

# PROPOSED RULES

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

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

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

## TITLE 16. ECONOMIC REGULATION

### PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

#### CHAPTER 60. PROCEDURAL RULES OF THE COMMISSION AND THE DEPARTMENT

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 60, Subchapter K, §§60.501, 60.502, 60.504, 60.510, 60.514, and 60.516; proposes the repeal of existing rules at Subchapter K, §§60.503, 60.512, 60.518, and 60.519; and proposes new rules at Subchapter K, §§60.512, 60.517, 60.518, and 60.520, regarding the Procedural Rules of the Commission and the Department. These proposed changes are referred to as "proposed rules."

#### EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 60, Subchapter K, implement Texas Occupations Code, Chapter 51, General Provisions Related to Licensing; Chapter 55, Licensing of Military Service Members, Military Veterans, and Military Spouses; and the license portability provisions of the federal Servicemembers' Civil Relief Act found at 50 U.S.C. §4025a.

The proposed rules are necessary to implement House Bill (HB) 5629 and Senate Bill (SB) 1818 (89th Legislature, Regular Session (2025)), which amend state law regarding occupational licensing and recognition of out-of-state occupational licenses for military service members, military veterans, and military spouses. The proposed rules primarily: (1) align the Department's procedures with the standards and requirements set out in HB 5629 for the issuance of occupational licenses and recognition of out-of-state occupational licenses; (2) pursuant to SB 1818, authorize the issuance of provisional licenses to applicants for licensure or license recognition; and (3) reorganize, clarify, and correct existing rule language to be more reader-friendly.

#### SECTION-BY-SECTION SUMMARY

The proposed rules amend §60.501, Military Definitions, to remove redundant or unnecessary language to clarify definitions. Most notably, the changes to this section simplify the definition of "active duty."

The proposed rules amend §60.502, Determining the Amount of Military Experience, Service, Training, or Education, to remove an errant comma.

The proposed rules amend §60.504, Extension of Certain Deadlines, to comply with current state law. The changes make it clear that all military service members- not only those who have been

discharged- are allowed two additional years to complete continuing education or other requirements.

The proposed rules amend §60.510, License Requirements for Applicants with Military Experience, Service, Training, or Education by: (1) clarifying application requirements for prospective applicants; (2) removing rule language repealed by HB 5629 and subsequently moved to new §60.520; and (3) rewording certain provisions to be more reader-friendly.

The proposed rules add new §60.512, Expedited Alternative Licensing Requirements--Similar Scope of Practice, which, consistent with HB 5629, allows military service members, military veterans, and military spouses to obtain a Texas occupational license if they currently possess a license, issued by another state, that has a similar scope of practice to a license issued by the Department. These changes remove the standard of "substantial equivalence" enshrined in the current rules. The proposed changes to this section also clarify the process by which out-of-state licensed military affiliated applicants will apply for a Texas license pursuant to this standard and clarify the department's authority to deny licensure to applicants with a disqualifying criminal history. The proposed rules repeal the previous version of this section.

The proposed rules amend §60.514, Expedited Alternative Licensing Requirements--Previously Held Texas License, by: (1) rewording and reorganizing the section to make it more reader-friendly; (2) restate the documentation requirements for an application; (3) add a requirement for a military spouse applicant to provide documentation of the spouse's active duty status; (4) clarify the department's authority to deny licensure to applicants with a disqualifying criminal history; and (5) repeal subsection (f) (fees), which is no longer supported by law.

The proposed rules amend §60.516, Expedited Alternative Licensing Requirements--Demonstration of Competency by Alternative Methods, by: (1) rewording and reorganizing the section to make it more reader-friendly; (2) restate the documentation requirements for an application; (3) add a requirement for a military spouse applicant to provide documentation of the spouse's active duty status; (4) clarify the department's authority to deny licensure to applicants with a disqualifying criminal history; (5) repeal subsection (f) (fees), which is no longer supported by law; and (6) repeal the unnecessary subsection (i).

The proposed rules add new §60.517, Provisional Licenses. This section implements SB 1818 and authorizes the department to issue a provisional (temporary) license to an applicant in the event that the Department cannot promptly issue the applicant a license or recognize their out-of-state license.

The proposed rules add new §60.518, Recognition of Out-of-State License of Military Service Members and Military Spouses, which describes the out-of-state license recognition process re-

lated to a regulated business or occupation for eligible military service members and their spouses. The proposed rule: (1) pursuant to HB 5629, states the criteria for the Department to recognize an out-of-state occupational license held by a military service member or military spouse; (2) describes the specific prerequisites and procedure by which the department will grant recognition of out-of-state occupational licenses; (3) requires applicants to pass a criminal background check; (4) states the Department's authority to deny recognition to an applicant with a disqualifying criminal history; and (5) states that the Department's must notify an applicant of the disposition of their application within 10 business days. The proposed rules repeal the previous version of this section.

The proposed rules add new rule §60.520, Fees, which was derived, in part, from previously repealed §60.503, Exemption from Late Renewal Fees. This new rule: (1) waives the initial application and examination fees owed by a military affiliated applicant except those examination fees owed to a third-party vendor; and (2) exempts a military affiliated applicant from payment of late renewal fees during active-duty periods.

The proposed rules repeal §60.503, Exemption from Late Renewal Fees.

The proposed rules repeal §60.512, Expedited Alternative Licensing Requirements--Substantially Equivalent License.

The proposed rules repeal §60.518, Recognition of Out-of-State License of Military Service Members and Military Spouses.

The proposed rules repeal §60.519, License Eligibility--Establishing License Residency Requirement for Out-of-State Military Service Members and Military Spouses.

#### FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Couvillon, Senior Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rules.

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue to local government, and no estimated increase in revenue to state government as a result of enforcing or administering the proposed rules.

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, there will be an estimated loss of revenue to the State as the proposed rules waive initial application fees for all military applicants when previously some of the applicants were assessed initial application fees. Approximately 17 applicants per year were subject to these fees. These fees that were previously paid will no longer be collected, resulting in a loss of revenue to the State. However, it is unknown which licenses will be applied for in the next five years and which corresponding license application fee amounts would be assessed, and therefore, the amount of lost revenue in any particular year cannot be estimated. Since the approximate number of applicants who currently pay these fees is not large, the amount of lost revenue is not expected to be significant.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

Because Mr. Couvillon has determined that the proposed rules will not affect a local economy, the agency is not required to prepare a local employment impact statement under Texas Government Code §2001.022.

#### PUBLIC BENEFITS

Mr. Couvillon also has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit an increase in the number of military affiliated applicants being licensed or recognized in this state. Moreover, such applicants will become licensed or recognized quicker as the proposed rules allow for immediate issuance of a provisional license which will put these persons to work faster rather than having to wait for the application process to continue to its conclusion.

#### PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, there will be a minimal cost for persons who are required to comply with the proposed rules. The proposed rules require military applicants who are applying for recognition of an out-of-state license to provide a notarized statement affirming certain facts about the applicant. Obtaining this notarization as required by statute will likely entail a cost for these applicants. The cost of notarization is usually minimal, about \$10, should the military applicant be charged a fee by the notary. There would be no additional economic costs for anyone in the first five years the rule would be in effect. As an offset to the possible cost, military affiliated applicants who meet the requirements for licensure or department recognition would obtain the license or work authorization letter at no cost from the Department, and these licenses or authorizations would impose no cost on any other persons. This offset makes a determination of the actual cost unclear.

#### FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

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

#### ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

The proposed rules do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Texas Government Code §2001.0045.

#### GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Texas Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rules. For each year of the first five years the proposed rules will be in effect, the agency has determined the following:

1. The proposed rules do not create or eliminate a government program.
2. Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.

3. Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency.

4. The proposed rules require an increase or decrease in fees paid to the agency.

The proposed rules require a decrease in fees paid to the agency by waiving initial license application fees for all military service members, spouses, and veterans rather than certain military applicants.

5. The proposed rules create a new regulation.

The proposed rules create a new regulation by requiring the Department to either promptly issue a military applicant a provisional license or promptly issue a regular license or department recognition of an out-of-state license upon receipt of an application for a license or department recognition.

6. The proposed rules expand, limit, or repeal an existing regulation.

The proposed rules expand an existing regulation by requiring a notarized statement, requiring a military spouse to provide a copy of a marriage license, and requiring the Department to promptly issue a provisional or regular license, or department recognition. The proposed rules repeal existing regulations by removing requirements for the establishment of residency. Moreover, the proposed rules change the requirement for license issuance or department recognition of out-of-state licenses from substantially equivalent license requirements to similar scope of practice as a license issued by the Department.

7. The proposed rules increase or decrease the number of individuals subject to the rules' applicability.

The proposed rules increase the number of individuals subject to the rule's applicability by changing the requirement for license issuance or department recognition of out-of-state licenses from substantially equivalent license requirements to similar scope of practice as a license issued by the Department.

8. The proposed rules do not positively or adversely affect this state's economy.

#### TAKINGS IMPACT ASSESSMENT

The Department has determined that no private real property interests are affected by the proposed rules and the proposed rules do not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rules do not constitute a taking or require a takings impact assessment under Texas Government Code §2007.043.

#### PUBLIC COMMENTS AND INFORMATION RELATED TO THE COST, BENEFIT, OR EFFECT OF THE PROPOSED RULES

The Department is requesting public comments on the proposed rules and information related to the cost, benefit, or effect of the proposed rules, including any applicable data, research, or analysis. Any information that is submitted in response to this request must include an explanation of how and why the submitted information is specific to the proposed rules. Please do not submit copyrighted, confidential, or proprietary information.

Comments on the proposed rules and responses to the request for information may be submitted electronically on the Department's website at [https://ga.tdlr.texas.gov:1443/form/Ch60\\_Rule\\_Making](https://ga.tdlr.texas.gov:1443/form/Ch60_Rule_Making); by

facsimile to (512) 475-3032; or by mail to Monica Nuñez, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711. The deadline for comments is 30 days after publication in the *Texas Register*.

### SUBCHAPTER K. LICENSING PROVISIONS RELATED TO MILITARY SERVICE MEMBERS, MILITARY VETERANS, AND MILITARY SPOUSES

**16 TAC §§60.501, 60.502, 60.504, 60.510, 60.512, 60.514, 60.516 - 60.518, 60.520**

#### STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51 and 55, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51 and the Federal Servicemembers Civil Relief Act at 50 U.S.C. §4025a, and the program statutes for all of the Department programs: Agriculture Code, Chapter 301 (Weather Modification and Control); Education Code, Chapter 1001 (Driver and Traffic Safety Education); Government Code, Chapters 171 (Court-Ordered Programs); and 469 (Elimination of Architectural Barriers); Health and Safety Code, Chapters 401, Subchapter M (Laser Hair Removal); 466 (State Lottery); 754 (Elevators, Escalators, and Related Equipment); and 755 (Boilers); Labor Code, Chapter 91 (Professional Employer Organizations); Occupations Code, Chapters 202 (Podiatrists); 203 (Midwives); 401 (Speech-Language Pathologists and Audiologists); 402 (Hearing Instrument Fitters and Dispensers); 403 (Dyslexia Practitioners and Therapists); 451 (Athletic Trainers); 455 (Massage Therapy); 506 (Behavioral Analysts); 605 (Orthotists and Prosthetists); 701 (Dietitians); 802 (Dog or Cat Breeders); 1151 (Property Tax Professionals); 1152 (Property Tax Consultants); 1202 (Industrialized Housing and Buildings); 1302 (Air Conditioning and Refrigeration Contractors); 1304 (Service Contract Providers and Administrators); 1305 (Electricians); 1603 (Barbers and Cosmetologists); 1802 (Auctioneers); 1806 (Residential Solar Retailers); 1901 (Water Well Drillers); 1902 (Water Well Pump Installers); 1952 (Code Enforcement Officers); 1953 (Sanitarians); 1958 (Mold Assessors and Remediators); 2001 (Charitable Bingo); 2052 (Combative Sports); 2303 (Vehicle Storage Facilities); 2308 (Vehicle Towing and Boating); 2309 (Used Automotive Parts Recyclers); 2310 (Motor Fuel Metering and Quality); 2311 (Electric Vehicle Charging Stations); and 2402 (Transportation Network Companies); and Transportation Code, Chapters 551A (Off-Highway Vehicle Training and Safety); and 662 (Motorcycle Operator Training and Safety). No other statutes, articles, or codes are affected by the proposed rules.

The legislation that enacted the statutory authority under which the proposed rules are proposed to be adopted is Senate Bill 1818 and House Bill 5629, 89th Legislature, Regular Session (2025).

#### *§60.501. Military Definitions.*

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

(1) Active duty--Current full-time military service in the armed forces of the United States or active duty military service as a member of the Texas military forces, as defined by §437.001, Government Code, or similar military service of another state. [The term does not include service performed exclusively for training, such as basic combat training, advanced individual training, annual training, inactive duty training, and special training periodically made available to service members. The term includes any period during which a person is absent from duty on account of sickness, wounds, leave, or other lawful cause.]

(2) - (4) (No change.)

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

(6) - (8) (No change.)

§60.502. *Determining the Amount of Military Experience, Service, Training, or Education.*

(a) The amount of military experience, service, training or education, which an applicant submits for purposes of meeting the licensing requirements of a specific license[,] will be determined in accordance with §60.35.

(b) (No change.)

§60.504. *Extension of Certain Deadlines.*

Pursuant to Texas Occupations Code, §55.003, a service member whose license expired while on active duty is entitled to two years of additional time [from the date of discharge] to complete:

(1) - (2) (No change.)

§60.510. *License Requirements for Applicants with Military Experience, Service, Training, or Education.*

(a) This section implements Texas Occupations Code §§51.4013, 55.007, 55.008, [55.009,] and 1305.1645(a).

(b) - (d) (No change.)

(e) An applicant who seeks to receive credit for verified military experience, service, training, or education must submit the following documentation:

(1) a [completed] license application and any supporting documents associated with the specific department license; and

(2) a supplemental application [completed Military Service Member, Military Veteran, or Military Spouse Supplemental Application] and supporting documents including:

(A) if the applicant is a service member, a copy of the applicant's military orders or other documents verifying the applicant's active duty status [showing proof of active duty status (for service members)];

(B) if the applicant is a veteran, [copy of the military orders or] documents verifying the applicant's veteran status; and [showing proof of veteran status (for veterans); and]

(C) documentation [copy of the military orders or documents] showing the type and amount of related military experience, service, training, or education applicable to a specific license.

(f) The amount of military experience, service, training, or education, which an applicant submits for purposes of meeting the licensing requirements of a specific license[,] will be determined in accordance with §60.502.

(g) An [The] applicant under this section must [still take and] pass any applicable examination required for obtaining the [a specific] license.

[(h) The initial license application fee and any examination fees paid to the department are waived for an applicant who meets the requirements under this section. The applicant is still responsible for paying any examination fees that are charged by a third-party examination vendor.]

(h) [(h)] The applicant under this section must pass a criminal history background check. The department may deny an application if the applicant has a disqualifying criminal history.

[(j) A service member or military veteran who obtains a license under this section must comply with all license renewal requirements including fees for the specific license obtained.]

§60.512. *Expedited Alternative Licensing Requirements--Similar Scope of Practice.*

(a) This section implements Texas Occupations Code §§55.004, 55.005, 55.006, and 55.0042.

(b) This section applies to a military service member, a military veteran, and a military spouse, as defined under §60.501.

(c) An applicant under this section is eligible to obtain a license issued by the department if:

(1) the applicant holds a current license, issued by another state, that has a scope of practice similar to that of a license issued by the department; and

(2) the applicant is in good standing with the other state's licensing authority pursuant to Texas Occupations Code §55.0042.

(d) To apply for a license under this section, an applicant must submit:

(1) a license application and any supporting documents required by the application;

(2) a supplemental application including:

(A) if the applicant is a service member, a copy of the applicant's military orders or other documents verifying the applicant's active duty status;

(B) if the applicant is a veteran, documents verifying the applicant's veteran status; or

(C) if the applicant is a military spouse, a copy of the applicant's marriage license or certificate and a copy of the service member's military orders or other documents verifying the service member's active duty status.

(3) a copy of the applicant's out-of-state license; and

(4) documentation verifying that the applicant is in good standing with the other state's licensing authority.

(e) An applicant who qualifies for a license under this section is not required to take any applicable examination required for obtaining the specific license.

(f) The applicant under this section must pass a criminal history background check. The department may deny an application if the applicant has a disqualifying criminal history.

(g) An application under this section shall be expedited in accordance with Texas Occupations Code §55.005.

(h) Pursuant to Texas Occupations Code §55.004(b), the executive director may waive any prerequisite to obtaining a license for an applicant under this section after reviewing the applicant's credentials.

(i) A service member, veteran, or spouse who obtains a license under this section must comply with all the license renewal requirements including fees for the specific license obtained.

(j) The department has sole discretion in determining whether an applicant's out-of-state license is similar in scope to a license issued by the department.

*§60.514. Expedited Alternative Licensing Requirements--Previously Held Texas License.*

(a) This section implements Texas Occupations Code §§55.004, 55.005, and 55.006, as they relate to an applicant who held a license issued by the department ~~[the same Texas license]~~ within the last five years.

(b) (No change.)

(c) An applicant under this section is eligible to obtain a license issued by the department if the applicant within the five years preceding the application date held the same license in this state ~~[Texas]~~.

(d) To apply for a license under this section, an applicant must submit:

(1) a license application and any supporting documents required by the application; and

(2) a supplemental application including:

(A) if the applicant is a service member, a copy of the applicant's military orders or other documents verifying the applicant's active duty status;

(B) if the applicant is a veteran, documents verifying the applicant's veteran status; or

(C) if the applicant is a military spouse, a copy of the applicant's marriage license or certificate and a copy of the service member's military orders or other documents verifying the service member's active duty status.

[(d) The following documentation must be submitted to apply for a license under this section:]

[(1) completed license application and any supporting documents associated with the specific department license; and]

[(2) completed Military Service Member, Military Veteran, or Military Spouse Supplemental Application and supporting documents including:]

[(A) copy of the military orders showing proof of active duty status (for service member and spouse);]

[(B) copy of the military orders or documents showing proof of veteran status (for veteran); and]

[(C) copy of document showing proof of status as a spouse.]

(e) An ~~[The]~~ applicant who qualifies for a license under this section is not required to take any applicable examination required for obtaining that specific license.

[(f) An applicant under this section must pay the license application fees associated with obtaining that specific license.]

[(f) [(g)] The applicant under this section must pass a criminal history background check. The department may deny an application if the applicant has a disqualifying criminal history.

[(g) [(h)] An application under this section shall be expedited in accordance with Texas Occupations Code §55.005.

[(h) [(i)] Pursuant to Texas Occupations Code §55.004(b), the executive director may waive any prerequisite to obtaining a license for an applicant under this section after reviewing the applicant's credentials.

[(j) A service member, veteran, or spouse who obtains a license under this section must comply with all license renewal requirements, including fees for the specific license obtained.]

*§60.516. Expedited Alternative Licensing Requirements--Demonstration of Competency by Alternative Methods.*

(a) - (d) (No change.)

(e) To apply for a license under this section, an applicant must submit:

(1) a license application and any supporting documents required by the application;

(2) a supplemental application including:

(A) if the applicant is a service member, a copy of the applicant's military orders or other documents verifying the applicant's active duty status;

(B) if the applicant is a veteran, documents verifying the applicant's veteran status; or

(C) if the applicant is a military spouse, a copy of the applicant's marriage license or certificate and a copy of the service member's military orders or other documents verifying the service member's active duty status; and

(3) documents specified under subsection (d) that demonstrate the applicant's competency to be evaluated by the department.

