

# 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 86. VEHICLE TOWING AND BOOTING

##### 16 TAC §86.700

The Texas Department of Licensing and Regulation (Department) proposes amendments to an existing rule at 16 Texas Administrative Code (TAC), Chapter 86, §86.700, regarding the Vehicle Towing and Booting program. The proposed changes are referred to as the "proposed rule."

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

The rules under 16 TAC, Chapter 86, implement Texas Occupations Code, Chapter 2308, Vehicle Towing and Booting.

The proposed rule clarifies the limited locations to which a tow truck company or a tow truck operator may take a vehicle involved in an Incident Management (IM) or other Non-Consent tow, by stating the two options in more concise language.

Additionally, the proposed rule explicitly prohibits: 1) a tow truck company or tow operator from recommending or soliciting authorization to tow or move a vehicle involved in an IM or other Non-Consent tow to any location other than a licensed vehicle storage facility (VSF) or 2) from obtaining authorization for any repairs or services other than those that are necessary for the tow.

The proposed rule is necessary because the Department continues to see a rise in vehicle "flipping" - a practice which involves towing vehicles involved in IM or other Non-Consent tows from one location to an unlicensed and unregulated body shop for storage and unauthorized work. The proposed rule will explicitly prohibit this practice and allow the Department to prosecute both tow companies and tow truck operators for using deception and dishonesty to funnel disabled vehicles away from licensed VSFs where storage fees are regulated and capped.

The need for rules addressing the practice of "flipping" has been discussed by the Towing and Storage Advisory Board for approximately one year. During the Board's September 22, 2020 meeting, it formally requested that the Department engage in the rulemaking process on this issue and present it with a proposed draft. The Sunset Commission has also recommended that the Department consider rules on this issue.

The proposed rules were presented to and discussed by the Towing and Storage Advisory Board at its meeting on Novem-

ber 18, 2020. The Advisory Board made the following change to the proposed rules:

##### SECTION-BY-SECTION SUMMARY

The proposed rule amends §86.700 by:

1. adding tow truck operators to the persons or entities subject to the rule;
2. explicitly adding Incident Management (IM) tows to the rule language to emphasize applicability to all types of Non-Consent tows;
3. adding a prohibition on tow truck companies and tow truck operators recommending or soliciting authorization to tow vehicles involved in IM and other Non-Consent tows to locations other than those allowed by rule;
4. adding clarifying language to emphasize where a vehicle involved in IM or other Non-Consent tows must be taken, if the vehicle operator selects a location of their own choosing and the tow truck company or tow truck operator declines to tow the vehicle there;
5. adding the word "ticket" to subsection (c); and
6. renumbering all sections.

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

Tony Couvillon, 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 the 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, enforcing or administering the proposed rules does not have foreseeable implications relating to costs or revenues of state governments.

##### LOCAL EMPLOYMENT IMPACT STATEMENT

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

##### PUBLIC BENEFITS

Mr. Couvillon also has determined that for each year of the first five-year period the proposed rule is in effect, the public benefit will be that it clarifies where a vehicle can be taken when it is towed during an IM or other Non-Consent tow. The proposed

rule also provides protection from a tow company or operator who might attempt to solicit a vehicle owner on the side of the road or scene of an accident, to have the vehicle taken to a location without regulated fees. Lastly, the proposed rule protects the public from bearing additional, possibly exorbitant costs, imposed by unregulated entities that can result from an unlawful solicitation by a tow operator at the scene of an accident or incident.

#### 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 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

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed rule. Since 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, are not required.

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

The proposed rule does 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 Government Code §2001.0045.

#### GOVERNMENT GROWTH IMPACT STATEMENT

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

1. The proposed rule does not create or eliminate a government program.
2. Implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions.
3. Implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency.
4. The proposed rule does not require an increase or decrease in fees paid to the agency.
5. The proposed rule does not create a new regulation.
6. The proposed rule does expand, limit, or repeal an existing regulation.
7. The proposed rule does not increase or decrease the number of individuals subject to the rules' applicability.
8. The proposed rule does 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 rule and the proposed rule does 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 rule does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

#### PUBLIC COMMENTS

Comments on the proposed rule may be submitted electronically on the Department's website at <https://ga.tdlr.texas.gov:1443/form/gcerules>; by facsimile to (512) 475-3032; or by mail to Vanessa Vasquez, 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*.

#### STATUTORY AUTHORITY

The proposed rule is proposed under Texas Occupations Code, Chapters 51 and Texas Occupations Code, Chapter 2308, 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 rule are those set forth in Texas Occupations Code, Chapters 51 and Texas Occupations Code, Chapter 2308. No other statutes, articles, or codes are affected by the proposed rule.

*§86.700. Responsibilities of Tow Truck Permit Holder and Tow Truck Operator--Storage of Towed Vehicles.*

(a) A towing company or tow truck operator that performs an incident management or nonconsent tow may only tow the vehicle to one of the following locations:

(1) a vehicle storage facility operated by a person who holds a vehicle storage facility license issued by the department; or

(2) a location other than a vehicle storage facility licensed by the department that is specifically requested and authorized by the vehicle owner or operator and to which a towing company or tow truck operator agrees to take the vehicle.

