or the ICF/IID component of the Rio Grande Center.

(46) Respite admission and discharge agreement--A written agreement between the residential care facility, the individual or LAR, and LIDDA, that describes:

(A) the purpose of the respite admission, including the circumstances that precipitated the need for the admission and the expected outcomes from the admission;

(B) the length of time the individual will receive respite services from the residential care facility; and

(C) the responsibilities of each party regarding the care, treatment, and discharge of the individual.

(47) School eligible--A term describing those individuals between the ages of three and 22 who are eligible for public education services.

(48) Service delivery system--All facility and community-based services and supports operated or contracted by HHSC.

(49) Services and supports--Programs and assistance for persons with an intellectual disability that may include a determination of intellectual disability, interdisciplinary team recommendations, education, special training, supervision, care, treatment, rehabilitation, residential care, and counseling, but does not include those services or programs that have been explicitly delegated by law to other state agencies.

(50) Significantly subaverage general intellectual functioning--Measured intelligence on standardized general intelligence tests of two or more standard deviations, not including standard error of measurement adjustments, below the age-group mean for the tests used consistent with THSC §591.003.

(51) State MH facility--State mental health facility. A state hospital.

(52) State MR facility--State mental retardation facility. A residential care facility.

(53) State MR facility living options instrument--A written document used to guide the discussion of living options during a planning meeting that results in a recommendation by the IDT of whether the individual should remain in the current living arrangement at the residential care facility or move to an alternative living arrangement.

(54) TGC--Texas Government Code.

(55) THSC--Texas Health and Safety Code.

(56) Waiver services--Home and community-based services provided through a Medicaid waiver program approved by Centers for Medicare and Medicaid Services (CMS), as described in §1915(c) of the Social Security Act.

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

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SUBCHAPTER B. ADMISSION AND COMMITMENT

26 TAC §§904.25, 904.29, 904.43, 904.45

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §591.004, provides that the Executive Commissioner of HHSC shall adopt rules to ensure the implementation of the Persons with an Intellectual Disability Act, Subtitle D, Title 7, Texas Health and Safety Code.

§904.29. Criteria for Commitment and Commitment for Residential Services Without an Interdisciplinary Team Recommendation of a Minor to a Residential Care Facility Under the PIDA.

(a) In accordance with Texas Government Code §546.0208 and §546.0203, before a minor may be committed to a residential care facility for residential services, the CRCG or the LIDDA, if the minor resides in a county that is not served by a CRCG, must fully inform the parent or guardian of all community-based services and any other service and support options for which the minor may be eligible and complete the permanency planning process, as described in §904.171 of this chapter (relating to MRA and State MR Facility Responsibilities).

(b) A minor represents a substantial risk of physical impairment or injury to self or others or is unable to provide for and is not providing for the minor's most basic personal physical needs, as referenced in subsections (d)(2) and (e)(2) of this section, if:

(1) the minor's IQ is four or more standard deviations below the mean, (i.e., in the severe or profound range of intellectual disability); or

(2) the minor's ICAP service level equals:

(A) 1, 2, 3, or 4; or

(B) 5 or 6 and the minor:

(i) has extraordinary medical needs that would require direct nursing treatment for at least 180 minutes per week if the minor's caregiver were not providing such treatment; or

(ii) exhibits incidents of dangerous behavior that would require intensive staff intervention and resources to prevent serious physical injury to the minor or others if the minor's caregiver were not managing such incidents.

(c) A determination that a minor cannot be adequately and appropriately habilitated in an available, less restrictive setting, as referenced in subsections (d)(3) or (e)(3) of this section, may not be made unless:

(1) a CRCG, or the LIDDA, if the minor resides in a county that is not served by CRCG, held a staffing concerning the minor and provided information to the minor's family about available community supports that could serve as an alternative to admission of the minor to a residential care facility;

(2) available community supports that could serve as an alternative to admission of the minor to a residential care facility were attempted; and

(3) if there are indications that the minor may have a serious emotional disturbance, the minor was assessed by a children's mental health professional to determine if a serious emotional distur-

bance exists and services to address the serious emotional disturbance were attempted.

(d) In accordance with THSC §§593.003, 593.052, and 593.041, except as provided by subsection (e) of this section, a minor may be committed to a residential care facility for residential services only if:

(1) the minor is determined to have an intellectual disability in accordance with §304.401 of this title (relating to Conducting a Determination of Intellectual Disability);

(2) the minor, because of an intellectual disability:

(A) represents a substantial risk of physical impairment or injury to self or others; or

(B) is unable to provide for and is not providing for the minor's most basic personal physical needs;

(3) the minor cannot be adequately and appropriately habilitated in an available, less restrictive setting;

(4) the residential care facility provides habilitative services, care, training, and treatment appropriate to the minor's needs;

(5) a report by a LIDDA's IDT recommending the placement has been completed in accordance with §904.43 of this subchapter (relating to LIDDA IDT Recommendation Concerning the Commitment of an Adult or a Minor or the Regular Voluntary Admission of an Adult to a Residential Care Facility Under the PIDA) during the six months preceding the date of the commitment hearing; and

(6) the court determines beyond a reasonable doubt that the minor meets the requirements of subsection (c) of this section and paragraphs (1), (2)(A) or (2)(B), (3), and (4) of this subsection.

(e) In accordance with THSC §§593.003, 593.041, 593.0511 and 593.052, a minor may be committed to a residential care facility for residential services without an IDT recommendation only if:

(1) the minor is determined to have an intellectual disability in accordance with §304.401 of this title;

(2) the parent of a minor petitions the court to issue a commitment order and shows, because of an intellectual disability, the minor:

(A) represents a substantial risk of physical impairment or injury to self or others; or

(B) is unable to provide for and is not providing for the minor's most basic personal physical needs;

(3) the minor cannot be adequately and appropriately habilitated in an available, less restrictive setting;

(4) the residential care facility provides habilitative services, care, training, and treatment appropriate to the minor's needs; and

(5) the court determines beyond a reasonable doubt that the minor meets the requirements of subsection (c) of this section and paragraphs (1), (2)(A) or (2)(B), (3), and (4) of this subsection.

(f) In accordance with THSC §593.056, a party to a commitment proceeding under subsections (d) or (e) of this section has the right to appeal the judgment to the appropriate court of appeals.

(1) The Texas Rules of Civil Procedure apply to an appeal under this section.

(2) An appeal under this section shall be given a preference setting.

(3) The county court may grant a stay of commitment pending the outcome of the appeal.

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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