[(e) The following documentation must be submitted to apply for a license under this section:]

[(1) completed license application and any supporting documents associated with the specific department license;]

[(2) completed Military Service Member, Military Veteran, or Military Spouse Supplemental Application and supporting documents including:]

[(A) copy of the military orders showing proof of active duty status (for service member and spouse);]

[(B) copy of the military orders or documents showing proof of veteran status (for veteran); and]

[(C) copy of document showing proof of status as a spouse; and]

[(3) documents specified under subsection (d) that demonstrate the applicant's competency and that will be evaluated by the department.]

[(f) An applicant under this section must pay the license application fees associated with obtaining that specific license.]

[(f) [(g)] The applicant under this section must pass a criminal history background check. The department may deny an application if the applicant has a disqualifying criminal history.

[(g) [(h)] An application under this section shall be expedited in accordance with Texas Occupations Code §55.005.

[(i) A service member, veteran, or spouse, who obtains a license under this section, must comply with all license renewal requirements including fees for the specific license obtained.]

*§60.517. Provisional Licenses.*

(a) This section applies to a military service member, a military veteran, and a military spouse, as defined under §60.501.

(b) On receipt by the department of an application for a license, or for recognition of an out-of-state license, the department shall promptly issue a provisional license to the applicant or issue the license or recognition for which the applicant applied. A provisional license issued under this subsection expires on the earlier of:

(1) the date the department approves or denies the provisional license holder's application for the license or for recognition of a license; or

(2) the 180th day after the date the provisional license is issued.

§60.518. Recognition of Out-of-State License of Military Service Members and Military Spouses.

(a) This section implements Texas Occupations Code §55.0041 and the license portability provisions of the federal Service-members' Civil Relief Act found at 50 U.S.C. §4025a.

(b) This section applies to a military service member or military spouse as defined under §60.501.

(c) A service member or military spouse may engage in a business or occupation for which a license is required without obtaining the applicable Texas license if:

(1) the applicant holds a current license, issued by another state, that has a scope of practice similar to that of a license issued by the department;

(2) the applicant is in good standing with the other state's licensing authority pursuant to Texas Occupations Code §55.0042; and

(3) the department recognizes the out-of-state license pursuant to this section.

(d) In order for an out-of-state license to be recognized under this section, a service member or military spouse must apply, in a manner determined by the department, and provide:

(1) a copy of the service member's military orders showing relocation to Texas;

(2) a copy of the out-of-state license, or if unavailable, other identifying information required by the department;

(3) if the applicant is a military spouse, a copy of the marriage license or certificate and a copy of the service member's military orders or other documents verifying the service member's active duty status; and

(4) a notarized statement affirming, under penalty of perjury, that:

(A) the applicant is the person described and identified in the application;

(B) all statements in the application are true, correct, and complete;

(C) the applicant understands the scope of practice for the applicable license in this state and will not perform outside of that scope of practice; and

(D) the applicant is in good standing in each state in which the applicant holds or has held an applicable license.

(e) In addition to the above requirements, an applicant under this section must pass a criminal history background check. The department may deny an application if the applicant has a disqualifying criminal history.

(f) Not later than the 10th business day after the date the department receives an application under subsection (d), the department shall notify the applicant that:

(1) the department recognizes the applicant's out-of-state license;

(2) the application is incomplete; or

(3) the department is unable to recognize the applicant's out-of-state license because:

(A) the department does not issue a license that has a scope of practice that is similar to the applicant's out-of-state license; or

(B) the applicant has a disqualifying criminal history.

(g) A person whose out-of-state license is recognized pursuant to this section:

(1) may engage in the authorized business or occupation for the duration of the person's military orders; and

(2) must immediately notify the department if the person is no longer in good standing with the licensing authority that issued the license recognized by the department.

(h) The department shall withdraw its recognition of a person's out-of-state license if it determines that the person is no longer in good standing with the licensing authority that issued the license.

(i) In the event of a divorce or similar event that affects a person's status as a spouse, a former spouse whose out-of-state license has been recognized pursuant to this section may continue to engage in the business or occupation until the third anniversary of the date the former spouse submitted an application for recognition under this section.

(j) An individual who engages in a business or occupation under the authority or license established by this section is subject to the enforcement authority granted under Texas Occupations Code, Chapter 51, this chapter, and the laws and regulations applicable to the business or occupation in Texas.

(k) An application under this section shall be expedited in accordance with Texas Occupations Code §55.005.

(l) If a service member or spouse of a service member is licensed by way of an interstate licensure compact with Texas, the service member or spouse shall be subject to the requirements of the compact and the applicable laws of this State, and not this section.

§60.520. Fees.

(a) Pursuant to Texas Occupations Code §55.009, the initial license application fee and any examination fees paid to the department are waived for an applicant who is a military service member, military veteran, or military spouse. The applicant is responsible for paying any examination fees that are charged by a third-party examination vendor.

(b) Pursuant to Texas Occupations Code §55.002, an individual who provides the department with satisfactory documentation that the individual was serving as a service member during a license renewal period may renew that license by paying the renewal fee and is exempt from paying a late renewal fee.

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

Filed with the Office of the Secretary of State on September 15, 2025.

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Doug Jennings  
General Counsel  
Texas Department of Licensing and Regulation  
Earliest possible date of adoption: October 26, 2025  
For further information, please call: (512) 475-4879



## 16 TAC §§60.503, 60.512, 60.518, 60.519

### STATUTORY AUTHORITY

The proposed repeals are repealed under Texas Occupations Code, Chapters 51 and 55, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed repeals are those set forth in Texas Occupations Code, Chapters 51 and the Federal Servicemembers Civil Relief Act at 50 U.S.C. §4025a, and the program statutes for all of the Department programs: Agriculture Code, Chapter 301 (Weather Modification and Control); Education Code, Chapter 1001 (Driver and Traffic Safety Education); Government Code, Chapters 171 (Court-Ordered Programs); and 469 (Elimination of Architectural Barriers); Health and Safety Code, Chapters 401, Subchapter M (Laser Hair Removal); 466 (State Lottery); 754 (Elevators, Escalators, and Related Equipment); and 755 (Boilers); Labor Code, Chapter 91 (Professional Employer Organizations); Occupations Code, Chapters 202 (Podiatrists); 203 (Midwives); 401 (Speech-Language Pathologists and Audiologists); 402 (Hearing Instrument Fitters and Dispensers); 403 (Dyslexia Practitioners and Therapists); 451 (Athletic Trainers); 455 (Massage Therapy); 506 (Behavioral Analysts); 605 (Orthotists and Prosthetists); 701 (Dietitians); 802 (Dog or Cat Breeders); 1151 (Property Tax Professionals); 1152 (Property Tax Consultants); 1202 (Industrialized Housing and Buildings); 1302 (Air Conditioning and Refrigeration Contractors); 1304 (Service Contract Providers and Administrators); 1305 (Electricians); 1603 (Barbers and Cosmetologists); 1802 (Auctioneers); 1806 (Residential Solar Retailers); 1901 (Water Well Drillers); 1902 (Water Well Pump Installers); 1952 (Code Enforcement Officers); 1953 (Sanitarians); 1958 (Mold Assessors and Remediators); 2001 (Charitable Bingo); 2052 (Combative Sports); 2303 (Vehicle Storage Facilities); 2308 (Vehicle Towing and Booting); 2309 (Used Automotive Parts Recyclers); 2310 (Motor Fuel Metering and Quality); 2311 (Electric Vehicle Charging Stations); and 2402 (Transportation Network Companies); and Transportation Code, Chapters 551A (Off-Highway Vehicle Training and Safety); and 662 (Motorcycle Operator Training and Safety). No other statutes, articles, or codes are affected by the proposed repeals.

The legislation that enacted the statutory authority under which the proposed repeals are proposed to be adopted is Senate Bill 1818 and House Bill 5629, 89th Legislature, Regular Session (2025).

*§60.503. Exemption from Late Renewal Fees.*

*§60.512. Expedited Alternative Licensing Requirements--Substantially Equivalent License.*

*§60.518. Recognition of Out-of-State License of Military Service Members and Military Spouses.*

*§60.519. License Eligibility--Establishing License Residency Requirement for Out-of-State Military Service Members and Military Spouses.*

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

Filed with the Office of the Secretary of State on September 15, 2025.

TRD-202503260  
Doug Jennings  
General Counsel  
Texas Department of Licensing and Regulation  
Earliest possible date of adoption: October 26, 2025  
For further information, please call: (512) 475-4879



## TITLE 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 62. COMMISSIONER'S RULES CONCERNING OPTIONS FOR LOCAL REVENUE LEVELS IN EXCESS OF ENTITLEMENT

##### 19 TAC §62.1072

*(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figures in 19 TAC §62.1072 are not included in the print version of the Texas Register. The figures are available in the on-line version of the September 26, 2025, issue of the Texas Register.)*

The Texas Education Agency (TEA) proposes an amendment to §62.1072, concerning options for local revenue levels in excess of entitlement. The proposed amendment would adopt as a part of the Texas Administrative Code (TAC) the official TEA publications *Options and Procedures for Districts with Local Revenue in Excess of Entitlement 2025-2026 School Year* and *Options and Procedures for Districts with Local Revenue in Excess of Entitlement 2026-2027 School Year*. The *Options and Procedures for Districts with Local Revenue in Excess of Entitlement* publications serve as manuals that contain the processes and procedures that TEA will use in the administration of the provisions of Texas Education Code (TEC), Chapter 49, and the fiscal, procedural, and administrative requirements that school districts subject to TEC, Chapter 49, must meet.

**BACKGROUND INFORMATION AND JUSTIFICATION:** The procedures contained in each yearly manual for districts determined to have local revenue in excess of entitlement are proposed as part of the TAC. The intent is to biennially update §62.1072 to refer to the most recent published manuals for the current and upcoming school years. Manuals adopted for previous school years will remain in effect with respect to those school years.

The proposed amendment to §62.1072 would adopt in rule the official TEA publications *Options and Procedures for Districts with Local Revenue in Excess of Entitlement 2025-2026 School Year* as Figure: 19 TAC §62.1072(a) and *Options and Proce-*

*dures for Districts with Local Revenue in Excess of Entitlement 2026-2027 School Year* as Figure: 19 TAC §62.1072(b). The section title would be updated to reflect the manuals adopted in the rule.

Each school year's options and procedures for districts determined to have local revenue in excess of entitlement explain how districts subject to excess local revenue are identified; the fiscal, procedural, and administrative requirements those districts must meet; and the consequences for not meeting requirements. The options and procedures also provide information on using the online Foundation School Program (FSP) System to fulfill certain requirements.

The following significant changes are addressed in the updated publications.

In *Options and Procedures for Districts with Local Revenue in Excess of Entitlement 2025-2026 School Year* and *Options and Procedures for Districts with Local Revenue in Excess of Entitlement 2026-2027 School Year*, dates would be changed throughout the manual. Non-substantive, technical edits would also be made.

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

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

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

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

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

**GOVERNMENT GROWTH IMPACT:** TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand an existing regulation by extending the dates to the 2026-2027 school year.

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

**PUBLIC BENEFIT AND COST TO PERSONS:** Ms. Copeland has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of en-

forcing the proposal would be to continue to inform the public of the existence of annual publications specifying the processes, procedures, and requirements used in the manuals for school districts with local revenue in excess of entitlement that are established biennially by the commissioner of education and communicated to all school districts. There is no anticipated economic cost to persons who are required to comply with the proposal.

**DATA AND REPORTING IMPACT:** The proposal would have no data and reporting impact. The proposal would place the specific procedures contained in the publications *Options and Procedures for Local Revenue in Excess of Entitlement 2025-2026 School Year* and *Options and Procedures for Local Revenue in Excess of Entitlement 2026-2027 School Year* in the TAC. TEA administers the options for local revenue in excess of entitlement of TEC, Chapter 49, according to the procedures specified in each yearly manual for districts with excess local revenue. Data reporting requirements are addressed primarily through the online FSP System.

**PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS:** TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

**PUBLIC COMMENTS:** The public comment period on the proposal begins September 26, 2025, and ends October 27, 2025. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on September 26, 2025. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About\\_TEA/Laws\\_and\\_Rules/Commissioner\\_Rules\\_\(TAC\)/Proposed\\_Commissioner\\_of\\_Education\\_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

**STATUTORY AUTHORITY.** The amendment is proposed under Texas Education Code (TEC), §49.006, which authorizes the commissioner of education to adopt rules necessary for the implementation of TEC, Chapter 49, Options for Local Revenue Levels in Excess of Entitlement.

**CROSS REFERENCE TO STATUTE.** The amendment implements Texas Education Code, §49.006.

§62.1072. *Options and Procedures for Local Revenue in Excess of Entitlement, 2025-2026 and 2026-2027 [2023-2024 and 2024-2025] School Years.*

(a) For the 2025-2026 [2023-2024] school year, the processes and procedures that the Texas Education Agency (TEA) will use in the administration of the provisions of the Texas Education Code (TEC), Chapter 49, and the fiscal, procedural, and administrative requirements that school districts subject to the TEC, Chapter 49, must meet are described in the official TEA publication *Options and Procedures for Districts with Local Revenue in Excess of Entitlement 2025-2026 [2023-2024] School Year*, provided in this subsection.

Figure: 19 TAC §62.1072(a)  
[Figure: 19 TAC §62.1072(a)]

(b) For the 2026-2027 [2024-2025] school year, the processes and procedures that the TEA will use in the administration of the provisions of the TEC, Chapter 49, and the fiscal, procedural, and administrative requirements that school districts subject to the TEC, Chapter 49, must meet are described in the official TEA publication *Options and Procedures for Districts with Local Revenue in Excess of Entitlement 2026-2027 [2024-2025] School Year*, provided in this subsection.



Figure: 19 TAC §62.1072(b)  
[Figure: 19 TAC §62.1072(b)]

(c) The specific processes, procedures, and requirements used in the manuals for districts with local revenue in excess of entitlement are established biennially by the commissioner of education and communicated to all school districts.

(d) School district actions and inactions in previous school years and data from those school years will continue to be subject to the annual manual for districts with local revenue in excess of entitlement with respect to those years.

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

Filed with the Office of the Secretary of State on September 15, 2025.

TRD-202503259

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: October 26, 2025

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



## CHAPTER 129. STUDENT ATTENDANCE

### SUBCHAPTER BB. COMMISSIONER'S RULES CONCERNING TRUANCY

#### 19 TAC §129.1047

The Texas Education Agency (TEA) proposes an amendment to §129.1047, concerning truancy sanctions. The proposed amendment would align the rule with statute and the current agency investigative process.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 129.1047 establishes criteria for sanctions regarding truancy.

The proposed amendment would remove §129.1047(b) and (c) to align with current program practices.

Section 129.1047(d) would be re-lettered, and language would be added to specify that sanctions related to truancy prevention measures are subject to a school district's due process rights under Texas Education Code (TEC), Chapter 39, Subchapter A. In addition, a reference to TEC, §39.102(a), would be updated to §39A.002.

FISCAL IMPACT: Kristin McGuire, interim deputy commissioner for special populations and student supports, has determined that for the first five-year period the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

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

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

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

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

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would limit and expand an existing regulation by removing outdated procedures and adding language to reflect the applicability of a school's due process rights to truancy prevention sanctions.

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

PUBLIC BENEFIT AND COST TO PERSONS: Ms. McGuire has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be to provide a public benefit by enhancing procedural clarity and ensuring alignment with updated legal requirements for truancy investigations. There is no anticipated economic cost to persons who are required to comply with the proposal.

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

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins September 26, 2025, and ends October 27, 2025. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on September 26, 2025. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About\\_TEA/Laws\\_and\\_Rules/Commissioner\\_Rules\\_\(TAC\)/Proposed\\_Commissioner\\_of\\_Education\\_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code, §25.0915, which establishes truancy prevention measures.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §25.0915.

§129.1047. *Sanctions.*

(a) An aggrieved party may file a written complaint with the Texas Education Agency [(TEA)] regarding an allegation that a school district has failed to comply with the provisions set forth in Texas Ed-

ucation Code (TEC), §25.0915, or this subchapter related to truancy prevention measures.

[(b) TEA may request that a school district provide documentation regarding its compliance with required truancy prevention measures in response to a complaint filed with the TEA. If, after a review of this documentation or a school district's failure to provide this documentation, TEA determines that the school district is not in compliance with required truancy prevention measure provisions, TEA may issue a preliminary report of its findings to the school district in accordance with §157.1122 of this title (relating to Notice).]

[(c) A school district may request in writing an informal review of TEA's preliminary report of findings in accordance with §157.1123 of this title (relating to Informal Review). Following the informal review, or if no informal review is requested by the deadline, a final report will be issued.]

(b) [(d)] The commissioner of education may implement any sanction listed in TEC, §39A.002 [§39.102(a)], against a school district found to be out of compliance with TEC, §25.0915, or this subchapter, subject to the due process rights accorded to the school district under TEC, Chapter 39, Subchapter A.

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

Filed with the Office of the Secretary of State on September 15, 2025.

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: October 26, 2025

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



## **TITLE 22. EXAMINING BOARDS**

### **PART 14. TEXAS OPTOMETRY BOARD**

#### **CHAPTER 272. ADMINISTRATION**

##### **22 TAC §272.5**

The Texas Optometry Board (Board) proposes amendments to 22 TAC Part 14 Chapter 272 - Administration §272.5 - Definitions.

##### **EXPLANATION OF AND JUSTIFICATION FOR THE RULE**

Texas Optometry Act §351.353 sets out parameters for the initial examination of a patient for whom a prescription for glasses or contacts is written. The Board finds it necessary to define what constitutes an initial visit for purposes of regulating this section of the statute especially as it relates to inspections of optometric practices under §351.1575 of the Texas Optometry Act.

This rule proposes that the time between eye exam visits can be up to three years before the optometrist would have to comply with requirements of the statute. The three-year time between visits is generally found in insurance contracts and has become a standard in optometric practice. Additionally, the Board wants to define initial as practice specific not provider specific- as long as the subsequent provider in the same practice has access to the patient's complete patient chart from all previous visits.

##### **SECTION-BY-SECTION SUMMARY**

Section 1 proposes a definition of Initial Visit to mean "A patient who returns to the same provider or the same practice with access to the patient's complete patient record within three years of the last examination in which a spectacle or contact lens prescription was written is exempted from the requirements of an initial visit under §351.353 of the Act."

##### **FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT**

Janice McCoy, Executive Director, has determined that for each year of the first five years that the proposed rule is in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rule. Additionally, Mrs. McCoy has determined that for each year of the first five years the proposed rule is in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rule.

##### **LOCAL EMPLOYMENT IMPACT STATEMENT**

Because Mrs. McCoy has determined that the proposed rule will not affect a local economy, the agency is not required to prepare a local employment impact statement under Texas Government Code §2001.022.

##### **PUBLIC BENEFIT**

Ms. McCoy has determined for the first five-year period the proposed rule is in effect, the intended public benefit will be clarity for patients and optometrists to know when and how the requirements of an initial visit must be met.

##### **PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL**

Mrs. McCoy has determined that for each year of the first five-year period the proposed rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule.

##### **FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES**

The proposed rule will have no direct adverse economic impact on small businesses, micro-businesses, or rural communities. Accordingly, the preparation of an economic impact statement and a regulatory flexibility analysis, as specified in Texas Government Code §2006.002, is not required.

##### **ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT**

The proposed rule do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Texas Government Code §2001.0045.