~~[(a) Unless the towing company agrees to take the vehicle to a location designated by the vehicle's owner, a towing company that makes a nonconsent tow shall tow the vehicle to a vehicle storage facility operated by a person who holds a vehicle storage facility license issued by the department.]~~

(b) Neither a towing company nor a tow truck operator may recommend or solicit authorization for a vehicle involved in an incident management or nonconsent tow to be towed or moved to any location other than a vehicle storage facility licensed by the department.

(c) ~~[(b)]~~ In the event the vehicle is taken to a location other than a licensed vehicle storage facility, the authorization for [document signed by the vehicle owner or operator to authorize] the tow ticket must [may] not include authorization for repairs or [of] any other services other than those necessary to perform the [nonconsent] tow.

(d) A towing company or tow truck operator may decline to take a vehicle to a location specifically requested and authorized by the vehicle owner or operator. However, if the towing company or tow operator declines, they may not take the vehicle to any location other than a licensed vehicle storage facility as set forth in subsection (a)(1) of this section.

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

Filed with the Office of the Secretary of State on November 30, 2020.

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Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

Earliest possible date of adoption: January 17, 2021

For further information, please call: (512) 475-4879



## PART 9. TEXAS LOTTERY COMMISSION

### CHAPTER 401. ADMINISTRATION OF STATE LOTTERY ACT

#### SUBCHAPTER D. LOTTERY GAME RULES

##### 16 TAC §§401.305, 401.312, 401.317

The Texas Lottery Commission (Commission) proposes amendments to 16 TAC §§401.305 ("Lotto Texas" Draw Game Rule), 401.312 ("Texas Two Step" Draw Game Rule), and 401.317 ("Powerball" Draw Game Rule).

The proposed amendment to §401.305 provides that Lotto Texas drawings will occur on the days and at times specified by the Commission's executive director, which may be days or times other than Wednesday and Saturday at 10:12 p.m., as the rule currently provides.

The proposed amendment to §401.312 similarly provides that Texas Two Step drawings will occur on the days and at times specified by the executive director, which may be days or times other than Monday and Thursday at 10:12 p.m., as the rule currently provides.

The proposed amendment to §401.317 provides that Powerball drawings will occur on the days specified by the Multi-State Lottery Association (MUSL) Powerball Group and announced by the executive director, which may be days other than Wednesday and Saturday, as the rule currently provides.

The purpose of the proposed amendments is to provide the Commission greater flexibility to coordinate the draw dates and times for its jackpot draw games to maximize potential revenue to the state.

Kathy Pyka, Controller, has determined that for each year of the first five years the amendments will be in effect, there will be no significant fiscal impact for state or local governments as a result of the proposed amendments. There will be no adverse effect on small businesses or rural communities, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the amendments, as proposed. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Ryan Mindell, Lottery Operations Director, has determined that for each year of the first five years the proposed amendments will be in effect, the public benefit expected is quicker and more direct communication to the public of potential draw date changes as well as greater flexibility to coordinate the Lotto Texas, Texas Two Step, and Powerball game schedules as needed.

Pursuant to Texas Government Code §2001.0221, the Commission provides the following Government Growth Impact Statement for the proposed amendments. For each year of the first five years the proposed amendments will be in effect, Kathy Pyka, Controller, 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 future legislative appropriations to the Commission.
- (4) The proposed amendments do not require an increase or decrease in fees paid to the Commission.
- (5) The proposed amendments do not create a new regulation.
- (6) The proposed amendments do not expand or limit an existing regulation.
- (7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability.
- (8) The proposed amendments do not positively or adversely affect this state's economy.

The Commission requests comments on the proposed amendments from any interested person. Comments on the proposed amendments may be submitted to Kyle Wolfe, Assistant General Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at [legal.input@lottery.state.tx.us](mailto:legal.input@lottery.state.tx.us). Comments must be received within 30 days after publication of this proposal in the Texas Register to be considered.

#### Statutory Authority

These amendments are proposed under Texas Government Code §466.015(c)(4), which authorizes the Commission to adopt rules governing the operation of the lottery, including the frequency of drawings or selection of a winning ticket, and §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

This proposal is intended to implement Texas Government Code Chapter 466.

#### §401.305. "Lotto Texas" Draw Game Rule.

(a) - (c) (No change.)

(d) Drawings.

(1) Lotto Texas base game drawings shall be held each week on the days and at times specified by the executive director. [Wednesday and Saturday at 10:12 p.m. Central Time. The executive director may change the drawing schedule, if it is deemed necessary.]

(2) - (5) (No change.)

(e) - (h) (No change.)

§401.312. "Texas Two Step" Draw Game Rule.

(a) - (c) (No change.)

(d) Drawings.

(1) Texas Two Step drawings shall be held each week on the days and at times specified by the executive director. ~~[Monday and Thursday at 10:12 p.m. Central Time. The executive director may change the drawing schedule, if necessary.]~~

(2) - (5) (No change.)

(e) - (f) (No change.)

§401.317. "Powerball" Draw Game Rule.

(a) - (b) (No change.)

(c) Game Description.

(1) Powerball Game. Powerball is a five (5) out of sixty-nine (69) plus one (1) out of twenty-six (26) numbers lottery game drawn on the days specified by the MUSL Powerball Group and announced by the executive director [every Wednesday and Saturday], as part of the Powerball Drawing, which pays the Grand Prize, at the election of the player made in accordance with this section, or by a default election made in accordance with this section, either on an annuitized pari-mutuel basis or as a single lump sum payment of the total funding held in the Grand Prize Pool for the winning Drawing on a pari-mutuel basis. Except as provided in this section, all other prizes are paid on a single payment basis.

(A) - (C) (No change.)

(2) - (6) (No change.)

(d) - (k) (No change.)

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 December 4, 2020.

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Bob Biard

General Counsel

Texas Lottery Commission

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For further information, please call: (512) 344-5392



## TITLE 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 33. STATEMENT OF INVESTMENT OBJECTIVES, POLICIES, AND GUIDELINES

##### OF THE TEXAS PERMANENT SCHOOL FUND

##### SUBCHAPTER A. STATE BOARD OF

##### EDUCATION RULES

##### 19 TAC §§33.5, 33.15, 33.25, 33.35, 33.60

The State Board of Education (SBOE) proposes amendments to §§33.5, 33.15, 33.25, 33.35, and 33.60, concerning statement of investment objectives, policies, and guidelines of the Texas Per-

manent School Fund (PSF). The proposed amendments would amend the asset allocation of the PSF, update transactions and restrictions that apply to the PSF, and update cross references and a section title.

**BACKGROUND INFORMATION AND JUSTIFICATION:** In accordance with statute, the rules in Chapter 33 establish investment objectives, policies, and guidelines for the PSF.

The proposed amendment to §33.5, Code of Ethics, would update a reference to 19 TAC §33.20, Responsible Parties and Their Duties.

The proposed amendment to §33.15, Objectives, would amend the asset allocation of the PSF.

The proposed amendment to §33.25, Permissible and Restricted Investments and General Guidelines for Investment Managers, would update transactions and restrictions that apply to the PSF.

The proposed amendment to §33.35, Guidelines for the Custodian and the Securities Lending Agent, would update the section title to include the PSF Liquid Account.

The proposed amendment to §33.60, Performance and Review Procedures, would update a reference from the Texas Natural Resources Code to the Texas Education Code.

The SBOE approved the proposed amendment for first reading and filing authorization at its November 20, 2020 meeting.

**FISCAL IMPACT:** Holland Timmins, executive administrator and chief investment officer of the Texas Permanent School Fund, has determined that for the first five years the proposal is in effect, it would have no fiscal impact to state or local government 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 adding to the list of prohibited transactions and restrictions in §33.25.

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:** Mr. Timmins 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 updating and clarifying provisions supporting the management and investment of the PSF. 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 new 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 December 18, 2020, and ends at 5:00 p.m. on January 22, 2021. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About\\_TEA/Laws\\_and\\_Rules/SBOE\\_Rules\\_\(TAC\)/Proposed\\_State\\_Board\\_of\\_Education\\_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/SBOE_Rules_(TAC)/Proposed_State_Board_of_Education_Rules/). The SBOE will take registered oral and written comments on the proposal at the appropriate committee meeting in January 2021 in accordance with the SBOE board operating policies and procedures. 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 December 18, 2020.

**STATUTORY AUTHORITY.** The amendments are proposed under Texas Constitution, Article VII, §5(a), which authorizes the State Board of Education (SBOE) to make distributions from the Permanent School Fund (PSF) to the available school fund with certain limits; Texas Constitution, Article VII, §5(f), which authorizes the SBOE to manage and invest the PSF according to the prudent investor standard and make investments it deems appropriate; Texas Education Code (TEC), §43.001, which describes the PSF as a perpetual endowment; TEC, §43.0052, as added by House Bill (HB) 4388, 86th Texas Legislature, 2019, and Texas Natural Resources Code (TNRC), §32.068 and §51.414, as added by HB 4388, 86th Texas Legislature, 2019, which created the Liquid Account within the PSF to be managed by the SBOE and require the SBOE and School Land Board to send quarterly investment and financial reports to the other; and TNRC, §32.012, as amended by Senate Bill (SB) 608, 86th Texas Legislature, 2019, and §32.0161, as added by SB 608, which require the SBOE to submit to the governor a list of six nominees for each of two positions on the School Land Board and requires the SBOE and the School Land Board to hold a joint annual public meeting to discuss the PSF.