##### **GOVERNMENT GROWTH IMPACT STATEMENT**

Pursuant to Texas Government Code §2001.0221, for the first five-year period the proposed rule is in effect Ms. McCoy has determined the following:

The proposed rule does not create or eliminate a government program.

The proposed rule does not require the creation or elimination of employee positions.

The proposed rule does not require the increase or decrease in future legislative appropriations to the agency.

The proposed rule does not require an increase or decrease in fees paid to the agency.

The proposed rule does not create a new regulation.

The proposed rule does not expand, limit, or repeal an existing regulation.

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

The proposed rule does not positively or adversely affect the state's economy.

#### TAKINGS IMPACT ASSESSMENT

Ms. McCoy has determined that there are no private real property interests affected by the proposed rule. Thus, the Board is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

#### PUBLIC COMMENTS

Comments on the amended rule may be submitted electronically to: [janice.mccoy@tob.texas.gov](mailto:janice.mccoy@tob.texas.gov) or in writing to Janice McCoy, Executive Director, Texas Optometry Board, 1801 N. Congress, Suite 9.300, Austin, Texas 78701. The deadline for furnishing comments is thirty days after publication in the *Texas Register*.

#### STATUTORY AUTHORITY

The Board proposes this 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. The statutory provisions affected by the proposed rule are those set forth in §351.353 of the Tex. Occ. Code. No other sections are affected by the amendments.

#### §272.5. Definitions.

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

(1) Act--The Texas Optometry Act, Chapter 351, Texas Occupations Code.

(2) APA--The Administrative Procedure Act, Chapter 2001, Government Code.

(3) Board--The Texas Optometry Board.

(4) Contested case--A proceeding, including but not restricted to licensing, in which the legal rights, duties, or privileges of a party are to be determined by the board after an opportunity for adjudicative hearing.

(5) Executive Director--Executive Director of the Texas Optometry Board.

(6) Initial Visit--A patient who returns to the same provider or the same practice with access to the patient's complete patient record within three years of the last examination in which a spectacle or contact lens prescription was written is exempted from the requirements of an initial visit under §351.353 of the Act.

(7) [(6)] PFD--Proposal for decision.

(8) [(7)] Respondent--A person against whom a formal charge has been made alleging conduct that violates the Act or rules, regulations, or orders of the Board and whose legal rights are to be determined by the board after the opportunity for an adjudicative hearing in a contested case as defined by the APA.

(9) [(8)] SOAH--State Office of Administrative Hearings.

(10) [(9)] Synchronous--live, real-time audiovisual interaction between the practitioner and the patient in a separate location.

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

Filed with the Office of the Secretary of State on September 15, 2025.

TRD-202503254

Janice McCoy

Executive Director

Texas Optometry Board

Earliest possible date of adoption: October 26, 2025

For further information, please call: (512) 305-8502



## PART 15. TEXAS STATE BOARD OF PHARMACY

### CHAPTER 281. ADMINISTRATIVE PRACTICE AND PROCEDURES

#### SUBCHAPTER C. DISCIPLINARY GUIDELINES

##### 22 TAC §281.63

The Texas State Board of Pharmacy proposes amendments to §281.63, concerning Considerations for Criminal Offenses. The amendments, if adopted, update the board's disciplinary guidelines concerning the imprisonment of a licensee, a registrant, or an owner of a pharmacy following a felony conviction or deferred adjudication, in accordance with Senate Bill 1080 and clarify certain provisions to align more closely to existing statute.

Daniel Carroll, Pharm.D., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Dr. Carroll has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to provide consistency between state law and Board rules regarding the licensing consequences of imprisonment following a felony conviction or deferred adjudication and clear and accurate regulations. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

For each year of the first five years the proposed amendments will be in effect, Dr. Carroll has determined the following:

(1) The proposed amendments do not create or eliminate a government program;

(2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions;

(3) Implementation of the proposed amendments does not require an increase or decrease in the future legislative appropriations to the agency;

- (4) The proposed amendments do not require an increase or decrease in fees paid to the agency;
- (5) The proposed amendments do not create a new regulation;
- (6) The proposed amendments do limit an existing regulation by narrowing the grounds for mandatory revocation of a license or registration in order to comply with state law;
- (7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability; and
- (8) The proposed amendments would have a de minimis impact on this state's economy.

Written comments on the amendments may be submitted to Eamon D. Briggs, Deputy General Counsel, Texas State Board of Pharmacy, 1801 Congress Avenue, Suite 13.100, Austin, Texas 78701-1319, FAX (512) 305-8061. Comments must be received by 5:00 p.m., October 28, 2025.

The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§281.63. *Considerations for Criminal Offenses.*

(a) The purpose of this section is to establish guidelines and criteria on the eligibility of persons with criminal backgrounds to obtain a license or registration from the board and on the disciplinary actions taken by the board. The section applies to all criminal convictions and to all deferred adjudication community supervisions or deferred dispositions, as authorized by the Act, for all types of licenses and registrations.

(b) The board may suspend, revoke, or impose other authorized disciplinary action on a current license or registration, disqualify a person from receiving a license or registration, or deny to a person the opportunity to be examined for a license or registration because of a person's conviction or deferred adjudication of a crime that serves as a ground for discipline under the Act, and that the board determines directly relates to the duties and responsibilities of a licensee, a registrant, or of an owner of a pharmacy. This subsection applies to persons who are not imprisoned at the time the board considers the conviction or deferred adjudication.

(c) The board may revoke a license or registration upon the imprisonment of the licensee, the registrant, or the owner of a pharmacy following a felony conviction or deferred adjudication. The board shall revoke a license or registration upon the imprisonment of the licensee, the registrant, or the owner of a pharmacy following a: [~~felony conviction or deferred adjudication, or revocation of felony community supervision, parole, or mandatory supervision.~~]

(1) felony conviction or deferred adjudication for:

(A) an offense that directly relates to the occupation of a licensee or registrant, or the operation of a pharmacy;

(B) an offense listed in Article 42.054, Code of Criminal Procedure; or

(C) a sexually violent offense, as defined by Article 62.001, Code of Criminal Procedure;

(2) felony community supervision revocation;

(3) revocation of parole; or

(4) revocation of mandatory supervision.

(d) A person in prison is not eligible for a license or registration.

(e) An applicant for a license or registration from the board shall disclose in writing to the board any conviction or deferred adjudication against him or her at the time of application. A current licensee or registrant shall disclose in writing to the board any conviction or deferred adjudication against him or her at the time of renewal.

(f) The board has determined that the criminal offenses listed in subsection (i) of this section [shall by rule determine and list in this section which criminal offenses] directly relate to the occupation of a licensee or registrant, or the operation of a pharmacy. For all other offenses not listed in this section, in considering whether a criminal conviction or deferred adjudication directly relates to the duties and responsibilities of a licensee, a registrant, or of an owner of a pharmacy [occupation of a licensee or a registrant, or the operation of a pharmacy], the board shall consider the following factors:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purposes for requiring a license or registration to engage in the occupation of the licensee or registrant, or the operation of a pharmacy;

(3) the extent to which a license or registration might afford the licensee or registrant an opportunity to repeat the criminal activity in which the person had been involved; [and]

(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensee or registrant; and[-]

(5) any correlation between the elements of the crime and the duties and responsibilities of the license or registration.

(g) The board has the authority to impose disciplinary action as authorized by the Act, for those criminal offenses that provide grounds for discipline under the Act. In reaching a decision regarding the severity of the disciplinary sanction to impose on a license or registration, the board shall, in its discretion and unless otherwise specified in §281.64 of this title (relating to Sanctions for Criminal Offenses), also determine the person's fitness to perform the duties and discharge the responsibilities of a licensee or registrant by evaluating and balancing these factors in the following priority with the first being the highest priority:

(1) the extent and nature of the person's past criminal activity;

(2) the amount of time that has elapsed since the person's last criminal activity;

(3) the person's rehabilitation or rehabilitative effort while incarcerated or following release as corroborated by extrinsic evidence;

(4) the age of the person at the time of the commission of the crime, if younger than 21 years of age at the time of the crime;

(5) the conduct and work activity of the person prior to and following the criminal activity; [and]

(6) evidence of the person's compliance with any conditions of community supervision, parole, or mandatory supervision; and

(7) [(6)] other evidence of the person's present fitness, including letters of recommendation. [from:]

~~[(A) prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;]~~

~~[(B) the sheriff and chief of police in the community where the person resides; and]~~

~~[(C) any other persons in contact with the person.]~~

(h) In order to establish the factors in subsection (g) of this section, a person with a conviction or deferred adjudication shall:

(1) to the extent possible, secure and provide to the board the recommendations ~~[of the prosecution, law enforcement, and correctional authorities]~~ specified in subsection ~~(g)(7) [(g)(6)]~~ of this section;

(2) cooperate with the board by providing the information required by this section, including proof that he or she has:

(A) maintained a record of steady employment, as evidenced by salary stubs, income tax records or other employment records for the time since the conviction or deferred adjudication and/or release from imprisonment;

(B) supported his or her dependents, as evidenced by salary stubs, income tax records or other employment records for the time since the conviction or deferred adjudication and/or release from imprisonment, and a recommendation from the spouse or either parent;

(C) maintained a record of good conduct as evidenced by recommendations, absence of other criminal activity or documentation of community service since conviction or deferred adjudication;

(D) paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered in all criminal cases in which he or she has been convicted, as evidenced by certified copies of a court release or other documentation from the court system that all monies have been paid; and

(E) obtained appropriate treatment and/or counseling, if applicable.

(i) The board has determined that the following crimes directly relate to duties and responsibilities of board licensees or registrants. The commission of each indicates an inability or a tendency for the person to be unable to perform or to be unfit for licensure or registration, because commission of such crimes indicates a lack of integrity and respect for one's fellow human being and the community at large. Even if the commission of these crimes did not occur while the licensee or registrant was on-duty or employed at a pharmacy, the board has determined that the crimes directly relate to the practice of pharmacy based on a lack of integrity and good moral character exhibited by the commission of the crimes. In addition, the direct relationship to a license or registration is presumed when any crime occurs in connection with the practice of pharmacy or the operation of a pharmacy. The crimes are as follows:

(1) practicing or operating a pharmacy without a license or registration and other violations of the Pharmacy Act;

(2) deceptive business practices under the Texas Penal Code;

(3) Medicare or Medicaid fraud;

(4) a misdemeanor or felony offense under the Texas Penal Code involving:

(A) murder;

(B) assault;

(C) burglary;

(D) robbery;

(E) theft;

(F) sexual assault;

(G) injury to a child;

(H) injury to an elderly person;

(I) child abuse or neglect;

(J) tampering with a governmental record;

(K) forgery;

(L) perjury;

(M) failure to report abuse;

(N) bribery;

(O) harassment;

(P) insurance claim fraud;

(Q) driving while intoxicated;

(R) solicitation of professional employment under the Penal Code §38.12(d) or Occupations Code, Chapter 102;

(S) mail fraud; or

(T) any criminal offense which requires the individual to register with the Department of Public Safety as a sex offender under Chapter 62, Code of Criminal Procedure.

(5) any crime of moral turpitude;

(6) a misdemeanor or felony offense under Chapters 431 and 481 through 486, Health and Safety Code and the Comprehensive Drug Abuse Prevention and Control Act of 1970; or

(7) other misdemeanors or felonies which serve as grounds for discipline under the Act, including violations of the Penal Code, Titles 4, 5, 6, 7, 8, 9, and 10, which indicate an inability or tendency for the person to be unable to perform as a licensee or registrant, or to be unfit for licensure or registration, if action by the board will promote the intent of the Pharmacy Act, board rules including this chapter, and Occupations Code, Chapter 53.

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

Filed with the Office of the Secretary of State on September 12, 2025.

TRD-202503251

Daniel Carroll, Pharm.D.

Executive Director

Texas State Board of Pharmacy

Earliest possible date of adoption: October 26, 2025

For further information, please call: (512) 305-8084



## CHAPTER 283. LICENSING REQUIREMENTS FOR PHARMACISTS

### 22 TAC §283.12

The Texas State Board of Pharmacy proposes amendments to §283.12, concerning Licenses for Military Service Members, Military Veterans, and Military Spouses. The amendments, if

adopted, update the alternative licensing procedures, expedited licensing procedures, and interim license procedures for a military service member, military veteran, or military spouse, in accordance with House Bill 5629, establish provisional license procedures for a military service member, military veteran, or military spouse, in accordance with Senate Bill 1818, and make grammatical corrections.

Daniel Carroll, Pharm.D., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Dr. Carroll has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to provide consistency between state law and Board rules regarding the licensing requirements and procedures for military service members, military veterans, and military spouses and grammatically correct regulations. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

For each year of the first five years the proposed amendments will be in effect, Dr. Carroll has determined the following:

- (1) The proposed amendments do not create or eliminate a government program;
- (2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions;
- (3) Implementation of the proposed amendments does not require an increase or decrease in the future legislative appropriations to the agency;
- (4) The proposed amendments do not require an increase or decrease in fees paid to the agency;
- (5) The proposed amendments do not create a new regulation;
- (6) The proposed amendments do limit an existing regulation by exempting military service members, military veterans, and military spouses from certain licensing requirements in order to comply with state law;
- (7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability; and
- (8) The proposed amendments would have a de minimis impact on this state's economy.

Written comments on the amendments may be submitted to Eamon D. Briggs, Deputy General Counsel, Texas State Board of Pharmacy, 1801 Congress Avenue, Suite 13.100, Austin, Texas 78701-1319, FAX (512) 305-8061. Comments must be received by 5:00 p.m., October 28, 2025.

The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§283.12. *Licenses for Military Service Members, Military Veterans, and Military Spouses.*

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Active duty--Current full-time military service in the armed forces of the United States or active duty military service as a member of the Texas military forces, or similar military service of another state.

(2) Armed forces of the United States--The army, navy, air force, space force, coast guard, or marine corps of the United States or a reserve unit of one of those branches of the armed forces.

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

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

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

(b) Alternative licensing procedure. For the purpose of §55.004, Occupations Code, [an applicant for a pharmacist license who is] a military service member, military veteran, or military spouse may complete the following alternative procedures to apply for a pharmacist license if the applicant holds a current license issued by another state that is similar in scope of practice to the license in this state and is in good standing with that state's licensing authority or within the five years preceding the application date held a pharmacist license in this state [for licensing as a pharmacist].

(1) Provisional license. On receipt by the board of an application for a pharmacist license in accordance with this subsection, the board shall issue a provisional license to the applicant while the board processes the application. A provisional license issued under this subsection expires on the earlier of:

(A) the date the board approves or denies the provisional license holder's application for the license; or

(B) the 180th date after the date the provisional license is issued.

(2) [(+)] Requirements for licensing by reciprocity. An applicant for licensing by reciprocity who meets all of the following requirements may be granted a temporary license as specified in this subsection prior to completing the NABP application for pharmacist license by reciprocity, and taking and passing the Texas Pharmacy Jurisprudence Examination. The applicant shall:

(A) complete the Texas application for pharmacist license by reciprocity that includes the following:

- (i) name;
- (ii) addresses, phone numbers, date of birth, and social security number; and
- (iii) any other information requested on the application;

(B) meet the educational and age requirements as set forth in §283.3 of this title (relating to Educational and Age Requirements);

(C) present to the board proof of initial licensing by examination and proof that any current licenses and any other licenses granted to the applicant by any other state have not been suspended, revoked, canceled, surrendered, or otherwise restricted for any reason;

(D) meet all requirements necessary for the board to access the criminal history records information, including submitting fingerprint information, and such criminal history check does not reveal any disposition for a crime specified in §281.64 of this title (relating to Sanctions for Criminal Offenses) indicating a sanction of denial, revocation, or suspension;

(E) be exempt from the application and examination fees paid to the board set forth in §283.9(a)(2)(A) and (b) of this title (relating to Fee Requirements for Licensure by Examination, Score Transfer and Reciprocity); and

(F) provide documentation of eligibility, including:

(i) military identification indicating that the applicant is a military service member, military veteran, or military dependent, if a military spouse; and

(ii) marriage certificate, if a military spouse.

(3) [(2)] Requirements for an applicant whose Texas pharmacist license has expired. An applicant whose Texas pharmacist license has expired within five years preceding the application date:

(A) shall complete the Texas application for licensing that includes the following:

(i) name;

(ii) addresses, phone numbers, date of birth, and social security number; and

(iii) any other information requested on the application;

(B) shall provide documentation of eligibility, including:

(i) military identification indicating that the applicant is a military service member, military veteran, or military dependent, if a military spouse; and

(ii) marriage certificate, if a military spouse;

(C) shall pay the renewal fee specified in §295.5 of this title (relating to Pharmacist License or Renewal Fees); however, the applicant shall be exempt from the fees specified in §295.7(3) of this title (relating to Pharmacist License Renewal);

(D) shall complete approved continuing education requirements according to the following schedule:

(i) if the Texas pharmacist license has been expired for more than one year but less than two years, the applicant shall complete 15 contact hours of approved continuing education;

(ii) if the Texas pharmacist license has been expired for more than two years but less than three years, the applicant shall complete 30 contact hours of approved continuing education; or

(iii) if the Texas pharmacist license has been expired for more than three years but less than five years, the applicant shall complete 45 contact hours of approved continuing education; and

(E) is not required to take the Texas Pharmacy Jurisprudence Examination.

(4) [(3)] A temporary license issued under this subsection [section] is valid for no more than six months and may be extended, if disciplinary action is pending, or upon request, as otherwise determined reasonably necessary by the executive director of the board.

(5) [(4)] A temporary license issued under this subsection [section] expires within six months of issuance if the individual fails to

pass the Texas Pharmacy Jurisprudence Examination within six months or fails to take the Texas Pharmacy Jurisprudence Examination within six months.

(6) [(5)] An individual may not serve as pharmacist-in-charge of a pharmacy with a temporary license issued under this subsection.

(c) Expedited licensing procedure. For the purpose of §55.005, Occupations Code, [an applicant for a pharmacist license who is] a military service member, military veteran, or military spouse [and who holds a current license as a pharmacist issued by another state] may complete the following expedited procedures to apply for a pharmacist license if the applicant holds a current license issued by another state that is similar in scope of practice to the license in this state and is in good standing with that state's licensing authority or within the five years preceding the application date held a pharmacist license in this state [for licensing as a pharmacist]. The applicant shall:

(1) meet the educational and age requirements specified in §283.3 of this title (relating to Educational and Age Requirements);

(2) meet all requirements necessary in order for the board to access the criminal history record information, including submitting fingerprint information and being responsible for all associated costs;

(3) complete the Texas and NABP applications for reciprocity. Any fraudulent statement made in the application for reciprocity is grounds for denial of the application. If such application is granted, any fraudulent statement is grounds for suspension, revocation, and/or cancellation of any license so granted by the board. The Texas application includes the following information:

(A) name;

(B) addresses, phone numbers, date of birth, and social security number; and

(C) any other information requested on the application;

(4) present to the board proof of initial licensing by examination and proof that their current license and any other license or licenses granted to the applicant by any other state have not been suspended, revoked, canceled, surrendered, or otherwise restricted for any reason;

(5) pass the Texas Pharmacy Jurisprudence Examination with a minimum grade of 75. (The passing grade may be used for the purpose of licensure by reciprocity for a period of two years from the date of passing the examination.) Should the applicant fail to achieve a minimum grade of 75 on the Texas Pharmacy Jurisprudence Examination, such applicant, in order to be licensed, shall retake the Texas Pharmacy Jurisprudence Examination as specified in §283.11 of this title (relating to Examination Retake Requirements) until such time as a minimum grade of 75 is achieved; and

(6) be exempt from the application and examination fees paid to the board set forth in §283.9(a)(2)(A) and (b).