**CROSS REFERENCE TO STATUTE.** The amendments implement Texas Constitution, Article VII, §5(a) and (f); Texas Education Code (TEC), §43.001; TEC, §43.0052, as added by House Bill (HB) 4388, 86th Texas Legislature, 2019; and Texas Natural Resources Code (TNRC), §32.012, as amended by Senate Bill (SB) 608, 86th Texas Legislature, 2019; TNRC, §32.0161, as added by SB 608, 86th Texas Legislature, 2019; and TNRC, §32.068 and §51.414, as added by HB 4388, 86th Texas Legislature, 2019.

§33.5. *Code of Ethics.*

(a) - (c) (No change.)

(d) Definitions. For purposes of this chapter, the following terms shall have the following meanings.

(1) - (3) (No change.)

(4) PSF Service Providers are the following Persons:

(A) any Person who is an external investment manager, as described in §33.20(c)(1) [~~§33.20(b)(1)~~] of this title (relating to Responsible Parties and Their Duties), or who is responsible by contract for providing legal advice regarding the PSF, executing PSF brokerage transactions, or acting as a custodian of the PSF;

(B) (No change.)

(C) any Person who is Investment Counsel as described in §33.20(c)(4) [~~§33.20(b)(4)~~] of this title or provides consultant services for compensation regarding the management and investment of the PSF;

(D) - (G) (No change.)

(5) - (6) (No change.)

(e) - (v) (No change.)

§33.15. *Objectives.*

(a) (No change.)

(b) Goal and objectives for the PSF.

(1) Goal. The goal of the SBOE for the PSF shall be to invest for the benefit of current and future generations of Texans consistent with the safety of principal, considering [~~in light of~~] the strategic asset allocation plan adopted. To achieve this goal, PSF investment shall always be carefully administered [~~at all times~~].

(2) (No change.)

(c) (No change.)

(d) Asset allocation policy.

(1) The SBOE shall adopt and implement a strategic asset allocation plan based on a well-diversified [~~well diversified~~], balanced investment approach that uses a broad range of asset classes indicated by the following characteristics of the PSF:

(A) - (G) (No change.)

(2) (No change.)

(3) The SBOE Committee on School Finance/Permanent School Fund, with the advice of the PSF investment staff, shall review the provisions of this section at least annually and, as needed, rebalance the assets of the portfolio according to the asset allocation rebalancing procedure specified in the PSF Investment Procedures Manual. The SBOE Committee on School Finance/Permanent School Fund shall consider the industry diversification and the percentage allocation within the following asset classes:

(A) - (I) (No change.)

(J) high yield;

~~{(J) risk parity;}~~

(K) - (L) (No change.)

(4) - (5) (No change.)

§33.25. *Permissible and Restricted Investments and General Guidelines for Investment Managers.*

(a) (No change.)

(b) Prohibited transactions and restrictions. Except as provided in subsection (a) of this section or as approved or delegated by the SBOE, the following prohibited transactions and restrictions apply to all Texas Permanent School Fund (PSF) investment managers with respect to the investment or handling of PSF assets, except as otherwise noted:

(1) - (5) (No change.)

(6) purchasing the equity or debt securities of the PSF investment manager's own organization or an affiliated organization, but excluding purchases with respect to indexed or passively managed portfolios;

(7) engaging in any purchasing transaction, after which the cumulative market value of common stock in a single corporation exceeds 2.5% of the PSF total market value or 5.0% of the manager's total portfolio market value, but excluding purchasing transactions with respect to indexed or passively managed portfolios;

(8) engaging in any purchasing transaction, after which the cumulative number of shares of common stock in a single corporation held by the PSF exceeds 5.0% of the outstanding voting stock of that issuer, but excluding purchasing transactions with respect to indexed or passively managed portfolios;

(9) - (11) (No change.)

(12) purchasing any publicly traded fixed income security rated below BB- [not rated investment grade] by Standard & Poor's [(BBB-)], Ba3 by Moody's [(Baa3)], or BB- by Fitch [(BBB-)], subject to the provisions of the PSF Investment Procedures Manual and the following restrictions:

(A) when ratings are provided by the three rating agencies, the middle rating shall be used;

(B) when ratings are provided by two ratings agencies, the lower rating is used; or

(C) when a rating is provided by one rating agency, the sole rating is used;

(13) purchasing any publicly traded fixed income securities that are rated below investment grade by Standard & Poor's (below BBB-), Moody's (below Baa3), or Fitch (below BBB-), with such rating as determined in accordance with paragraph (12)(A)-(C) of this subsection, if the cumulative market value of such below investment grade rated securities after such purchase exceeds 5% of the total portfolio market par value of the PSF fixed income portfolio;

(14) [(13)] purchasing short-term money market instruments rated below A-1 by Standard & Poor's or P-1 by Moody's;

(15) [(14)] engaging in any transaction that results in unrelated business taxable income (excluding current holdings);

(16) [(15)] engaging in any transaction considered a "prohibited transaction" under the Internal Revenue Code or the Employee Retirement Income Security Act (ERISA);

(17) [(16)] purchasing precious metals or other commodities;

(18) [(17)] engaging in any transaction that would leverage a manager's position;

(19) [(18)] lending securities owned by the PSF, but held in custody by another party, such as a bank custodian, to any other party for any purpose, unless lending securities according to a separate written agreement the SBOE approved; and

(20) [(19)] purchasing fixed income securities without a stated par value amount due at maturity.