(d) License renewal. As specified in §55.003, Occupations Code, a military service member who holds a pharmacist license is entitled to two years of additional time to complete any requirements related to the renewal of the military service member's license.

(1) A military service member who fails to renew their pharmacist license in a timely manner because the individual was serving as a military service member shall submit to the board:

(A) name, address, and license number of the pharmacist;

(B) military identification indicating that the individual is a military service member; and

(C) a statement requesting up to two years of additional time to complete the renewal.

(2) A military service member specified in paragraph (1) of this subsection shall be exempt from fees specified in §295.7(3) of this title (relating to Pharmacist License Renewal).

(3) A military service member specified in paragraph (1) of this subsection is entitled to two additional years of time to complete the continuing education requirements specified in §295.8 of this title (relating to Continuing Education Requirements).

(e) Inactive status. The holder of a pharmacist license who is a military service member, a military veteran, or a military spouse who holds a pharmacist license and who is not engaged in the practice of pharmacy in this state may place the license on inactive status as specified in §295.9 of this title (relating to Inactive License). The inactive license holder:

(1) shall provide documentation to include:

(A) military identification indicating that the pharmacist is a military service member, military veteran, or military dependent, if a military spouse; and

(B) marriage certificate, if a military spouse;

(2) shall be exempt from the fees specified in §295.9(a)(1)(C) and §295.9(a)(2)(C) of this title;

(3) shall not practice pharmacy in this state; and

(4) may reactivate the license as specified in §295.9 of this title (relating to Inactive License).

(f) Interim license for military service member or military spouse. In accordance with §55.0041, Occupations Code, a military service member or military spouse may be issued an interim pharmacist license if the member or spouse currently holds a license similar in scope of practice issued by the licensing authority of another state and is in good standing with that licensing authority as specified in §55.0042, Occupations Code. [who is currently licensed in good standing by a jurisdiction with licensing requirements that are substantially equivalent to the licensing requirements in this state may be issued an interim pharmacist license. The military service member or military spouse:]

(1) Before engaging in the practice of pharmacy, the military service member or military spouse shall submit an application that includes [shall provide documentation to include]:

(A) a copy of the member's military orders showing relocation to this state [notification of intent to practice form including any additional information requested];

(B) if the applicant is a military spouse, a copy of the military spouse's marriage certificate [proof of the military service member or military spouse's residency in this state, including a copy of the permanent change of station order for the military service member or military service member to whom the military spouse is married]; and

(C) a notarized affidavit affirming under penalty of perjury that: [copy of the military service member or military spouse's military identification card; and]

(i) the applicant is the person described and identified in the application;

(ii) all statements in the application are true, correct, and complete;

(iii) the applicant understands the scope of practice for a pharmacist license in this state and will not perform outside of that scope of practice; and

(iv) the applicant is in good standing in each state in which the applicant holds or has held a pharmacist license.

~~[(D) verification from the jurisdiction in which the military service member or military spouse holds an active pharmacist license that the military service member or military spouse's license is in good standing;]~~

(2) A military service member or military spouse applying for an interim license under this subsection may not practice pharmacy in this state until issued an interim pharmacist license.[:]

(3) For a military service member or military spouse applying for an interim license under this subsection, the board shall: [may hold an interim pharmacist license only for the period during which the military service member or military service member to whom the military spouse is married is stationed at a military installation in this state, but not to exceed three years from the date of issuance of the interim license; and]

(A) determine whether the state in which the applicant is licensed issues licenses similar in scope of practice to a pharmacist license issued by the board; and

(B) notify the applicant that:

(i) the board is issuing the interim license;

(ii) the application is incomplete; or

(iii) the board is unable to issue the interim license because a pharmacist license issued by the board is not similar in scope of practice to the applicant's license.

(4) A military service member or military spouse may engage in the practice of pharmacy under an interim license issued under this subsection only for the period during which the military service member or, with respect to a military spouse, the military service member to whom the spouse is married is stationed at a military installation in this state [may not renew the interim pharmacist license].

(5) In the event of a divorce or similar event that affects a person's status as a military spouse, the former spouse may continue to engage in the practice of pharmacy under an interim license issued under this subsection until the third anniversary of the date the spouse submitted the application required under paragraph (1) of this subsection.

(6) While engaged in the practice of pharmacy in this state, the military service member or military spouse shall comply with all other laws and regulations applicable to the business or occupation in this state.

(g) Relationship to federal law. This [Subsection (f) of this] section establishes requirements and procedures authorized or required by Texas Occupations Code, Chapter 55, and does not modify or alter rights that may be provided under federal law.

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

Filed with the Office of the Secretary of State on September 12, 2025.





## CHAPTER 291. PHARMACIES

### SUBCHAPTER B. COMMUNITY PHARMACY (CLASS A)

#### 22 TAC §291.31

The Texas State Board of Pharmacy proposes amendments to §291.31, concerning Definitions. The amendments, if adopted, add definitions for the terms "common ownership" and "owner of record."

Daniel Carroll, Pharm.D., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Dr. Carroll has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be clear and correct regulations that reflect the Board's current practices concerning the licensure of pharmacies. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

For each year of the first five years the proposed amendments will be in effect, Dr. Carroll has determined the following:

- (1) The proposed amendments do not create or eliminate a government program;
- (2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions;
- (3) Implementation of the proposed amendments does not require an increase or decrease in the future legislative appropriations to the agency;
- (4) The proposed amendments do not require an increase or decrease in fees paid to the agency;
- (5) The proposed amendments do not create a new regulation;
- (6) The proposed amendments do expand an existing regulation;
- (7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability; and
- (8) The proposed amendments would have a de minimis impact on this state's economy.

Written comments on the amendments may be submitted to Eamon D. Briggs, Deputy General Counsel, Texas State Board of Pharmacy, 1801 Congress Avenue, Suite 13.100, Austin, Texas 78701-1319, FAX (512) 305-8061. Comments must be received by 5:00 p.m., October 28, 2025.

The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing

the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

#### §291.31. Definitions.

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

(1) Accurately as prescribed--Dispensing, delivering, and/or distributing a prescription drug order:

(A) to the correct patient (or agent of the patient) for whom the drug or device was prescribed;

(B) with the correct drug in the correct strength, quantity, and dosage form ordered by the practitioner; and

(C) with correct labeling (including directions for use) as ordered by the practitioner. Provided, however, that nothing herein shall prohibit pharmacist substitution if substitution is conducted in strict accordance with applicable laws and rules, including Chapter 562 of the Texas Pharmacy Act.

(2) Act--The Texas Pharmacy Act, Chapters 551 - 569, Occupations Code, as amended.

(3) Advanced practice registered nurse--A registered nurse licensed by the Texas Board of Nursing to practice as an advanced practice registered nurse on the basis of completion of an advanced education program. The term includes nurse practitioner, nurse midwife, nurse anesthetist, and clinical nurse specialist. The term is synonymous with advanced nurse practitioner and advanced practice nurse.

(4) Automated checking device--A device that confirms that the correct drug and strength has been labeled with the correct label for the correct patient prior to delivery of the drug to the patient.

(5) Automated counting device--An automated device that is loaded with bulk drugs and counts and/or packages (i.e., fills a vial or other container) a specified quantity of dosage units of a designated drug product.

(6) Automated pharmacy dispensing system--A system that automatically performs operations or activities, other than compounding or administration, relative to the storage, packaging, counting, and labeling for dispensing and delivery of medications, and that collects, controls, and maintains all transaction information. "Automated pharmacy dispensing system" does not mean "Automated compounding or counting device" or "Automated medication supply device."

(7) Beyond use date--The date beyond which a product should not be used.

(8) Board--The Texas State Board of Pharmacy.

(9) Common ownership--Two or more pharmacies with an identical owner of record with the board or that have owners of record with the board that are a parent, subsidiary, or affiliate of one another under §1.002, Business Organizations Code.

(10) [(9)] Confidential record--Any health-related record that contains information that identifies an individual and that is maintained by a pharmacy or pharmacist, such as a patient medication record, prescription drug order, or medication order.

(11) [(40)] Controlled substance--A drug, immediate precursor, or other substance listed in Schedules I - V or Penalty Groups 1 - 4 of the Texas Controlled Substances Act, as amended (Chapter 481, Health and Safety Code), or a drug, immediate precursor, or other substance included in Schedules I, II, III, IV, or V of the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended (Public Law 91-513).

(12) [(44)] Dangerous drug--A drug or device that:

(A) is not included in Penalty Groups 1 - 4 of the Texas Controlled Substances Act, as amended, (Chapter 481, Health and Safety Code), and is unsafe for self-medication; or

(B) bears or is required to bear the legend:

(i) "Caution: federal law prohibits dispensing without prescription" or "Rx only" or another legend that complies with federal law; or

(ii) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian."

(13) [(42)] Data communication device--An electronic device that receives electronic information from one source and transmits or routes it to another (e.g., bridge, router, switch or gateway).

(14) [(43)] Deliver or delivery--The actual, constructive, or attempted transfer of a prescription drug or device or controlled substance from one person to another, whether or not for a consideration.

(15) [(44)] Designated agent--

(A) a licensed nurse, physician assistant, pharmacist, or other individual designated by a practitioner to communicate prescription drug orders to a pharmacist;

(B) a licensed nurse, physician assistant, or pharmacist employed in a health care facility to whom the practitioner communicates a prescription drug order;

(C) an advanced practice registered nurse or physician assistant authorized by a practitioner to prescribe or order drugs or devices under Chapter 157 of the Medical Practice Act (Subtitle B, Occupations Code); or

(D) a person who is a licensed vocational nurse or has an education equivalent to or greater than that required for a licensed vocational nurse designated by the practitioner to communicate prescriptions for an advanced practice registered nurse or physician assistant authorized by the practitioner to sign prescription drug orders under Chapter 157 of the Medical Practice Act (Subtitle B, Occupations Code).

(16) [(45)] Dispense--Preparing, packaging, compounding, or labeling for delivery a prescription drug or device in the course of professional practice to an ultimate user or his agent by or pursuant to the lawful order of a practitioner.

(17) [(46)] Dispensing error--An action committed by a pharmacist or other pharmacy personnel that causes the patient or patient's agent to take possession of a dispensed prescription drug and an individual subsequently discovers that the patient has received an incorrect drug product, which includes incorrect strength, incorrect dosage form, and/or incorrect directions for use.

(18) [(47)] Dispensing pharmacist--The pharmacist responsible for the final check of the dispensed prescription before delivery to the patient.

(19) [(48)] Distribute--The delivery of a prescription drug or device other than by administering or dispensing.

(20) [(49)] Downtime--Period of time during which a data processing system is not operable.

(21) [(20)] Drug regimen review--An evaluation of prescription drug orders and patient medication records for:

(A) known allergies;

(B) rational therapy-contraindications;

(C) reasonable dose and route of administration;

(D) reasonable directions for use;

(E) duplication of therapy;

(F) drug-drug interactions;

(G) drug-food interactions;

(H) drug-disease interactions;

(I) adverse drug reactions; and

(J) proper utilization, including overutilization or underutilization.

(22) [(24)] Electronic prescription drug order--A prescription drug order that is generated on an electronic application and transmitted as an electronic data file.

(23) [(22)] Electronic signature--A unique security code or other identifier which specifically identifies the person entering information into a data processing system. A facility which utilizes electronic signatures must:

(A) maintain a permanent list of the unique security codes assigned to persons authorized to use the data processing system; and

(B) have an ongoing security program which is capable of identifying misuse and/or unauthorized use of electronic signatures.

(24) [(23)] Electronic verification process--An [an] electronic verification, bar code verification, weight verification, radio frequency identification (RFID), or similar electronic process or system that accurately verifies that medication has been properly dispensed and labeled by, or loaded into, an automated pharmacy dispensing system.

(25) [(24)] Full-time pharmacist--A pharmacist who works in a pharmacy from 30 to 40 hours per week or, if the pharmacy is open less than 60 hours per week, one-half of the time the pharmacy is open.

(26) [(25)] Hard copy--A physical document that is readable without the use of a special device.

(27) [(26)] Hot water--The temperature of water from the pharmacy's sink maintained at a minimum of 105 degrees F (41 degrees C).

(28) [(27)] Medical Practice Act--The Texas Medical Practice Act, Subtitle B, Occupations Code, as amended.

(29) [(28)] Medication order--A written order from a practitioner or an oral order from a practitioner or his authorized agent for administration of a drug or device.

(30) [(29)] New prescription drug order--A prescription drug order that has not been dispensed to the patient in the same strength and dosage form by this pharmacy within the last year.

(31) [(30)] Original prescription--The:

(A) original written prescription drug order; or

(B) original oral or electronic prescription drug order reduced to writing either manually or electronically.

(32) Owner of record--The direct owner of the pharmacy provided on the pharmacy's application for a pharmacy license or most recent approved change of ownership form.

(33) [(31)] Part-time pharmacist--A pharmacist who works less than full-time.

(34) [(32)] Patient counseling--Communication by the pharmacist of information to the patient or patient's agent in order to improve therapy by ensuring proper use of drugs and devices.

(35) [(33)] Patient med-pak--A package prepared by a pharmacist for a specific patient comprised of a series of containers and containing two or more prescribed solid oral dosage forms. The patient med-pak is so designed or each container is so labeled as to indicate the day and time, or period of time, that the contents within each container are to be taken.

(36) [(34)] Pharmaceutical care--The provision of drug therapy and other pharmaceutical services intended to assist in the cure or prevention of a disease, elimination or reduction of a patient's symptoms, or arresting or slowing of a disease process.

(37) [(35)] Pharmacist-in-charge--The pharmacist designated on a pharmacy license as the pharmacist who has the authority or responsibility for a pharmacy's compliance with laws and rules pertaining to the practice of pharmacy.

(38) [(36)] Pharmacy technician--An individual who is registered with the board as a pharmacy technician and whose responsibility in a pharmacy is to provide technical services that do not require professional judgment regarding preparing and distributing drugs and who works under the direct supervision of and is responsible to a pharmacist.

(39) [(37)] Pharmacy technician trainee--An individual who is registered with the board as a pharmacy technician trainee and is authorized to participate in a pharmacy's technician training program.

(40) [(38)] Physician assistant--A physician assistant recognized by the Texas Medical Board as having the specialized education and training required under Subtitle B, Chapter 157, Occupations Code, and issued an identification number by the Texas Medical Board.

(41) [(39)] Practitioner--

(A) a person licensed or registered to prescribe, distribute, administer, or dispense a prescription drug or device in the course of professional practice in this state, including a physician, dentist, podiatrist, or veterinarian but excluding a person licensed under this Act;

(B) a person licensed by another state, Canada, or the United Mexican States in a health field in which, under the law of this state, a license holder in this state may legally prescribe a dangerous drug;

(C) a person practicing in another state and licensed by another state as a physician, dentist, veterinarian, or podiatrist, who has a current federal Drug Enforcement Administration registration number and who may legally prescribe a Schedule II, III, IV, or V controlled substance, as specified under Chapter 481, Health and Safety Code, in that other state; or

(D) an advanced practice registered nurse or physician assistant to whom a physician has delegated the authority to prescribe or order drugs or devices under Chapter 157 of the Medical Practice Act (Subtitle B, Occupations Code) or, for the purpose of this subchapter, a pharmacist who practices in a hospital, hospital-based clinic, or an academic health care institution and to whom a physician has del-

egated the authority to sign a prescription for a dangerous drug under §157.101, Occupations Code.

(42) [(40)] Prepackaging--The act of repackaging and relabeling quantities of drug products from a manufacturer's original commercial container into a prescription container, unit-dose packaging, or multi-compartment container for dispensing by a pharmacist to the ultimate consumer, including dispensing through the use of an automated pharmacy dispensing system or automated checking device.

(43) [(41)] Prescription department--The area of a pharmacy that contains prescription drugs.

(44) [(42)] Prescription drug--

(A) a substance for which federal or state law requires a prescription before the substance may be legally dispensed to the public;

(B) a drug or device that under federal law is required, before being dispensed or delivered, to be labeled with the statement:

(i) "Caution: federal law prohibits dispensing without prescription" or "Rx only" or another legend that complies with federal law; or

(ii) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian"; or

(C) a drug or device that is required by federal or state statute or regulation to be dispensed on prescription or that is restricted to use by a practitioner only.

(45) [(43)] Prescription drug order--

(A) a written order from a practitioner or an oral order from a practitioner or his authorized agent to a pharmacist for a drug or device to be dispensed; or

(B) a written order or an oral order pursuant to Subtitle B, Chapter 157, Occupations Code.

(46) [(44)] Prospective drug use review--A review of the patient's drug therapy and prescription drug order or medication order prior to dispensing or distributing the drug.

(47) [(45)] State--One of the 50 United States of America, a U.S. territory, or the District of Columbia.

(48) [(46)] Texas Controlled Substances Act--The Texas Controlled Substances Act, Health and Safety Code, Chapter 481, as amended.

(49) [(47)] Written protocol--A physician's order, standing medical order, standing delegation order, or other order or protocol as defined by rule of the Texas Medical Board under the Texas Medical Practice Act.

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

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Executive Director

Texas State Board of Pharmacy

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For further information, please call: (512) 305-8084

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## SUBCHAPTER C. NUCLEAR PHARMACY (CLASS B)

### 22 TAC §291.52

The Texas State Board of Pharmacy proposes amendments to §291.52, concerning Definitions. The amendments, if adopted, add definitions for the terms "common ownership" and "owner of record."

Daniel Carroll, Pharm.D., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Dr. Carroll has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be clear and correct regulations that reflect the Board's current practices concerning the licensure of pharmacies. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

For each year of the first five years the proposed amendments will be in effect, Dr. Carroll has determined the following:

- (1) The proposed amendments do not create or eliminate a government program;
- (2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions;
- (3) Implementation of the proposed amendments does not require an increase or decrease in the future legislative appropriations to the agency;
- (4) The proposed amendments do not require an increase or decrease in fees paid to the agency;
- (5) The proposed amendments do not create a new regulation;
- (6) The proposed amendments do expand an existing regulation;
- (7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability; and
- (8) The proposed amendments would have a de minimis impact on this state's economy.

Written comments on the amendments may be submitted to Eamon D. Briggs, Deputy General Counsel, Texas State Board of Pharmacy, 1801 Congress Avenue, Suite 13.100, Austin, Texas 78701-1319, FAX (512) 305-8061. Comments must be received by 5:00 p.m., October 28, 2025.

The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§291.52. *Definitions.*

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. Any term not defined in this section shall have the definition set forth in the Act, §551.003.

(1) Accurately as prescribed--Dispensing, delivering, and/or distributing a prescription drug order or radioactive prescription drug order:

(A) to the correct patient (or agent of the patient) for whom the drug or device was prescribed;

(B) with the correct drug in the correct strength, quantity, and dosage form ordered by the practitioner; and

(C) with correct labeling (including directions for use) as ordered by the practitioner. Provided, however, that nothing herein shall prohibit pharmacist substitution if substitution is conducted in strict accordance with applicable laws and rules, including Subchapter A, Chapter 562 of the Act.

(2) ACPE--Accreditation Council for Pharmacy Education.

(3) Act--The Texas Pharmacy Act, Chapters 551 - 569, Occupations Code, as amended.

(4) Administer--The direct application of a prescription drug and/or radiopharmaceutical, by injection, inhalation, ingestion, or any other means to the body of a patient by:

(A) a practitioner, an authorized agent under his supervision, or other person authorized by law; or

(B) the patient at the direction of a practitioner.

(5) Authentication of product history--Identifying the purchasing source, the intermediate handling, and the ultimate disposition of any component of a radioactive drug.

(6) Authorized nuclear pharmacist--A pharmacist who:

(A) has completed the specialized training requirements specified by this subchapter for the preparation and distribution of radiopharmaceuticals; and

(B) is named on a Texas radioactive material license, issued by the Texas Department of State Health Services, Radiation Control Program.

(7) Authorized user--Any individual named on a Texas radioactive material license, issued by the Texas Department of State Health Services, Radiation Control Program.

(8) Board--The Texas State Board of Pharmacy.

(9) Common ownership--Two or more pharmacies with an identical owner of record with the board or that have owners of record with the board that are a parent, subsidiary, or affiliate of one another under §1.002, Business Organizations Code.

(10) [(9)] Component--Any ingredient intended for use in the compounding of a drug preparation, including those that may not appear in such preparation.

(11) [(40)] Compounding--The preparation, mixing, assembling, packaging, or labeling of a drug or device:

(A) as the result of a practitioner's prescription drug or medication order based on the practitioner-patient-pharmacist relationship in the course of professional practice;

(B) for administration to a patient by a practitioner as the result of a practitioner's initiative based on the practitioner-patient-pharmacist relationship in the course of professional practice;

(C) in anticipation of prescription drug or medication orders based on routine, regularly observed prescribing patterns; or

(D) for or as an incident to research, teaching, or chemical analysis and not for sale or dispensing, except as allowed under §562.154 or Chapter 563 of the Act.

(12) [(44)] Controlled substance--A drug, immediate precursor, or other substance listed in Schedules I - V or Penalty Groups 1-4 of the Texas Controlled Substances Act, as amended, or a drug, immediate precursor, or other substance included in Schedule I, II, III, IV, or V of the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended (Public Law 91-513).

(13) [(42)] Dangerous drug--A drug or device that:

(A) is not included in Penalty Group 1, 2, 3, or 4, Chapter 481, Health and Safety Code, and is unsafe for self-medication; or

(B) bears or is required to bear the legend:

(i) "Caution: federal law prohibits dispensing without prescription" or "Rx only" or another legend that complies with federal law; or

(ii) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian."

(14) [(43)] Data communication device--An electronic device that receives electronic information from one source and transmits or routes it to another (e.g., bridge, router, switch, or gateway).

(15) [(44)] Deliver or delivery--The actual, constructive, or attempted transfer of a prescription drug or device, radiopharmaceutical, or controlled substance from one person to another, whether or not for a consideration.

(16) [(45)] Designated agent--

(A) an individual, including a licensed nurse, physician assistant, nuclear medicine technologist, or pharmacist:

(i) who is designated by a practitioner and authorized to communicate a prescription drug order to a pharmacist; and

(ii) for whom the practitioner assumes legal responsibility;

(B) a licensed nurse, physician assistant, or pharmacist employed in a health care facility to whom a practitioner communicates a prescription drug order; or

(C) a registered nurse or physician assistant authorized by a practitioner to administer a prescription drug order for a dangerous drug under Subchapter B, Chapter 157 (Occupations Code).

(17) [(46)] Device--An instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related articles, including any component parts or accessory that is required under federal or state law to be ordered or prescribed by a practitioner.

(18) [(47)] Diagnostic prescription drug order--A radioactive prescription drug order issued for a diagnostic purpose.

(19) [(48)] Dispense--Preparing, packaging, compounding, or labeling for delivery a prescription drug or device, or a radiopharmaceutical in the course of professional practice to an ultimate user or his agent by or pursuant to the lawful order of a practitioner.

(20) [(19)] Dispensing pharmacist--The authorized nuclear pharmacist responsible for the final check of the dispensed prescription before delivery to the patient.

(21) [(20)] Distribute--The delivering of a prescription drug or device, or a radiopharmaceutical other than by administering or dispensing.

(22) [(21)] Electronic radioactive prescription drug order--A radioactive prescription drug order which is transmitted by an electronic device to the receiver (pharmacy).

(23) [(22)] Full-time pharmacist--A pharmacist who works in a pharmacy at least 30 hours per week or, if the pharmacy is open less than 60 hours per week, one-half of the time the pharmacy is open.

(24) [(23)] Hot water--The temperature of water from the pharmacy's sink maintained at a minimum of 105 degrees F (41 degrees C).

(25) [(24)] Nuclear pharmacy technique--The mechanical ability required to perform the nonjudgmental, technical aspects of preparing and dispensing radiopharmaceuticals.

(26) [(25)] Original prescription--The:

(A) original written radioactive prescription drug orders; or

(B) original oral or electronic radioactive prescription drug orders maintained either manually or electronically.

(27) Owner of record--The direct owner of the pharmacy provided on the pharmacy's application for a pharmacy license or most recent approved change of ownership form.

(28) [(26)] Pharmacist-in-charge--The pharmacist designated on a pharmacy license as the pharmacist who has the authority or responsibility for a pharmacy's compliance with laws and rules pertaining to the practice of pharmacy.

(29) [(27)] Pharmacy technician--An individual whose responsibility in a pharmacy is to provide technical services that do not require professional judgment regarding preparing and distributing drugs and who works under the direct supervision of and is responsible to a pharmacist.

(30) [(28)] Pharmacy technician trainee--An individual who is registered with the board as a pharmacy technician trainee and is authorized to participate in a pharmacy's technician training program.

(31) [(29)] Radioactive drug service--The act of distributing radiopharmaceuticals; the participation in radiopharmaceutical selection and the performance of radiopharmaceutical drug reviews.

(32) [(30)] Radioactive prescription drug order--An order from a practitioner or a practitioner's designated agent for a radiopharmaceutical to be dispensed.

(33) [(31)] Radiopharmaceutical--A prescription drug or device that exhibits spontaneous disintegration of unstable nuclei with the emission of a nuclear particle(s) or photon(s), including any nonradioactive reagent kit or nuclide generator that is intended to be used in preparation of any such substance.

(34) [(32)] Sterile radiopharmaceutical--A dosage form of a radiopharmaceutical free from living micro-organisms.

(35) [(33)] Therapeutic prescription drug order--A radioactive prescription drug order issued for a specific patient for a therapeutic purpose.

(36) [(34)] Ultimate user--A person who has obtained and possesses a prescription drug or radiopharmaceutical for administration to a patient by a practitioner.

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

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## SUBCHAPTER D. INSTITUTIONAL PHARMACY (CLASS C)

### 22 TAC §291.72

The Texas State Board of Pharmacy proposes amendments to §291.72, concerning Definitions. The amendments, if adopted, add definitions for the terms "common ownership" and "owner of record."

Daniel Carroll, Pharm.D., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Dr. Carroll has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be clear and correct regulations that reflect the Board's current practices concerning the licensure of pharmacies. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

For each year of the first five years the proposed amendments will be in effect, Dr. Carroll has determined the following:

- (1) The proposed amendments do not create or eliminate a government program;
- (2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions;
- (3) Implementation of the proposed amendments does not require an increase or decrease in the future legislative appropriations to the agency;
- (4) The proposed amendments do not require an increase or decrease in fees paid to the agency;
- (5) The proposed amendments do not create a new regulation;
- (6) The proposed amendments do expand an existing regulation;
- (7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability; and
- (8) The proposed amendments would have a de minimis impact on this state's economy.

Written comments on the amendments may be submitted to Eamon D. Briggs, Deputy General Counsel, Texas State Board of Pharmacy, 1801 Congress Avenue, Suite 13.100, Austin, Texas 78701-1319, FAX (512) 305-8061. Comments must be received by 5:00 p.m., October 28, 2025.

The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

#### §291.72. Definitions.

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

(1) Accurately as prescribed--Distributing and/or delivering a medication drug order:

(A) to the correct patient (or agent of the patient) for whom the drug or device was prescribed;

(B) with the correct drug in the correct strength, quantity, and dosage form ordered by the practitioner; and

(C) with correct labeling as ordered by the practitioner and required by rule.

(2) Act--The Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Occupations Code, as amended.

(3) Administer--The direct application of a prescription drug by injection, inhalation, ingestion, or any other means to the body of a patient by:

(A) a practitioner, an authorized agent under his supervision, or other person authorized by law; or

(B) the patient at the direction of a practitioner.

(4) Automated compounding or counting device--An automated device that compounds, measures, counts and/or packages a specified quantity of dosage units of a designated drug product.

(5) Automated medication supply system--A mechanical system that performs operations or activities relative to the storage and distribution of medications for administration and which collects, controls, and maintains all transaction information.

(6) Board--The State Board of Pharmacy.

(7) Clinical Pharmacy Program--An ongoing program in which pharmacists are on duty during the time the pharmacy is open for pharmacy services and pharmacists provide direct focused, medication-related care for the purpose of optimizing patients' medication therapy and achieving definite outcomes, which includes the following activities:

(A) prospective medication therapy consultation, selection, and adjustment;

(B) monitoring laboratory values and therapeutic drug monitoring;

(C) identifying and resolving medication-related problems; and

(D) disease state management.

(8) Common ownership--Two or more pharmacies with an identical owner of record with the board or that have owners of record with the board that are a parent, subsidiary, or affiliate of one another under §1.002, Business Organizations Code.

(9) [(8)] Confidential record--Any health-related record that contains information that identifies an individual and that is maintained by a pharmacy or pharmacist, such as a patient medication record, prescription drug order, or medication drug order.

(10) [(9)] Consultant pharmacist--A pharmacist retained by a facility on a routine basis to consult with the facility in areas that pertain to the practice of pharmacy.

(11) [(10)] Controlled substance--A drug, immediate precursor, or other substance listed in Schedules I - V or Penalty Groups 1 - 4 of the Texas Controlled Substances Act, as amended, or a drug, immediate precursor, or other substance included in Schedules I - V of the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended (Public Law 91-513).

(12) [(11)] Dangerous drug--A drug or device that:

(A) is not included in Penalty Group 1, 2, 3, or 4, Chapter 481, Health and Safety Code, and is unsafe for self-medication; or

(B) bears or is required to bear the legend:

(i) "Caution: federal law prohibits dispensing without prescription" or "Rx only" or another legend that complies with federal law; or

(ii) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian."

(13) [(12)] Device--An instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component part or accessory, that is required under federal or state law to be ordered or prescribed by a practitioner.

(14) [(13)] Direct copy--Electronic copy or carbonized copy of a medication order, including a facsimile (FAX) or digital image.

(15) [(14)] Dispense--Preparing, packaging, compounding, or labeling for delivery a prescription drug or device in the course of professional practice to an ultimate user or his agent by or pursuant to the lawful order of a practitioner.

(16) [(15)] Distribute--The delivery of a prescription drug or device other than by administering or dispensing.

(17) [(16)] Distributing pharmacist--The pharmacist who checks the medication order prior to distribution.

(18) [(17)] Downtime--Period of time during which a data processing system is not operable.

(19) [(18)] Drug regimen review--

(A) An evaluation of medication orders and patient medication records for:

- (i) known allergies;
- (ii) rational therapy--contraindications;
- (iii) reasonable dose and route of administration;
- (iv) reasonable directions for use;
- (v) duplication of therapy;
- (vi) drug-drug interactions;
- (vii) drug-food interactions;

(viii) drug-disease interactions;

(ix) adverse drug reactions; and

(x) proper utilization, including overutilization or underutilization.

(B) The drug regimen review may be conducted prior to administration of the first dose (prospective) or after administration of the first dose (retrospective).

(20) [(19)] Electronic signature--A unique security code or other identifier which specifically identifies the person entering information into a data processing system. A facility which utilizes electronic signatures must:

(A) maintain a permanent list of the unique security codes assigned to persons authorized to use the data processing system; and

(B) have an ongoing security program which is capable of identifying misuse and/or unauthorized use of electronic signatures.

(21) [(20)] Expiration date--The date (and time, when applicable) beyond which a product should not be used.

(22) [(21)] Facility--

(A) a hospital or other patient facility that is licensed under Chapter 241 or 577, Health and Safety Code;

(B) a hospice patient facility that is licensed under Chapter 142, Health and Safety Code;

(C) an ambulatory surgical center licensed under Chapter 243, Health and Safety Code; or

(D) a hospital maintained or operated by the state.

(23) [(22)] Floor stock--Prescription drugs or devices not labeled for a specific patient and maintained at a nursing station or other hospital department (excluding the pharmacy) for the purpose of administration to a patient of the facility.

(24) [(23)] Formulary--List of drugs approved for use in the facility by the committee which performs the pharmacy and therapeutics function for the facility.

(25) [(24)] Full-time pharmacist--A pharmacist who works in a pharmacy from 30 to 40 hours per week or if the pharmacy is open less than 60 hours per week, one-half of the time the pharmacy is open.

(26) [(25)] Hard copy--A physical document that is readable without the use of a special device (i.e., data processing system, computer, etc).

(27) [(26)] Hot water--The temperature of water from the pharmacy's sink maintained at a minimum of 105 degrees F (41 degrees C).

(28) [(27)] Institutional pharmacy--Area or areas in a facility where drugs are stored, bulk compounded, delivered, compounded, dispensed, and distributed to other areas or departments of the facility, or dispensed to an ultimate user or his or her agent.

(29) [(28)] Investigational new drug--New drug intended for investigational use by experts qualified to evaluate the safety and effectiveness of the drug as authorized by the Food and Drug Administration.

(30) [(29)] Medical Practice Act--The Texas Medical Practice Act, Subtitle B, Occupations Code, as amended.

(31) [(30)] Medication order--A written order from a practitioner or a verbal order from a practitioner or his authorized agent for administration of a drug or device.

(32) [(31)] Number of beds--The total number of beds is determined by the:

(A) number of beds for which the hospital is licensed by the Texas Department of State Health Services; or

(B) average daily census as calculated by dividing the total number of inpatients admitted during the previous calendar year by 365 (or 366 if the previous calendar year is a leap year).

(33) Owner of record--The direct owner of the pharmacy provided on the pharmacy's application for a pharmacy license or most recent approved change of ownership form.

(34) [(32)] Part-time pharmacist--A pharmacist either employed or under contract, who routinely works less than full-time.

(35) [(33)] Patient--A person who is receiving services at the facility (including patients receiving ambulatory procedures and patients conditionally admitted as observation patients), or who is receiving long term care services or Medicare extended care services in a swing bed on the hospital premise or an adjacent, readily accessible facility that is under the authority of the hospital's governing body. For the purposes of this definition, the term "long term care services" means those services received in a skilled nursing facility which is a distinct part of the hospital and the distinct part is not licensed separately or formally approved as a nursing home by the state, even though it is designated or certified as a skilled nursing facility. A patient includes a person confined in any correctional institution operated by the state of Texas.

(36) [(34)] Perpetual inventory--An inventory which documents all receipts and distributions of a drug product, such that an accurate, current balance of the amount of the drug product present in the pharmacy is indicated.

(37) [(35)] Pharmaceutical care--The provision of drug therapy and other pharmaceutical services intended to assist in the cure or prevention of a disease, elimination or reduction of a patient's symptoms, or arresting or slowing of a disease process.

(38) [(36)] Pharmacist-in-charge--Pharmacist designated on a pharmacy license as the pharmacist who has the authority or responsibility for a pharmacy's compliance with laws and rules pertaining to the practice of pharmacy.

(39) [(37)] Pharmacy and therapeutics function--Committee of the medical staff in the facility which assists in the formulation of broad professional policies regarding the evaluation, selection, distribution, handling, use, and administration, and all other matters relating to the use of drugs and devices in the facility.

(40) [(38)] Pharmacy technician--An individual who is registered with the board as a pharmacy technician and whose responsibility in a pharmacy is to provide technical services that do not require professional judgment regarding preparing and distributing drugs and who works under the direct supervision of and is responsible to a pharmacist.

(41) [(39)] Pharmacy technician trainee--An individual who is registered with the board as a pharmacy technician trainee and is authorized to participate in a pharmacy's technician training program.

(42) [(40)] Pre-packaging--The act of re-packaging and re-labeling quantities of drug products from a manufacturer's original container into unit-dose packaging or a multiple dose container for

distribution within the facility except as specified in §291.74(f)(3)(B) of this title (relating to Operational Standards).

(43) [(41)] Prescription drug--

(A) A substance for which federal or state law requires a prescription before it may be legally dispensed to the public;

(B) A drug or device that under federal law is required, prior to being dispensed or delivered, to be labeled with either of the following statements:

(i) Caution: federal law prohibits dispensing without prescription or "Rx only" or another legend that complies with federal law; or

(ii) Caution: federal law restricts this drug to use by or on order of a licensed veterinarian; or

(C) A drug or device that is required by any applicable federal or state law or regulation to be dispensed on prescription only or is restricted to use by a practitioner only.

(44) [(42)] Prescription drug order--

(A) a written order from a practitioner or a verbal order from a practitioner or his authorized agent to a pharmacist for a drug or device to be dispensed; or

(B) a written order or a verbal order pursuant to Subtitle B, Chapter 157, Occupations Code.

(45) [(43)] Rural hospital--A licensed hospital with 75 beds or fewer that:

(A) is located in a county with a population of 50,000 or less as defined by the United States Census Bureau in the most recent U.S. census; or

(B) has been designated by the Centers for Medicare and Medicaid Services as a critical access hospital, rural referral center, or sole community hospital.

(46) [(44)] Sample--A prescription drug which is not intended to be sold and is intended to promote the sale of the drug.

(47) [(45)] Supervision--

(A) Physically present supervision--In a Class C pharmacy, a pharmacist shall be physically present to directly supervise pharmacy technicians or pharmacy technician trainees.

(B) Electronic supervision--In a Class C pharmacy in a facility with 100 beds or less, a pharmacist licensed in Texas may electronically supervise pharmacy technicians or pharmacy technician trainees to perform the duties specified in §291.73(e)(2) of this title (relating to Personnel) provided:

(i) the pharmacy uses a system that monitors the data entry of medication orders and the filling of such orders by an electronic method that shall include the use of one or more the following types of technology:

(I) digital interactive video, audio, or data transmission;

(II) data transmission using computer imaging by way of still-image capture and store and forward; and

(III) other technology that facilitates access to pharmacy services;

(ii) the pharmacy establishes controls to protect the privacy and security of confidential records;



(iii) the pharmacist responsible for the duties performed by a pharmacy technician or pharmacy technician trainee verifies:

(I) the data entry; and

(II) the accuracy of the filled orders prior to release of the order; and

(iv) the pharmacy keeps permanent digital records of duties electronically supervised and data transmissions associated with electronically supervised duties for a period of two years.

(C) If the conditions of subparagraph (B) of this paragraph are met, electronic supervision shall be considered the equivalent of direct supervision for the purposes of the Act.

(48) ~~[(46)]~~ Tech-Check-Tech--Allowing a pharmacy technician to verify the accuracy of work performed by another pharmacy technician relating to the filling of floor stock and unit dose distribution systems for a patient admitted to the hospital if the patient's orders have previously been reviewed and approved by a pharmacist.

(49) ~~[(47)]~~ Texas Controlled Substances Act--The Texas Controlled Substances Act, the Health and Safety Code, Chapter 481, as amended.

(50) ~~[(48)]~~ Unit-dose packaging--The ordered amount of drug in a dosage form ready for administration to a particular patient, by the prescribed route at the prescribed time, and properly labeled with name, strength, and expiration date of the drug.

(51) ~~[(49)]~~ Unusable drugs--Drugs or devices that are unusable for reasons, such as they are adulterated, misbranded, expired, defective, or recalled.