(c) - (d) (No change.)

§33.35. *Guidelines for the Custodian and the Securities Lending Agent for the Texas Permanent School Fund (PSF) and the PSF Liquid Account.*

Completing custodial and security lending functions in an accurate and timely manner is necessary for effective investment management and accurate records.

(1) A custodian shall have the following responsibilities regarding the segments of the funds for which the custodian is responsible.

(A) (No change.)

(B) Provide for daily investment of any cash [on a daily basis] to avoid uninvested amounts.

(C) - (I) (No change.)

(2) (No change.)

§33.60. *Performance and Review Procedures.*

As requested by the State Board of Education (SBOE) or Texas Permanent School Fund (PSF) investment staff, evaluation and periodic investment reports shall supply critical information on a continuing basis, such as the amount of trading activity, investment performance, cash positions, diversification ratios, rates of return, and other perspectives of the portfolios. The reports shall address compliance with investment policy guidelines.

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

(3) Reports to the School Land Board. Each quarter, the SBOE shall provide the School Land Board a financial report on the portion of the PSF assets and funds for which the SBOE is responsible in accordance with Texas Education [Natural Resources] Code, §43.0052.

(4) - (6) (No change.)

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 December 7, 2020.

TRD-202005262

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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



## CHAPTER 61. SCHOOL DISTRICTS

### SUBCHAPTER AA. COMMISSIONER'S RULES ON SCHOOL FINANCE

#### 19 TAC §61.1010

The Texas Education Agency (TEA) proposes an amendment to §61.1010, concerning additional state aid for school districts that contract to partner to operate a district campus. The proposed

amendment would align the rule with changes made by Senate Bill (SB) 2117 and House Bill (HB) 3, 86th Texas Legislature, 2019, and revise the list of allotments to be excluded from the entitlement.

**BACKGROUND INFORMATION AND JUSTIFICATION:** Section 61.1010 provides an additional entitlement through the Foundation School Program for school districts that enter into contracts to partner to operate a district campus under Texas Education Code (TEC), §11.174. The rule also provides for additional funding to the school district in the amount of any positive difference between the amount to which a charter school would be entitled under TEC, §12.106, and the amount to which the school district would be entitled under the TEC, Chapter 42, Subchapters B, C, and E, for the district's students attending the contracted campus.

SB 2117, 86th Texas Legislature, 2019, amended TEC, §42.2511, to expand the entitlement to a school district that contracts with an open-enrollment charter school to jointly operate a campus or campus program as provided by TEC, §11.157(b). HB 3, 86th Texas Legislature, 2019, further amended TEC, §42.2511, by recodifying it as §48.252.

To align with SB 2117, the proposed amendment to 19 TAC §61.1010 would add language throughout the rule referencing campus programs under TEC, §11.157(b). In addition, a definition for "contracted campus program" would be added in subsection (b)(2), and a new provision in subsection (c)(2) would be added to set forth the method to calculate the additional state aid by requiring the program contact hours to be reported on a separate track.

Subsection (c)(1) would be amended to update one of the data sources used as part of the settle-up process for the entitlement. Instead of using data from the Texas Department of Agriculture on the number of students eligible for free and reduced-price meals, TEA would use data from the Texas Student Data System Public Education Information Management System fall submission regarding the number of students eligible for compensatory education funding under TEC, §48.104.

Subsection (e) would be amended to update the list of allotments to be excluded from the entitlement.

Finally, due to the recodification of TEC, Chapters 41 and 42, by HB 3, cross references to statute would be updated throughout the rule.

**FISCAL IMPACT:** Leo Lopez, associate commissioner for school finance, 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 allowing contracted campus programs under TEC, §11.157(b), to be eligible to receive funding and adding to the list of allotments that are excluded from the entitlement.

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:** Mr. Lopez 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 providing additional funding in accordance with TEC, §48.252, to districts that contract to partner to operate district campuses or contracted campus programs. The additional funding will assist with improving academic performance and will incentivize contracting to partner as a way to provide innovative governance arrangements. 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 new data or reporting impact. The current rule requires school districts and open-enrollment charter schools to follow specified reporting requirements.

**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 December 25, 2020, and ends January 25, 2021. 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 December 25, 2020. 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), §48.252, which authorizes the commissioner of education to adopt rules necessary for the implementation of an entitlement for school districts that enter into a contract to operate a district campus under the TEC, §11.174.

**CROSS REFERENCE TO STATUTE.** The amendment implements Texas Education Code, §48.252, formerly §42.2511, as amended by Senate Bill 2117, 86th Texas Legislature, 2019, and as transferred, redesignated, and amended by House Bill 3, 86th Texas Legislature, 2019.