(52) ~~[(50)]~~ Written protocol--A physician's order, standing medical order, standing delegation order, or other order or protocol as defined by rule of the Texas Medical Board under the Texas Medical Practice Act Subtitle B, Chapter 157, Occupations Code.

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

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For further information, please call: (512) 305-8084



## SUBCHAPTER G. SERVICES PROVIDED BY PHARMACIES

### 22 TAC §291.120

The Texas State Board of Pharmacy proposes amendments to §291.120, concerning General. The amendments, if adopted, add definitions for the terms "common ownership" and "owner of record."

Daniel Carroll, Pharm.D., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect,

there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Dr. Carroll has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be clear and correct regulations that reflect the Board's current practices concerning the licensure of pharmacies. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

For each year of the first five years the proposed amendments will be in effect, Dr. Carroll has determined the following:

(1) The proposed amendments do not create or eliminate a government program;

(2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions;

(3) Implementation of the proposed amendments does not require an increase or decrease in the future legislative appropriations to the agency;

(4) The proposed amendments do not require an increase or decrease in fees paid to the agency;

(5) The proposed amendments do not create a new regulation;

(6) The proposed amendments do expand an existing regulation;

(7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability; and

(8) The proposed amendments would have a de minimis impact on this state's economy.

Written comments on the amendments may be submitted to Eamon D. Briggs, Deputy General Counsel, Texas State Board of Pharmacy, 1801 Congress Avenue, Suite 13.100, Austin, Texas 78701-1319, FAX (512) 305-8061. Comments must be received by 5:00 p.m., October 28, 2025.

The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§291.120. *General.*

(a) Purpose. This subchapter applies to all classes of pharmacies except as otherwise noted.

(b) Definitions.

(1) The Texas Pharmacy Act or Act--Subtitle J, other than Chapter 567, Occupations Code, as amended.

(2) Board--The Texas State Board of Pharmacy.

(3) Common ownership--Two or more pharmacies with an identical owner of record with the board or that have owners of record with the board that are a parent, subsidiary, or affiliate of one another under §1.002, Business Organizations Code.

(4) Owner of record--The direct owner of the pharmacy provided on the pharmacy's application for a pharmacy license or most recent approved change of ownership form.

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

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Daniel Carroll, Pharm.D.

Executive Director

Texas State Board of Pharmacy

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For further information, please call: (512) 305-8084



## CHAPTER 297. PHARMACY TECHNICIANS AND PHARMACY TECHNICIAN TRAINEES

### 22 TAC §297.2

The Texas State Board of Pharmacy proposes amendments to §297.2, concerning Definitions. The amendments, if adopted, add definitions for the terms "common ownership" and "owner of record."

Daniel Carroll, Pharm.D., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Dr. Carroll has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be clear and correct regulations that reflect the Board's current practices concerning the regulation of pharmacy technicians and pharmacy technician trainees. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

For each year of the first five years the proposed amendments will be in effect, Dr. Carroll has determined the following:

- (1) The proposed amendments do not create or eliminate a government program;
- (2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions;
- (3) Implementation of the proposed amendments does not require an increase or decrease in the future legislative appropriations to the agency;
- (4) The proposed amendments do not require an increase or decrease in fees paid to the agency;
- (5) The proposed amendments do not create a new regulation;
- (6) The proposed amendments do expand an existing regulation;
- (7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability; and
- (8) The proposed amendments would have a de minimis impact on this state's economy.

Written comments on the amendments may be submitted to Eamon D. Briggs, Deputy General Counsel, Texas State Board of Pharmacy, 1801 Congress Avenue, Suite 13.100, Austin, Texas 78701-1319, FAX (512) 305-8061. Comments must be received by 5:00 p.m., October 28, 2025.

The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

#### §297.2. Definitions.

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

(1) Act--The Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code, as amended.

(2) Board--The Texas State Board of Pharmacy.

(3) Common ownership--Two or more pharmacies with an identical owner of record with the board or that have owners of record with the board that are a parent, subsidiary, or affiliate of one another under §1.002, Business Organizations Code.

(4) Owner of record--The direct owner of the pharmacy provided on the pharmacy's application for a pharmacy license or most recent approved change of ownership form.

(5) [(3)] Pharmacy technician--An individual who is registered with the Board as a pharmacy technician and whose responsibility in a pharmacy is to provide technical services that do not require professional judgment regarding preparing and distributing drugs and who works under the direct supervision of and is responsible to a pharmacist.

(6) [(4)] Pharmacy technician trainee--An individual who is registered with the board as a pharmacy technician trainee and is authorized to participate in a pharmacy's technician training program.

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

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Daniel Carroll, Pharm.D.

Executive Director

Texas State Board of Pharmacy

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For further information, please call: (512) 305-8084



### 22 TAC §297.10

The Texas State Board of Pharmacy proposes amendments to §297.10, concerning Registration for Military Service Members, Military Veterans, and Military Spouses. The amendments, if adopted, update the alternative registration procedures, expedited registration procedures, and interim registration procedures for a military service member, military veteran, or

military spouse, in accordance with House Bill 5629, establish provisional registration procedures for a military service member, military veteran, or military spouse, in accordance with Senate Bill 1818, and make grammatical corrections.

Daniel Carroll, Pharm.D., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Dr. Carroll has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to provide consistency between state law and Board rules regarding the registration requirements and procedures for military service members, military veterans, and military spouses and grammatically correct regulations. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

For each year of the first five years the proposed amendments will be in effect, Dr. Carroll has determined the following:

- (1) The proposed amendments do not create or eliminate a government program;
- (2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions;
- (3) Implementation of the proposed amendments does not require an increase or decrease in the future legislative appropriations to the agency;
- (4) The proposed amendments do not require an increase or decrease in fees paid to the agency;
- (5) The proposed amendments do not create a new regulation;
- (6) The proposed amendments do limit an existing regulation by exempting military service members, military veterans, and military spouses from certain registration requirements in order to comply with state law;
- (7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability; and
- (8) The proposed amendments would have a de minimis impact on this state's economy.

Written comments on the amendments may be submitted to Eamon D. Briggs, Deputy General Counsel, Texas State Board of Pharmacy, 1801 Congress Avenue, Suite 13.100, Austin, Texas 78701-1319, FAX (512) 305-8061. Comments must be received by 5:00 p.m., October 28, 2025.

The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

*§297.10. Registration for Military Service Members, Military Veterans, and Military Spouses.*

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Active duty--Current full-time military service in the armed forces of the United States or active duty military service as a member of the Texas military forces, or similar military service of another state.

(2) Armed forces of the United States--The army, navy, air force, space force, coast guard, or marine corps of the United States or a reserve unit of one of those branches of the armed forces.

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

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

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

(b) Alternative registration procedure. For the purpose of §55.004, Occupations Code, [an applicant for a pharmacy technician registration who is] a military service member, military veteran, or military spouse may complete the following alternative procedures to apply for a pharmacy technician registration if the applicant holds a current registration issued by another state that is similar in scope of practice to the registration in this state and is in good standing with that state's licensing authority or within the five years preceding the application date held a pharmacy technician registration in this state [for registering as a pharmacy technician].

(1) Provisional registration. On receipt by the board of an application for a pharmacy technician registration in accordance with this subsection, the board shall issue a provisional registration to the applicant while the board processes the application. A provisional registration issued under this subsection expires on the earlier of:

(A) the date the board approves or denies the provisional registration holder's application for the registration; or

(B) the 180th date after the date the provisional registration is issued.

(2) [(4)] An applicant who holds a current registration as a pharmacy technician issued by another state but does not have a current pharmacy technician certification certificate shall meet the requirements for registration as a pharmacy technician trainee as specified in §297.3 of this chapter (relating to Registration Requirements).

(3) [(2)] An applicant who held a pharmacy technician registration in Texas that expired within the five years preceding the application date who meets the following requirements may be granted a pharmacy technician registration. The applicant:

(A) shall complete the Texas application for registration that includes the following:

- (i) name;
- (ii) addresses, phone numbers, date of birth, and social security number; and
- (iii) any other information requested on the application;

(B) shall provide documentation to include:

(i) military identification indicating that the applicant is a military service member, military veteran, or military dependent, if a military spouse; and

(ii) marriage certificate, if the applicant is a military spouse; applicant's spouse is on active duty status;

(C) be exempt from the application fees paid to the board set forth in §297.4(a) and (b)(2) of this chapter (relating to Fees);

(D) shall meet all necessary requirements in order for the board to access the criminal history records information, including submitting fingerprint information and such criminal history check does not reveal any charge or conviction for a crime that §281.64 of this title (relating to Sanctions for Criminal Offenses) indicates a sanction of denial, revocation, or suspension; and

(E) is not required to have a current pharmacy technician certification certificate.

(c) Expedited registration procedure. For the purpose of §55.005, Occupations Code, ~~[an applicant for a pharmacy technician registration who is]~~ a military service member, military veteran or military spouse ~~[and who holds a current registration as a pharmacy technician issued by another state or who held a pharmacy technician registration in Texas that expired within the five years preceding the application date]~~ may complete the following expedited procedures to apply for a pharmacy technician registration if the applicant holds a current registration issued by another state that is similar in scope of practice to the registration in this state and is in good standing with that state's licensing authority or within the five years preceding the application date held a pharmacy technician registration in this state [for registering as a pharmacy technician].

(1) The applicant shall:

(A) have a high school or equivalent diploma (e.g., GED), or be working to achieve a high school or equivalent diploma. For the purpose of this clause, an applicant for registration may be working to achieve a high school or equivalent diploma for no more than two years;

(B) have taken and passed a pharmacy technician certification examination approved by the board and have a current certification certificate;

(C) complete the Texas application for registration that includes the following information:

(i) name;

(ii) addresses, phone numbers, date of birth, and social security number; and

(iii) any other information requested on the application;

(D) meet all requirements necessary in order for the Board to access the criminal history record information, including submitting fingerprint information and paying the required fees; and

(E) shall be exempt from the registration fee as specified in §297.4(b)(2) of this chapter.

(2) Once an applicant has successfully completed all requirements of registration, and the board has determined there are no grounds to refuse registration, the applicant ~~shall~~ will be notified of registration as a registered pharmacy technician and of his or her pharmacy technician registration number.

(3) All applicants for renewal of an expedited pharmacy technician registration issued to a military service member, military veteran, or military spouse shall comply with the renewal procedures as specified in §297.3 of this chapter.

(d) Registration [License] renewal. As specified in §55.003, Occupations Code, a military service member who holds a pharmacy technician registration is entitled to two years of additional time to complete any requirements related to the renewal of the military service member's registration.

(1) A military service member who fails to renew their pharmacy technician registration in a timely manner because the individual was serving as a military service member shall submit to the board:

(A) name, address, and registration number of the pharmacy technician;

(B) military identification indicating that the individual is a military service member; and

(C) a statement requesting up to two years of additional time to complete the renewal.

(2) A military service member specified in paragraph (1) of this subsection shall be exempt from fees specified in §297.3(d)(3) of this chapter.

(3) A military service member specified in paragraph (1) of this subsection is entitled to two additional years of time to complete the continuing education requirements specified in §297.8 of this title (relating to Continuing Education Requirements).

(e) Interim registration for military service member or military spouse. In accordance with §55.0041, Occupations Code, a military service member or military spouse may be issued an interim pharmacy technician registration if the member or spouse currently holds a registration similar in scope of practice issued by the licensing authority of another state and is in good standing with that licensing authority as specified in §55.0042, Occupations Code. [who is currently registered in good standing by a jurisdiction with registration requirements that are substantially equivalent to the registration requirements in this state may be issued an interim pharmacy technician registration. The military service member or military spouse:]

(1) Before engaging in pharmacy technician duties, the military service member or military spouse shall submit an application that includes [shall provide documentation to include]:

(A) a copy of the member's military orders showing relocation to this state [notification of intent to practice form including any additional information requested];

(B) if the applicant is a military spouse, a copy of the military spouse's marriage certificate [proof of the military service member or military spouse's residency in this state, including a copy of the permanent change of station order for the military service member to whom the military spouse is married]; and

(C) a notarized affidavit affirming under penalty of perjury that: [copy of the military service member or military spouse's military identification card; and]

(i) the applicant is the person described and identified in the application;

(ii) all statements in the application are true, correct, and complete;

(iii) the applicant understands the scope of practice for a pharmacy technician registration in this state and will not perform outside of that scope of practice; and

(iv) the applicant is in good standing in each state in which the applicant holds or has held a pharmacy technician registration.

{(D) verification from the jurisdiction in which the military service member or military spouse holds an active pharmacy technician registration that the military service member or military spouse's registration is in good standing;}

(2) A military service member or military spouse applying for an interim registration under this subsection may not engage in pharmacy technician duties in this state until issued an interim pharmacy technician registration.}[3]

(3) For a military service member or military spouse applying for an interim registration under this subsection, the board shall: [may hold an interim pharmacy technician registration only for the period during which the military service member or military service member to whom the military spouse is married is stationed at a military installation in this state, but not to exceed three years from the date of issuance of the interim registration; and]

(A) determine whether the state in which the applicant is registered issues registrations similar in scope of practice to a pharmacy technician registration issued by the board; and

(B) notify the applicant that:

(i) the board is issuing the interim registration;

(ii) the application is incomplete; or

(iii) the board is unable to issue the interim registration because a pharmacy technician registration issued by the board is not similar in scope of practice to the applicant's registration.

(4) A military service member or military spouse may engage in pharmacy technician duties under an interim registration issued under this subsection only for the period during which the military service member or, with respect to a military spouse, the military service member to whom the spouse is married is stationed at a military installation in this state [may not renew the interim pharmacy technician registration].

(f) Relationship to federal law. This [Subsection (e) of this] section establishes requirements and procedures authorized or required by Texas Occupations Code, Chapter 55, and does not modify or alter rights that may be provided under federal law.

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

Filed with the Office of the Secretary of State on September 12, 2025.

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Daniel Carroll, Pharm.D.

Executive Director

Texas State Board of Pharmacy

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For further information, please call: (512) 305-8084



## **TITLE 25. HEALTH SERVICES**

### **PART 1. DEPARTMENT OF STATE HEALTH SERVICES**

#### **CHAPTER 229. FOOD AND DRUG**

## **SUBCHAPTER II. WARNING LABEL REQUIREMENTS FOR FOOD**

### **25 TAC §§229.1001 - 229.1005**

The executive commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), proposes new Subchapter II, §§229.1001 - 229.1005, concerning Warning Label Requirements for Food.

#### **BACKGROUND AND PURPOSE**

The proposal is necessary to comply with Senate Bill (S.B.) 25, 89th Legislature, Regular Session, 2025, which amends Health and Safety Code (HSC) Chapter 431, Subchapter D by adding §§431.0815, 431.0816, and 431.0817.

Section 431.0815 requires any food manufacturer offering food for human consumption for sale in Texas to include a warning label if the food contains certain ingredients outlined in the statute. A food manufacturer or a food retailer, who is provided content information by the manufacturer, must disclose all required labeling information to the consumer if the product is offered for sale in Texas on the manufacturer's or retailer's website. The warning label requirements apply only to food labels developed or copyrighted on or after January 1, 2027. The warning label requirements do not apply to food not offered for human consumption; food labeled, prepared, served, or sold in a restaurant or retail food establishment; a drug or dietary supplement; or products regulated by the United States Department of Agriculture (USDA), Food Safety and Inspection Service (FSIS), or labeled with a governmental warning with a recommendation from the Surgeon General of the United States Public Health Service (USPHS).

S.B. 25 provides specific language for the required warning label and includes font size, placement, and contrast requirements when the warning label is placed on a food label. S.B. 25 includes exceptions to the warning label requirement for certain ingredients as outlined in HSC §431.0817.

#### **SECTION-BY-SECTION SUMMARY**

Proposed new Subchapter II, Warning Label Requirements for Food, adds a new subchapter in Chapter 229 for rules related to warning label requirements for food as listed below.

Proposed new §229.1001 describes the purpose of the rule, establishes the scope of the rule, and provides for the adoption of federal regulations.

Proposed new §229.1002 provides terms and definitions used throughout the subchapter.

Proposed new §229.1003 establishes exemptions for certain ingredients; foods produced in a restaurant or retail food establishment; products regulated by the United States Department of Agriculture (USDA) or Food Safety and Inspection Service (FSIS), or labeled with a governmental warning with a recommendation from the surgeon general of the United States Public Health Service (USPHS); drugs; dietary supplements; a pesticide chemical, soil or plant nutrient, or other agricultural chemical used in the production, storage, or transportation of a raw agricultural commodity; and exemptions related to a specific ingredient for food and color additive in HSC §431.0815.

Proposed new §229.1004 lists food ingredients that require a warning label and warning label requirements.

Proposed new §229.1005 establishes criminal, civil, administrative penalties, and other enforcement actions, for violations to rules in subchapter II.

#### FISCAL NOTE

Christy Havel Burton, Chief Financial Officer, has determined for each year of the first five years that the rules will be in effect, there will be an estimated additional cost to state government as a result of enforcing and administering the rules as proposed. Enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of local government.

The effect on state government for each year of the first five years the proposed rules are in effect is an estimated cost of \$2,500,000 in fiscal year (FY) 2026; \$2,500,000 in FY 2027; \$2,500,000 in FY 2028; \$2,500,000 in FY 2029; and \$2,500,000 in FY 2030.

#### GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Christy Havel Burton has also determined there will be an adverse economic effect on small businesses or micro-businesses, or rural communities.

DSHS estimates the number of small businesses subject to the proposed rules is 11,466. The projected economic impact for a small business is based on current licensed food manufacturers with DSHS. This estimate excludes manufacturers that are licensed and have gross annual sales greater than \$10 million.

Costs to businesses will only occur if labels are developed or copyrighted on or after January 1, 2027. If labels are never changed, businesses are not required to comply. A business may choose not to continue using any of the listed ingredients; this would not incur any additional costs for the business.

#### LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

#### COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

#### PUBLIC BENEFIT AND COSTS

Timothy Stevenson, DVM, Ph.D., Deputy Commissioner, Consumer Protection Division, has determined that for each year of the first five years the rules are in effect, the public benefit will include increased awareness of food consumption by requiring a warning label on food containing specific ingredients. This will assist consumers in making informed decisions on food products to purchase or consume.

Christy Havel Burton has also determined that for the first five years the rules are in effect, persons who are required to comply with the proposed rules may incur economic costs for label development. The actual costs are unknown.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Written comments on the proposal, including information related to the cost, benefit, or effect of the proposed rule, as well as any applicable data, research, or analysis, may be submitted to the Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4601 West Guadalupe Street, Austin, Texas 78751; or emailed to [HHSRulesCoordinationOffice@hhs.texas.gov](mailto:HHSRulesCoordinationOffice@hhs.texas.gov).

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 25R043" in the subject line.

#### STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §524.0151 and Texas Health and Safety Code §1001.075, which authorize the executive commissioner of HHSC to adopt rules and policies for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code §431.0815 and §431.241, and Texas Health and Safety Code Chapter 1001.

The new sections implement Texas Government Code §524.0151 and Texas Health and Safety Code Chapter 1001.

#### §229.1001. Purpose and Scope.

(a) This subchapter implements Texas Health and Safety Code (HSC) Chapter 431. HSC Chapter 431 requires the Department of State Health Services (DSHS) to adopt rules about warning labels on foods that have specific ingredients and requires rules for website disclosures if food that is subject to the warning label requirements is offered for sale in Texas on the manufacturer's or retailer's website.

(b) This subchapter applies to:

(1) any manufacturer that offers a food product for sale in Texas, no matter where the food product was originally made;

(2) any ingredient meant to be consumed by humans, which the United States Food and Drug Administration (FDA) requires to be listed on the food label; and

(3) food product labels developed or copyrighted on or after January 1, 2027. For purposes of this subchapter, any change to a food product label on or after January 1, 2027, must follow the rules in §229.1004 of this subchapter (relating to Warning Label Requirements) unless exempt.

(c) The department adopts by reference:

(1) 21 Code of Federal Regulations (CFR) Part 70, Color Additives, Subpart B, Packaging and Labeling, as amended;

(2) 21 CFR Part 73, Listing of Color Additives Exempt From Certification, Subpart A, Foods, as amended;

(3) 21 CFR Part 74, Listing of Color Additives Subject to Certification, Subpart A, Foods, as amended;

(4) 21 CFR Part 81, General Specifications and General Restrictions for Provisional Color Additives for Use in Foods, Drugs, and Cosmetics, as amended;

(5) 21 CFR Part 82, Listing of Certified Provisionally Listed Colors and Specifications, as amended; and

(6) 21 CFR Part 101, Food Labeling, as amended.

§229.1002. Definitions.

(a) Dietary supplement--A product a person can consume that has a "dietary ingredient" to add to the diet. A "dietary ingredient" includes vitamins and minerals, herbs, amino acids, enzymes, live bacteria (called "probiotics"), or other substances found in food. The dietary supplement can also be a mix or concentrate of any of these ingredients.

(b) Drug--Articles that are:

(1) listed in the official United States Pharmacopoeia National Formulary (USP-NF) or any of the USP-NF supplements;

(2) intended for diagnosing, curing, mitigating, treating, or preventing diseases in humans or animals;

(3) other than food, meant to influence the structure or any function of the body of humans or animals; and

(4) intended to be used as a component of any article mentioned in this definition.

(5) The term does not include devices or their parts, components, or accessories.

(6) A food for which a claim is made in accordance with Section 403(r) of the Federal Food, Drug, and Cosmetic Act (21 United States Code (U.S.C.) §301), and for which the claim is approved by the United States Secretary of Health and Human Services, is not a drug solely because the label or labeling contains such a claim.

(c) Food--Any article used by humans for food or drink, including chewing gum and items used as ingredients in other food or drink.

(d) Food manufacturer--A person who combines, purifies, processes, or packages food to sell through a wholesale outlet. This term also includes:

(1) a retail outlet that packages or labels food before selling it; and

(2) a person responsible for the purity and proper labeling of a food item by labeling the food with the person's name and address.

(e) Raw agricultural commodity--Any food in its natural state, including all fruits that can be washed, colored, or treated in their unpeeled form before being marketed. Treatment includes waxing, fumi-

gating, or removing foreign objects or other parts of the plant, such as leaves, stems, and husks. This definition excludes transforming a harvested raw agricultural commodity into processed food by actions such as cutting, cooking, heating, chopping, irradiating, or pasteurizing.

(f) Restaurant--A place where food is made and sold directly to people for immediate eating, examples include:

(1) cafeterias;

(2) lunchrooms;

(3) cafes;

(4) bistros;

(5) fast food places;

(6) food stands;

(7) saloons;

(8) taverns;

(9) bars;

(10) lounges;

(11) catering facilities;

(12) hospital kitchens;

(13) day care kitchens; and

(14) nursing home kitchens.

(15) "Restaurant" does not include places that provide food for interstate travel, central kitchens, and other similar places that don't serve food directly to the consumer.

(16) For purposes of this subchapter, a restaurant is a food establishment as defined in other department rules, including:

(A) §229.371 of this chapter (relating to Definitions);

(B) §229.471 of this chapter (relating to Definitions);

and

(C) §228.2 of this title (relating to Definitions).

(g) Retail food establishment--A place that sells food products directly to consumers as its primary function, like:

(1) grocery stores;

(2) convenience stores;

(3) vending machines; and

(4) some farm-run businesses.

(5) "Retail food establishment" includes places that make, process, pack, or store food to sell directly to consumers. The value of food products sold directly to consumers must be higher than the sales of food products to all other buyers. "Consumers" does not include businesses.

(6) For purposes of this subchapter, a retail food establishment is also known as a food establishment as defined in other department rules, including:

(A) §229.371 of this chapter;

(B) §229.471 of this chapter; and

(C) §228.2 of this title.

§229.1003. Exemptions.

(a) This subchapter does not apply to:

(1) an ingredient used in a product that is not meant for humans to consume;

(2) food labeled, prepared, served, or sold in a restaurant;

(3) food labeled, prepared, or served in a retail food establishment;

(4) a product regulated by the United States Department of Agriculture (USDA), Food Safety and Inspection Service (FSIS);

(5) a product labeled with a governmental warning with a recommendation from the surgeon general of the United States Public Health Service (USPHS);

(6) a drug or dietary supplement; or

(7) a pesticide chemical, soil or plant nutrient, or other agricultural chemical used in the production, storage, or transportation of a raw agricultural commodity.

(b) Texas Health and Safety Code (HSC) §431.0815 and this subchapter do not apply to an ingredient, including a food additive and color additive, if a federal law or a regulation issued by the United States Food and Drug Administration (FDA) or USDA:

(1) prohibits the use of the ingredient;

(2) sets conditions for using the ingredient, such as needing a warning or disclosure statement;

(3) says an ingredient or group of ingredients is safe for people to eat; or

(4) requires a labeling statement for foods that are ultra-processed or processed.

§229.1004. Warning Label Requirements.

(a) Food that contains any of the following ingredients must include a warning label described in subsection (b) of this section:

(1) acetylated esters of mono- and diglycerides (acetic acid ester);

(2) anisole;

(3) azodicarbonamide (ADA);

(4) bleached flour;

(5) blue 1 (CAS 3844-45-9);

(6) blue 2 (CAS 860-22-0);

(7) bromated flour;

(8) butylated hydroxyanisole (BHA);

(9) butylated hydroxytoluene (BHT);

(10) calcium bromate;

(11) canthaxanthin;

(12) certified food colors by the United States Food and Drug Administration (FDA);

(13) citrus red 2 (CAS 6358-53-8);

(14) diacetyl;

(15) diacetyl tartaric and fatty acid esters of mono and diglycerides (DATEM);

(16) dimethylamylamine (DMAA);

(17) dioctyl sodium sulfosuccinate (DSS);

(18) ficin;

(19) green 3 (CAS 2353-45-9);

(20) interesterified palm oil;

(21) interesterified soybean oil;

(22) lactylated fatty acid esters of glycerol and propylene glycol;

(23) lye;

(24) morpholine;

(25) olestra;

(26) partially hydrogenated oil (PHO);

(27) potassium aluminum sulfate;

(28) potassium bromate;

(29) potassium iodate;

(30) propylene oxide;

(31) propylparaben;

(32) red 3 (CAS 16423-68-0);

(33) red 4 (CAS 4548-53-2);

(34) red 40 (CAS 25956-17-6);

(35) sodium aluminum sulfate;

(36) sodium lauryl sulfate;

(37) sodium stearyl fumarate;

(38) stearyl tartrate;

(39) synthetic trans fatty acid;

(40) thiodipropionic acid;

(41) titanium dioxide;

(42) toluene;

(43) yellow 5 (CAS 1934-21-0); or

(44) yellow 6 (CAS 2783-94-0).

(b) The warning label must include the following statement, if the food contains an ingredient listed in subsection (a) of this section: "WARNING: This product contains an ingredient that is not recommended for human consumption by the appropriate authority in Australia, Canada, the European Union, or the United Kingdom." The warning label must:

(1) be printed in a font size not smaller than the smallest font used to disclose other consumer information required by the FDA;

(2) be placed in a prominent and reasonably visible location; and

(3) have sufficiently high contrast with the immediate background to ensure the warning is likely to be seen and understood by the ordinary individual under customary conditions of purchase and use.

(c) Food manufacturers and retailers who sell their products via internet that require warning labels under subsection (a) of this section must provide all labeling information required by subsection (b) of this section to consumers by:

(1) posting a legible statement on the manufacturer's or retailer's website on which the product is offered for sale;



(2) posting pictures of the entire food product label, including the warning label on the website; or

(3) providing the information in other ways with the consumer.

§229.1005. Enforcement.

(a) Criminal penalties stated in Texas Health and Safety Code (HSC) §431.059 can be imposed for violations of this subchapter.

(b) Civil penalties stated in HSC §431.0585 can be imposed for violations of this subchapter.

(c) Administrative penalties as described in HSC §431.054, §431.055, §431.056, §431.057, and §431.058, and §229.261 of this chapter (relating to Assessment of Administrative Penalties), can be imposed for violations of the previously stated sections. Before a penalty is imposed, the person accused of a violation must be given an opportunity for a hearing.

(d) Hearings regarding administrative penalties and emergency orders will be held according to, Texas Government Code §§2001.051 - 2001.902, and the department's formal hearing rules in §§1.21, 1.23, 1.25, and 1.27 of this title (relating to Formal Hearing Procedures).

(e) The commissioner or the commissioner's designee may issue emergency orders according to HSC §431.045.

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

Filed with the Office of the Secretary of State on September 9, 2025.

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Cynthia Hernandez

General Counsel

Department of State Health Services

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For further information, please call: (512) 834-6670



## **TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

### **PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES**

#### **CHAPTER 705. ADULT PROTECTIVE SERVICES**

The Department of Family and Protective Services (DFPS) proposes to amend and repeal rules in Title 40, Texas Administrative Code (TAC), Chapter 705, Subchapters A, C, E, G, I, K, M and O and proposes changes to agency rules §§705.101, 705.103, 705.107, 705.303, 705.501, 705.701 - 705.703, 705.705, 705.901, 705.903, 705.1101, 705.1303, 705.1501, 705.1503, 705.1505, 705.1507, 705.1509, 705.1511, 705.1513, 705.1515, 705.1517, 705.1519, 705.1521, 705.1523, 705.1525, 705.1527, 705.1529, 705.1531 and 705.1533 in Title 40, Texas Administrative Code (TAC), Chapter 705, Subchapter G.

#### **BACKGROUND AND PURPOSE**

The purpose of the amended, and repealed rules is to reflect the current scope and authority of the APS program as a result of House Bill (H.B.) 4696, 88th Legislature, regular session, and the resulting transfer of Home and Community Support Service Agency (HCSSA) investigations, regardless of payment source (Medicaid, Medicare or private pay) to the Health and Human Services Commission (HHSC). This includes perpetrators eligible for the Employee Misconduct Registry (EMR). All references to the EMR and HHSC are being removed as they are no longer applicable to the APS program. The new, amended, and repealed rules also clean up existing rules related to emergency protective services and nomenclature related to victim/client.

#### **SECTION-BY-SECTION SUMMARY**

The proposed amendments to §705.101 make non-substantive nomenclature changes by replacing the term "an alleged victim" with the term "client"; removing definitions of "alleged victim" and "alleged victim/perpetrator"; redefining "client" and "designated perpetrator" to account for the term replacements; removing terms no longer applicable to the program; and renumbering of the term definitions.

The proposed amendments to §705.103 make non-substantive nomenclature changes by replacing the term "an alleged victim" with the term "client".

The proposed amendments to §705.107 make non-substantive nomenclature changes by replacing the term "an alleged victim" with the term "client".

The proposed amendments to §705.303 make non-substantive nomenclature changes by replacing the term "alleged victims" with the term "clients".

The proposed amendments to §705.501 make non-substantive nomenclature changes by replacing the term "an alleged victim" with the term "client".

The proposed amendment to Subchapter G replaces the title of the Subchapter from "Eligibility" to "Purchased Client Services" to clarify that the rules within the subchapter pertain to Purchased Client Services generally rather than eligibility for such.

Proposed new §705.702 combines the relevant provisions of repealed §705.703 and §705.705 related to eligibility and availability of purchased client services.

The proposed repeal of §705.701 deletes eligibility for emergency protective services as this rule is duplicative; APS provides services as authorized by Human Resources Code Chapter 48 to individuals determined to be in a state of abuse, neglect, or financial exploitation.

The proposed repeal of §705.703 is because the rule is no longer necessary as it is now incorporated into new §705.702.

The proposed repeal of §705.705 is because the rule is no longer necessary as it is now incorporated into new §705.702.

The proposed amendments to §705.901 make non-substantive nomenclature changes by replacing the term "an alleged victim" with the term "client".

The proposed amendments to §705.903 make non-substantive nomenclature changes by replacing the term "an alleged victim" with the term "client".

The proposed amendments to §705.1101 make non-substantive nomenclature changes by replacing the term "an alleged victim" with the term "client".

The proposed amendments to §705.1303 delete subsections (b), (c), and (d) as these related to the Employee Misconduct Registry which has been transferred to the Health and Human Services Commission pursuant to H.B. 4696, 88th Legislature, regular session; corresponding formatting changes are also made.

The proposed repeal of Subchapter O, Employee Misconduct Registry, is due to the transfer of the Employee Misconduct Registry which was transferred to the Health and Human Services Commission pursuant to H.B. 4696, 88th Legislature, regular session.

The proposed repeal of §705.1501 is necessary as the Employee Misconduct Registry is no longer a part of the Adult Protective Services program pursuant to H.B. 4696, 88th Legislature, regular session.

The proposed repeal of §705.1503 is necessary as the Employee Misconduct Registry is no longer a part of the Adult Protective Services program pursuant to H.B. 4696, 88th Legislature, regular session.

The proposed repeal of §705.1505 is necessary as the Employee Misconduct Registry is no longer a part of the Adult Protective Services program pursuant to H.B. 4696, 88th Legislature, regular session.

The proposed repeal of §705.1507 is necessary as the Employee Misconduct Registry is no longer a part of the Adult Protective Services program pursuant to H.B. 4696, 88th Legislature, regular session.

The proposed repeal of §705.1509 is necessary as the Employee Misconduct Registry is no longer a part of the Adult Protective Services program pursuant to H.B. 4696, 88th Legislature, regular session.

The proposed repeal of §705.1511 is necessary as the Employee Misconduct Registry is no longer a part of the Adult Protective Services program pursuant to H.B. 4696, 88th Legislature, regular session.

The proposed repeal of §705.1513 is necessary as the Employee Misconduct Registry is no longer a part of the Adult Protective Services program pursuant to H.B. 4696, 88th Legislature, regular session.

The proposed repeal of §705.1515 is necessary as the Employee Misconduct Registry is no longer a part of the Adult Protective Services program pursuant to H.B. 4696, 88th Legislature, regular session.

The proposed repeal of §705.1517 is necessary as the Employee Misconduct Registry is no longer a part of the Adult Protective Services program pursuant to H.B. 4696, 88th Legislature, regular session.

The proposed repeal of §705.1519 is necessary as the Employee Misconduct Registry is no longer a part of the Adult Protective Services program pursuant to H.B. 4696, 88th Legislature, regular session.

The proposed repeal of §705.1521 is necessary as the Employee Misconduct Registry is no longer a part of the Adult Protective Services program pursuant to H.B. 4696, 88th Legislature, regular session.

The proposed repeal of §705.1523 is necessary as the Employee Misconduct Registry is no longer a part of the Adult

Protective Services program pursuant to H.B. 4696, 88th Legislature, regular session.

The proposed repeal of §705.1525 is necessary as the Employee Misconduct Registry is no longer a part of the Adult Protective Services program pursuant to H.B. 4696, 88th Legislature, regular session.

The proposed repeal of §705.1527 is necessary as the Employee Misconduct Registry is no longer a part of the Adult Protective Services program pursuant to H.B. 4696, 88th Legislature, regular session.

The proposed repeal of §705.1529 is necessary as the Employee Misconduct Registry is no longer a part of the Adult Protective Services program pursuant to H.B. 4696, 88th Legislature, regular session.

The proposed repeal of §705.1531 is necessary as the Employee Misconduct Registry is no longer a part of the Adult Protective Services program pursuant to H.B. 4696, 88th Legislature, regular session.

The proposed repeal of §705.1533 is necessary as the Employee Misconduct Registry is no longer a part of the Adult Protective Services program pursuant to H.B. 4696, 88th Legislature, regular session.

#### FISCAL NOTE

Lea Ann Biggar, Chief Financial Officer of DFPS, has determined that for each year of the first five years that the section(s) will be in effect, there will be fiscal implications as a result of enforcing and administering the section(s) as proposed; there will be Information Technology costs of \$266,753.00 in Fiscal Year 2 and \$26,470.00 in Fiscal Year 3 with respect to capital and professional services fees. They will be no effect on local government.

#### GOVERNMENT GROWTH IMPACT STATEMENT

DFPS has determined that during the first five years that the sections will be in effect

- (1) the amended and appealed rules will not create or eliminate a government program;
- (2) implementation of the amended and appealed rules will not affect the number of employee positions or the elimination of existing employee positions;
- (3) implementation of the amended and appealed rules will not require an increase or decrease in future legislative appropriations to the agency.
- (4) the amended and appealed rules will not affect fees paid to the agency;
- (5) the amended and appealed rules will not create a new regulation;
- (6) the amended and appealed rules will not expand, limit, or repeal an existing regulation;
- (7) the amended and appealed rules will not change the number of individuals subject to the rule's applicability;
- (8) the amended and appealed rules will not affect the state's economy positively or adversely;

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

Ms. Biggar has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural

communities as the rule does not apply to small or micro-businesses, or rural communities.

## ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the section(s) as proposed.

## COSTS TO REGULATED PERSONS

Texas Government Code, §2001.0045 does not apply to this rule because the rule that is adopted by the Department of Family Protective Services.

## PUBLIC BENEFIT

Ms. Biggar has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the sections is that the public will benefit from clarity in the rules as well as compliance with H.B. 4696, 88th Legislature, regular session which required DFPS to transfer investigation authority involving Home and Community Support Service Agency investigations to the Health and Human Services Commission along with the Emergency Misconduct Registry applicable to those investigations.

## TAKINGS IMPACT ASSESSMENT

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

## PUBLIC COMMENT

DFPS invites comments on the proposed rule proposals. DFPS requests information related to the cost, benefit, or effect of the proposed new, amended, and repealed rules, including any applicable data, research, or analysis. To be considered, comments, questions, and information must be submitted no later than 30 days after the date of this issue of the *Texas Register*.

Electronic comments and questions may be submitted to Lauren Villa, Policy Attorney at [Lauren.Villa@dfps.texas.gov](mailto:Lauren.Villa@dfps.texas.gov) or [RULES@dfps.texas.gov](mailto:RULES@dfps.texas.gov). Hard copy comments may be submitted to the DFPS Rules Coordinator, Legal Services Sanjuanita Maltos, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030.

## SUBCHAPTER A. DEFINITIONS

### 40 TAC §§705.101, 705.103, 705.107

#### STATUTORY AUTHORITY

The proposed amended rules implement H.B. 4696 from the 88th Legislature, regular session.

The modification is proposed under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall oversee the development of rules relating to the matters within the department's jurisdiction and notwithstanding any other law, shall adopt rules for the operation and provision of services by the department.

#### CROSS REFERENCE TO STATUTES

The proposed rules implement Human Resources Code, Chapter 48; Family Code, Chapter 261; and Health and Safety Code, Chapters 142 and 253.

*§705.101. How are the terms in this chapter defined?*

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

(1) Administrative law judge--An attorney who serves as a hearings examiner in a due process hearing, including a release hearing [or Employee Misconduct Registry (EMR) hearing].

(2) Adult--A person aged 18 or older, or an emancipated minor.

(3) Adult with a disability--A person aged 18 or older, or an emancipated minor, with a physical, mental, or developmental disability that substantially impairs the person's ability to adequately provide for his or her own care or protection.