*§61.1010. Additional State Aid for School Districts that Contract to Partner to Operate a District Campus.*

(a) General provisions. This section implements the Texas Education Code (TEC), §48.252 [~~§42.2511~~] (School District Entitlement for Certain Students), which provides for additional funding for school districts that have entered into a contract to partner to operate a district campus under the TEC, §11.174, and for districts that entered into a contract with a partner to jointly operate a campus or campus program under TEC, §11.157(b).

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings. [~~Definition.~~]

(1) Contracted campus--~~A~~ [~~In this section, the term "contracted campus" means a~~] campus for which the board of trustees of a school district has contracted to partner to operate a campus under the TEC, §11.174 or §11.157(b).

(2) Contracted campus program--A program on a campus operated by a charter school under TEC, Chapter 12, Subchapter D, for which the board of trustees of a school district has contracted to jointly operate the program under TEC, §11.157(b).

(c) Entitlement.

(1) In the fall of each school year, as part of the settle-up process for the preceding school year, the Texas Education Agency (TEA) will use the attendance reported through the Texas Student Data System Public Education Information Management System (TSDS PEIMS) summer data submission, as well as campus-level data regarding the number of students eligible for compensatory education funding under TEC, §48.104, from the TSDS PEIMS fall submission [~~free and reduced-price meals received from the Texas Department of Agriculture~~], to calculate the following for a contracted campus or contracted campus program :

(A) [(4)] the entitlement for each student in average daily attendance at the contracted campus or contracted campus program, as if the campus or contracted campus program were a charter school under the TEC, §12.106, using the state average basic [~~adjusted~~] allotment as defined under the TEC, §12.106(a-1), and state average tax effort for enrichment funding as defined by the TEC, §12.106(a-2);

(B) [(2)] the entitlement for each student in average daily attendance at the contracted campus or contracted campus program under the TEC, Chapter 48 [~~42~~], Subchapters B, C, and E [~~F~~], as adjusted by subsection (d) of this section, using the district's basic [~~adjusted~~] allotment and enrichment tax effort without a local share component for those entitlements; and

(C) [(3)] any positive difference that results from subtracting the amount calculated under subparagraph (B) [~~paragraph (2)~~] of this paragraph [~~subsection~~] from the amount calculated under subparagraph (A) [~~paragraph (1)~~] of this paragraph [~~subsection~~], which shall be added to the district's Foundation School Fund Allotment.

(2) Campus program attendance must be reported on a separate track to receive funding.

(d) Estimates. School districts will be provided with estimated funding during a school year for eligible contracted campuses or contracted campus programs based on the prior year's attendance [~~and Texas Department of Agriculture~~] data using the same methodology used in subsection (c)(1) [(e)] of this section to calculate the entitlement. The final entitlement will be based on data from the current school year as provided for in subsection (c)(1) [(e)] of this section. Any difference from the estimated entitlement will be addressed as part

of the Foundation School Program settle-up process according to the provisions of TEC, §48.272 [~~§42.258~~].

(e) Exclusions. For purposes of the calculation in subsection (c) of this section, the following allotments shall be excluded from the entitlement:

[(1) the Tuition Allotment for districts not offering all grade levels under the TEC, §42.106;

(1) [(2)] the Advanced Career and Technology Education Allotment under the TEC, §48.106(a)(2), for students enrolled in P-TECH or New Tech Network campuses [~~§42.154(a)(2)~~];

(2) the College, Career, or Military Readiness Outcomes Bonus under TEC, §48.110;

(3) the Teacher Incentive Allotment under TEC, §48.112;

[(3) the Transportation Allotment under the TEC, §42.155; and]

(4) the Mentor Program Allotment under TEC, §48.114; and

[(4) the New Instructional Facility Allotment under the TEC, §42.158;

(5) the School Safety Allotment under TEC, §42.168.

(f) Funding for instructional facilities for charter schools. Effective September 1, 2018, for purposes of the calculation in subsection (c)(1)(A) [(e)(4)] of this section, any funding to which the contracted campus or contracted campus program would be entitled under the TEC, §12.106(d), will be included in the calculation.

(g) Recovery of funds. If a contract is found to be out of compliance with the TEC, §11.157 or §11.174, or §97.1075 of this title (relating to Contracting to Partner to Operate a Campus under Texas Education Code, §11.174), the TEA will eliminate any funding provided for that campus or contracted campus program under the TEC, §48.252 [~~§42.2511~~], and recover any funds overallocated under the provisions of the TEC, §48.272 [~~§42.258~~].

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 December 7, 2020.

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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



## CHAPTER 74. CURRICULUM REQUIREMENTS

### SUBCHAPTER B. GRADUATION REQUIREMENTS

#### 19 TAC §74.11

The State Board of Education (SBOE) proposes an amendment to §74.11, concerning high school graduation requirements. The proposed amendment would update the rule to align with the re-



quirement in House Bill (HB) 3, 86th Texas Legislature, 2019, that students complete and submit a free application for federal student aid (FAFSA) or a Texas application for state financial aid (TASFA) as a requirement for high school graduation. The amendment would also specify when a student may demonstrate proficiency in certain communication skills required for graduation.