(4) Allegation--An assertion that a client [an alleged victim] is in a state of or at risk of harm due to abuse, neglect, or financial exploitation.

(5) Alleged perpetrator--A person who is reported to be responsible for the abuse, neglect, or financial exploitation of a client [an alleged victim].

~~[(6) Alleged victim--An adult with a disability or an adult aged 65 or older who has been reported to APS to be in a state of or at risk of harm due to abuse, neglect, or financial exploitation.]~~

~~[(7) Alleged victim/perpetrator--An adult with a disability or an adult aged 65 or older who has been reported to APS to be in a state of or at risk of self-neglect.]~~

(6) ~~[(8)]~~ APS--Adult Protective Services, a division of DFPS.

(7) ~~[(9)]~~ Capacity to consent to protective services--Having the mental and physical ability to understand the services offered and to accept or reject those services knowing the consequences of the decision.

(8) ~~[(40)]~~ Caretaker--

(A) A guardian, representative payee, or other person who by act, words, or course of conduct has acted so as to cause a reasonable person to conclude that the person has accepted the responsibility for protection, food, shelter, or care for a client [an alleged victim]; or

~~[(B) An employee of a home and community support services agency (HCSSA) providing non-Medicaid services to an alleged victim; or~~

~~[(C)]~~ A person, including a family member, privately hired and receiving monetary compensation to provide personal care services, as defined in Texas Health and Safety Code, §142.001(22-a), to a client [an alleged victim].

(9) ~~[(44)]~~ Client--An adult with a disability or an adult aged 65 or older who has been reported to APS to be in a state of or at risk of harm due to abuse, neglect, or financial exploitation [An alleged victim or alleged victim/perpetrator who has been determined by a validated finding to be in need of protective services. The alleged victim does not have to meet financial eligibility requirements].

(10) ~~[(42)]~~ Commissioner--The commissioner of DFPS or the commissioner's designee.

(11) ~~[(43)]~~ Designated perpetrator--An alleged perpetrator who has been determined by an APS [a] validated finding to have abused, neglected, or financially exploited a client. [A designated perpetrator may be eligible for inclusion on the Employee Misconduct Registry, when the abuse, neglect, or financial exploitation meets the definition of reportable conduct.]

[(14) Designated victim--An alleged victim with a valid abuse, neglect, or financial exploitation finding.]

[(15) Designated victim/perpetrator--An alleged victim/perpetrator with a validated self-neglect finding.]

[(12) [(46)] DFPS--Department of Family and Protective Services.

[(13) [(47)] Emancipated minor--A person under 18 years of age who has the power and capacity of an adult. This includes a minor who has had the disabilities of minority removed by a court of law or a minor who, with or without parental consent, has been married. Marriage includes common-law marriage.

[(18) Emergency protective services--Services provided to an alleged victim who is also the subject of an investigation conducted by HHSC PI under Texas Human Resources Code, Chapter 48, Subchapter F, to alleviate danger of serious harm or death.]

[(14) [(49)] Emotional harm--A highly unpleasant mental reaction with observable signs of distress, such as anguish, grief, fright, humiliation, or fury.

[(20) Employee Misconduct Registry (EMR)--A database established under Texas Health and Safety Code, Chapter 253, and maintained by HHSC that contains the names of persons who have committed reportable conduct. A person whose name is recorded in the EMR is prohibited by law from working for certain facilities or agencies in Texas, as provided under Texas Health and Safety Code, Chapter 253.]

[(21) EMR hearing--A due process hearing offered to a person who has been found to have committed reportable conduct for the purpose of appealing the finding of reportable conduct as well as the underlying finding of abuse, neglect, or financial exploitation.]

[(15) [(22)] Goods--Tangible objects such as food, clothing, shelter and other items necessary to meet one's basic needs.

[(23) HHSC--Health and Human Services Commission.]

[(24) HHSC PI--Health and Human Services Commission Regulatory Services Division Provider Investigations.]

[(25) Home and community support services agency (HCSSA)--An agency licensed under Texas Health and Safety Code, Chapter 142.]

[(16) [(26)] Intimidation--Behavior by actions or words creating fear of physical harm, death, or abandonment.

[(17) [(27)] Ongoing relationship--A personal relationship that includes:

(A) frequent and regular interaction;

(B) a reasonable assumption that the interaction will continue; and

(C) an establishment of trust, beyond a commercial or contractual agreement.

[(18) [(28)] Physical harm--Physical pain, injury, illness, or any impairment of physical condition.

[(19) [(29)] Protective services--The services furnished by DFPS or by another protective services agency to an APS client with a validated finding of abuse, neglect, or financial exploitation, [designated victim, or designated victim/perpetrator,] or to that person's relative or caretaker if DFPS determines the services are necessary to prevent the client [, designated victim, or designated victim/perpetrator] from being in or returning to a state of abuse,

neglect, or financial exploitation. These services may include social casework, case management, and arranging for psychiatric and health evaluation, home care, day care, social services, health care, respite services, and other services consistent with Texas Human Resources Code, §48.002. The term does not include the investigation of an allegation of abuse, neglect, or financial exploitation.

[(20) [(30)] Purchased client services (PCS)--A type of protective services provided in accordance with Texas Human Resources Code, §48.002(a)(5), including, but not limited to, emergency shelter, medical, and psychiatric assessments, in-home care, residential care, heavy housecleaning, minor home repairs, money management, transportation, emergency food, medication, and other supplies.

[(21) [(31)] Release hearing--A formal due process hearing conducted by an administrative law judge. A release hearing provides a designated perpetrator with an opportunity to appeal DFPS's decision to release information about him or her to persons or entities outside DFPS, except for information released as required or allowed by state or federal law or in accordance with this chapter.

[(22) [(32)] Report--An allegation of abuse, neglect, or financial exploitation, as described in Texas Human Resources Code, §48.002, which is made under Texas Human Resources Code, §48.051(a).

[(23) [(33)] Reporter--A person who makes a report to DFPS about a situation of alleged abuse, neglect, or financial exploitation of a client [an alleged victim].

[(24) [(34)] Serious harm--In danger of sustaining significant physical harm or death; or danger of imminent impoverishment or deprivation of basic needs.

[(25) [(35)] Services--Activities provided by others, including, but not limited to, cooking, cleaning, money management, medical care, or mental health care.

[(26) [(36)] Substantially impairs--When a disability grossly and chronically diminishes an adult's physical or mental ability to live independently or provide self-care as determined through observation, diagnosis, evaluation, or assessment.

[(27) [(37)] Sustained perpetrator--A designated perpetrator whose validated finding of abuse, neglect, or financial exploitation of a client [designated victim] has been sustained by an administrative law judge in a due process hearing, including a release hearing [or Employee Misconduct Registry (EMR) hearing], or if the designated perpetrator has waived the right to a hearing.

[(28) [(38)] Unreasonable confinement--An act that results in a forced isolation from the people one would normally associate with, including friends, family, neighbors, and professionals; an inappropriate restriction of movement; or the use of any inappropriate restraint.

§705.103. *How is abuse defined?*

In this chapter, when the alleged perpetrator is a caretaker, family member, or other person who has an ongoing relationship with the client [alleged victim], abuse is defined as:

(1) the negligent or willful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical or emotional harm or pain to the client [alleged victim]; or

(2) sexual abuse of the client [alleged victim], including any involuntary or nonconsensual sexual conduct that would constitute an offense under Texas Penal Code, Section 21.08, (indecent exposure) or Texas Penal Code, Chapter 22, Assaultive Offenses.

§705.107. *How is financial exploitation defined?*

In this chapter, when an alleged perpetrator is a caretaker, family member, or other person who has an ongoing relationship with the client [alleged victim], financial exploitation is defined as the illegal or improper act or process of the alleged perpetrator using, or attempting to use, the resources of the client [alleged victim], including the client's [alleged victim's] Social Security number or other identifying information, for monetary or personal benefit, profit, or gain without the informed consent of the client [alleged victim].

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

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Sanjuanita Maltos  
Rules Coordinator  
Department of Family and Protective Services  
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For further information, please call: (512) 945-5978



## SUBCHAPTER C. APS PROGRAM OVERVIEW

### 40 TAC §705.303

#### STATUTORY AUTHORITY

The proposed amended rules implement H.B. 4696 from the 88th Legislature, regular session.

The modification is proposed under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall oversee the development of rules relating to the matters within the department's jurisdiction and notwithstanding any other law, shall adopt rules for the operation and provision of services by the department.

#### CROSS REFERENCE TO STATUTES

The proposed rules implement Human Resources Code, Chapter 48; Family Code, Chapter 261; and Health and Safety Code, Chapters 142 and 253.

*§705.303. How does DFPS educate the public about APS?*

(a) DFPS conducts a statewide public awareness campaign to educate the public regarding abuse, neglect, and financial exploitation of clients [alleged victims] and to reduce the incidences of maltreatment involving adults with disabilities and adults aged 65 or older.

(b) Based on available funding, DFPS utilizes a selection of:

- (1) public service announcements;
- (2) program brochures and literature;
- (3) a prevention website; and
- (4) speaking engagements, by enlisting the assistance of community organizations.

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

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Department of Family and Protective Services  
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## SUBCHAPTER E. ALLEGATION PRIORITIES

### 40 TAC §705.501

#### STATUTORY AUTHORITY

The amended rules implement H.B. 4696 from the 88th Legislature, regular session.

The modification is proposed under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall oversee the development of rules relating to the matters within the department's jurisdiction and notwithstanding any other law, shall adopt rules for the operation and provision of services by the department.

#### CROSS REFERENCE TO STATUTES

The proposed rules implement Human Resources Code, Chapter 48; Family Code, Chapter 261; and Health and Safety Code, Chapters 142 and 253.

*§705.501. How are allegations prioritized?*

(a) APS assigns the following priorities to reported allegations:

(1) Priority I--Allegation that the client [alleged victim] is in a state of serious harm or is in danger of death from abuse or neglect.

(2) Priority II--Allegation that the client [alleged victim] is abused, neglected, or financially exploited and, as a result, is at risk of serious harm.

(3) Priority III--Allegation that the client [alleged victim] is in a state of abuse or neglect when the severity and immediacy of the allegation do not meet the definitions in paragraphs (1) or (2) of this subsection.

(4) Priority IV--Allegation that the client [alleged victim] is financially exploited when there is no serious harm.

(b) APS establishes the timeframe for conducting the initial face-to-face contact with the client [alleged victim] based on the priority assigned to the allegation(s).

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

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## SUBCHAPTER G. ELIGIBILITY

## 40 TAC §§705.701, 705.703, 705.705

### STATUTORY AUTHORITY

The proposed repealed rules implement H.B. 4696 from the 88th Legislature, regular session.

The modification is proposed under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall oversee the development of rules relating to the matters within the department's jurisdiction and notwithstanding any other law, shall adopt rules for the operation and provision of services by the department.

### CROSS REFERENCE TO STATUTES

The proposed rules implement Human Resources Code, Chapter 48; Family Code, Chapter 261; and Health and Safety Code, Chapters 142 and 253.

*§705.701. Who is eligible for emergency protective services?*

*§705.703. Who is eligible for purchased client services?*

*§705.705. When are purchased client services available?*

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

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## 40 TAC §705.702

### STATUTORY AUTHORITY

The proposed new rule implements H.B. 4696 from the 88th Legislature, regular session.

The modification is proposed under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall oversee the development of rules relating to the matters within the department's jurisdiction and notwithstanding any other law, shall adopt rules for the operation and provision of services by the department.

### CROSS REFERENCE TO STATUTES

The proposed rule implements Human Resources Code, Chapter 48; Family Code, Chapter 261; and Health and Safety Code, Chapters 142 and 253.

*§705.702. Who is eligible for purchased client services?*

(a) Purchased client services (PCS) are services provided in accordance with Human Resources Code §48.002(a)(5), including, but not limited to, emergency shelter, medical and psychiatric assessments, in-home care, residential care, heavy housecleaning, minor home repairs, money management, transportation, emergency food, medication, and other supplies.

(b) APS shall provide PCS, including contracted services, to adults who are elderly or have a disability that have been determined

by APS to be in need of protective services in accordance with Human Resources Code §48.002(a)(5) and §48.205. APS must develop a service plan for the client indicating that PCS are necessary to remedy abuse, neglect, or financial exploitation.

(c) Other state and local resources must be used before purchased client services are expended in accordance with Human Resources Code §48.205.

(d) DFPS service plans that include the use of PCS are subject to the availability of service providers, availability of funds and use of other available resources.

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

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## SUBCHAPTER I. FAMILY VIOLENCE

### 40 TAC §§705.901, §705.903

#### STATUTORY AUTHORITY

The proposed amended rules implement H.B. 4696 from the 88th Legislature, regular session.

The modification is proposed under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall oversee the development of rules relating to the matters within the department's jurisdiction and notwithstanding any other law, shall adopt rules for the operation and provision of services by the department.

#### CROSS REFERENCE TO STATUTES

The proposed rules implement Human Resources Code, Chapter 48; Family Code, Chapter 261; and Health and Safety Code, Chapters 142 and 253.

*§705.901. What actions does APS perform when clients [alleged victims] are also victims of family violence?*

(a) When APS staff validates an allegation that a client [an alleged victim] is a victim of family violence as specified in Texas Family Code, §71.004, APS staff:

(1) documents that the client [alleged victim] is a victim of family violence; and

(2) provides the client [alleged victim] with written information in the client's [alleged victim's] preferred language, as available, concerning community services.

(b) Statistical compilations of the documented findings are included in DFPS's annual report.

*§705.903. Can DFPS apply for protective orders?*

When APS staff validates an allegation that a client [an alleged victim] is a victim of family violence as specified in Texas Family Code,

§71.004, DFPS may apply for a protective order to protect the victim. Before DFPS files the protective order, APS staff contacts the victim and a non-abusive adult member of the household, if available:

- (1) to notify them of DFPS's intent to file a protective order; and
- (2) to request assistance in developing a safety plan for the protection of the victim and any non-abusive household members.

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

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## SUBCHAPTER K. INVESTIGATIONS

### 40 TAC §705.1101

#### STATUTORY AUTHORITY

The proposed amended rules implement H.B. 4696 from the 88th Legislature, regular session.

The modification is proposed under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall oversee the development of rules relating to the matters within the department's jurisdiction and notwithstanding any other law, shall adopt rules for the operation and provision of services by the department.

#### CROSS REFERENCE TO STATUTES

The proposed rules implement Human Resources Code, Chapter 48; Family Code, Chapter 261; and Health and Safety Code, Chapters 142 and 253.

*§705.1101. What assessments does APS use?*

- (a) APS uses a series of three assessments.

(1) Safety assessment. When APS investigates, APS uses a safety assessment to determine if the client [alleged victim] is in imminent risk of abuse, neglect, or financial exploitation, or is in a state of abuse, neglect, or financial exploitation and needs protective services. A safety assessment helps APS determine current danger factors and if immediate intervention is necessary to mitigate them.

(2) Risk of recidivism assessment: If APS validates abuse, neglect, or financial exploitation, APS uses a risk of recidivism assessment to help determine whether the client is at low, moderate, or high risk of being a client [an alleged victim] within the next 12 months.

(3) Strengths and needs assessment: If APS validates abuse, neglect, or financial exploitation and provides protective services, APS uses a strengths and needs assessment to help develop a service plan appropriate to the client's needs.

- (b) Each assessment is comprehensive, and at a minimum, assesses:

- (1) environmental conditions;

- (2) financial condition;
- (3) physical, medical, and mental health conditions;
- (4) social interaction and support; and
- (5) need for legal intervention.

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

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## SUBCHAPTER M. RELEASE HEARINGS

### 40 TAC §705.1303

#### STATUTORY AUTHORITY

The proposed amended rules implement H.B. 4696 from the 88th Legislature, regular session.

The modification is proposed under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall oversee the development of rules relating to the matters within the department's jurisdiction and notwithstanding any other law, shall adopt rules for the operation and provision of services by the department.

#### CROSS REFERENCE TO STATUTES

The proposed rules implement Human Resources Code, Chapter 48; Family Code, Chapter 261; and Health and Safety Code, Chapters 142 and 253.

*§705.1303. Does the designated perpetrator have the right to appeal?*

[(a)] When APS staff validates an allegation of abuse, neglect, or financial exploitation against a designated perpetrator and an entity or employer (such as a contracting agency or senior center) allows such designated perpetrator to have access to adults with disabilities, adults aged 65 or older, or children, then the APS caseworker may notify the entity of the findings by complying with this subchapter. If the findings are to be released to any entity or employer, the designated perpetrator must be given prior written notification, except in emergencies, and an opportunity to request an Administrative Review of Investigative Findings and a hearing before the State Office of Administrative Hearings.

[(b) If the designated perpetrator is an employee as defined in §705.1505 of this chapter (relating to How are the terms in this subchapter defined?) and subject to placement on the Employee Misconduct Registry established under Texas Health and Safety Code, Chapter 253, the perpetrator may request a hearing as described in Subchapter O of this chapter (relating to Employee Misconduct Registry).]

[(c) A designated perpetrator who is offered an EMR hearing under subsection (b) of this section may not also request a release hearing, as described in this chapter, relating to the same allegations of abuse, neglect, or financial exploitation.]

[(d) DFPS may elect to offer due process for an emergency release in an EMR hearing, as described in Subchapter O of this chapter (relating to Employee Misconduct Registry).]

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

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## SUBCHAPTER O. EMPLOYEE MISCONDUCT REGISTRY

**40 TAC §§705.1501, 705.1503, 705.1505, 705.1507, 705.1509, 705.1511, 705.1513, 705.1515, 705.1517, 705.1519, 705.1521, 705.1523, 705.1525, 705.1527, 705.1529, 705.1531, 705.1533**

### STATUTORY AUTHORITY

The proposed repealed rules implement H.B. 4696 from the 88th Legislature, regular session.

The modification is proposed under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall oversee the development of rules relating to the matters within the department's jurisdiction and notwithstanding any other law, shall adopt rules for the operation and provision of services by the department.

### CROSS REFERENCE TO STATUTES

The proposed rules implement Human Resources Code, Chapter 48; Family Code, Chapter 261; and Health and Safety Code, Chapters 142 and 253.

*§705.1501. What is the purpose of this subchapter?*

*§705.1503. To which investigations does this subchapter apply?*

*§705.1505. How are the terms in this subchapter defined?*

*§705.1507. How is reportable conduct defined for the purpose of this subchapter?*

*§705.1509. What notice does DFPS provide to an employee before the employee's name is submitted to the Employee Misconduct Registry?*

*§705.1511. How is the Notice of Finding provided to an employee, and who is responsible for ensuring that DFPS has a valid mailing address for an employee?*

*§705.1513. How does an employee dispute a finding of reportable conduct and what happens if the Request for EMR Hearing is not filed or not filed properly?*

*§705.1515. What is the deadline for filing the Request for EMR Hearing?*

*§705.1517. Is the finding of reportable conduct ever reversed without conducting a hearing?*

*§705.1519. When and where will the EMR hearing take place and who conducts the hearing?*

*§705.1521. May an employee or DFPS request that the EMR hearing be rescheduled?*

*§705.1523. May an employee withdraw a Request for EMR Hearing after it is filed?*

*§705.1525. What happens if a party fails to appear at a pre-hearing conference or a hearing on the merits?*

*§705.1527. How is the EMR conducted?*

*§705.1529. How and when is the decision made after the EMR hearing?*

*§705.1531. How is judicial review requested and what is the deadline?*

*§705.1533. What action does DFPS take when an employee's administrative case is fully resolved or has reached final disposition?*

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