**BACKGROUND INFORMATION AND JUSTIFICATION:** The 86th Texas Legislature, 2019, passed HB 3, amending Texas Education Code (TEC), §28.025(c), and adding new TEC, §28.0256, to require a student to complete a financial aid application, FAFSA or TASFA, in order to graduate. In accordance with TEC, §28.0256(b), a student is not required to comply with the financial aid application requirement if the student's parent or guardian submits a signed opt out form authorizing the student to decline to complete and submit a financial aid application. The student may submit the opt out form on the student's own behalf if the student is 18 years of age or older or is an emancipated youth under Texas Family Code, Chapter 31. A school counselor may also authorize the student to decline to complete and submit a financial aid application for good cause, as determined by the school counselor. The opt out form must be approved by the Texas Education Agency (TEA).

The proposed amendment would add new subsection (b) to align with the financial aid application requirement and include options by which a student may opt out of the requirement.

Additionally, in response to requests for clarification from school districts, subsection (a)(3) would be amended to specify that a student may demonstrate proficiency in the communication skills identified in the paragraph beginning in Grade 8.

The SBOE approved the proposed amendment for first reading and filing authorization at its November 20, 2020 meeting.

**FISCAL IMPACT:** Monica Martinez, associate commissioner for standards and support services, has determined that for the first five years the proposal is in effect, it would have no fiscal impact to state or local government beyond what is required by the authorizing statute. HB 3 requires school districts and charter schools to monitor and report the completion of the financial aid application requirement, which will have a cost to the state. The 86th Texas Legislature, 2019, appropriated \$1.5 million for the creation of a database to track TASFA completion electronically.

**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 requiring students to either submit a financial aid application or to opt out of the graduation requirement.

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. Martinez 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 promoting students' completion of financial aid applications and eligibility to receive financial aid. There is no anticipated economic cost to persons who are required to comply with the proposal.

**DATA AND REPORTING IMPACT:** The proposal would have data and reporting implications. TEC, §28.026(e)(2), requires each school district to report to the agency the number of students who complete and submit a financial aid application and the number of students who opted out of the financial aid requirement.

**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 December 18, 2020, and ends at 5:00 p.m. on January 22, 2021. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About\\_TEA/Laws\\_and\\_Rules/SBOE\\_Rules\\_\(TAC\)/Proposed\\_State\\_Board\\_of\\_Education\\_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/SBOE_Rules_(TAC)/Proposed_State_Board_of_Education_Rules/). The SBOE will take registered oral and written comments on the proposal at the appropriate committee meeting in January 2021 in accordance with the SBOE board operating policies and procedures. 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 December 18, 2020.

**STATUTORY AUTHORITY.** The amendment is proposed under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.025(c), as amended by House Bill (HB) 3, 86th Texas Legislature, 2019, which requires that, in order to receive a high school diploma, a student must complete the curriculum requirements identified by the State Board of Education and comply with the financial aid application requirement in accordance with TEC, §28.0256; TEC, §28.0256(a), as added by HB 3, 86th Texas Legislature, 2019, which requires each student to complete and submit a free application for federal student aid or a Texas application for state financial aid before graduating from high school; TEC, §28.0256(b), as added by HB 3, 86th Texas Legislature, 2019, which provides an exception to students to opt out of the financial aid application requirement under TEC, §28.0256(a), by submitting a form signed by a parent, guardian, or student aged

18 years old or older, that authorizes the student to decline to comply with the financial aid application graduation requirement. A high school counselor may also authorize a student to decline to comply with the financial aid application graduation requirement for good cause; and TEC, §28.0256(d), as added by HB 3, 86th Texas Legislature, 2019, which specifies that if a school counselor notifies a school district whether a student has complied with the requirement under TEC, §28.0256(a) or (b), the school counselor may only indicate whether the student has complied with this section and may not indicate the manner in which the student complied.

**CROSS REFERENCE TO STATUTE.** The amendment implements Texas Education Code, §§7.102(c)(4); 28.025(c), as amended by House Bill (HB) 3, 86th Texas Legislature, 2019; and 28.0256(a), (b), and (d), as added by HB 3, 86th Texas Legislature, 2019.

*§74.11. High School Graduation Requirements.*

(a) To receive a high school diploma, a student entering Grade 9 in the 2014-2015 school year and thereafter must complete the following:

(1) in accordance with subsection (d) [(e)] of this section, requirements of the Foundation High School Program specified in §74.12 of this title (relating to Foundation High School Program);

(2) testing requirements for graduation as specified in Chapter 101 of this title (relating to Assessment); and

(3) demonstrated proficiency, in Grade 8 or higher, as determined by the district in which the student is enrolled, in delivering clear verbal messages; choosing effective nonverbal behaviors; listening for desired results; applying valid critical-thinking and problem-solving processes; and identifying, analyzing, developing, and evaluating communication skills needed for professional and social success in interpersonal situations, group interactions, and personal and professional presentations.

(b) Before graduating from high school, each student in Grade 12 must complete and submit a free application for federal student aid (FAFSA) or a Texas application for state financial aid (TASFA). A student may graduate under the Foundation High School Program without completing a financial aid application if:

(1) the student's parent or other person standing in parental relation submits a signed form, approved by the Texas Education Agency (TEA), indicating that the parent or other person authorizes the student to decline to complete and submit the financial aid application;

(2) the student signs and submits the form described by paragraph (1) of this subsection on the student's own behalf if the student is 18 years of age or older or has been emancipated under Texas Family Code, Chapter 31; or

(3) a school counselor authorizes the student to decline to complete and submit the financial aid application for good cause, as determined by the school counselor. If a school counselor notifies a school district that a student has declined to complete and submit a financial aid application for good cause, the school counselor may not indicate details regarding what constitutes good cause.

(c) [(b)] A school district shall clearly indicate the distinguished level of achievement under the Foundation High School Program, an endorsement, and a performance acknowledgment on the transcript or academic achievement record (AAR) of a student who satisfies the applicable requirements.

(d) [(e)] A student entering Grade 9 in the 2014-2015 school year and thereafter shall enroll in the courses necessary to complete

the curriculum requirements for the Foundation High School Program specified in §74.12 of this title and the curriculum requirements for at least one endorsement specified in §74.13 of this title (relating to Endorsements).

(e) [(d)] A student may graduate under the Foundation High School Program without earning an endorsement if, after the student's sophomore year:

(1) the student and the student's parent or person standing in parental relation to the student are advised by a school counselor of the specific benefits of graduating from high school with one or more endorsements; and

(2) the student's parent or person standing in parental relation to the student files with a school counselor written permission, on a form adopted by the TEA [Texas Education Agency (TEA)], allowing the student to graduate under the Foundation High School Program without earning an endorsement.

(f) [(e)] A student may earn a distinguished level of achievement by successfully completing the curriculum requirements for the Foundation High School Program and the curriculum requirements for at least one endorsement required by the Texas Education Code (TEC), §28.025(b-15), including four credits in science and four credits in mathematics to include Algebra II.

(g) [(f)] An out-of-state or out-of-country transfer student (including foreign exchange students) or a transfer student from a Texas nonpublic school is eligible to receive a Texas diploma but must complete all requirements of this section to satisfy state graduation requirements. Any course credit required in this section that is not completed by the student before he or she enrolls in a Texas school district may be satisfied through the provisions of §74.23 of this title (relating to Correspondence Courses and Distance Learning) and §74.24 of this title (relating to Credit by Examination) or by completing the course or courses according to the provisions of §74.26 of this title (relating to Award of Credit).

(h) [(g)] Elective credits may be selected from the following:

(1) high school courses not required for graduation that are listed in the following chapters of this title:

(A) Chapter 110 of this title (relating to Texas Essential Knowledge and Skills for English Language Arts and Reading);

(B) Chapter 111 of this title (relating to Texas Essential Knowledge and Skills for Mathematics);

(C) Chapter 112 of this title (relating to Texas Essential Knowledge and Skills for Science);

(D) Chapter 113 of this title (relating to Texas Essential Knowledge and Skills for Social Studies);

(E) Chapter 114 of this title (relating to Texas Essential Knowledge and Skills for Languages Other Than English);

(F) Chapter 115 of this title (relating to Texas Essential Knowledge and Skills for Health Education);

(G) Chapter 116 of this title (relating to Texas Essential Knowledge and Skills for Physical Education);

(H) Chapter 117 of this title (relating to Texas Essential Knowledge and Skills for Fine Arts);

(I) Chapter 127 of this title (relating to Texas Essential Knowledge and Skills for Career Development); and

(J) Chapter 130 of this title (relating to Texas Essential Knowledge and Skills for Career and Technical Education);

(2) state-approved innovative courses as specified in §74.27 of this title (relating to Innovative Courses and Programs);

(3) Junior Reserve Officer Training Corps (JROTC)--one to four credits; and

(4) Driver Education--one-half credit.

(i) [(h)] Courses offered for dual credit at or in conjunction with an institution of higher education that provide advanced academic instruction beyond, or in greater depth than, the essential knowledge and skills for the equivalent high school course required for graduation may satisfy graduation requirements, including requirements for required courses, advanced courses, and courses for elective credit as well as requirements for endorsements.

(j) [(i)] A student may not be enrolled in a course that has a required prerequisite unless:

(1) the student has successfully completed the prerequisite course(s);

(2) the student has demonstrated equivalent knowledge as determined by the school district; or

(3) the student was already enrolled in the course in an out-of-state, an out-of-country, or a Texas nonpublic school and transferred to a Texas public school prior to successfully completing the course.

(k) [(j)] A district may award credit for a course a student completed without meeting the prerequisites if the student completed the course in an out-of-state, an out-of-country, or a Texas nonpublic school where there was not a prerequisite.

(l) [(k)] A district shall allow a student who successfully completes AP Computer Science A or IB Computer Science Higher Level to satisfy both one advanced mathematics requirement and one languages other than English requirement for graduation.

(m) [(l)] Each school district shall annually report to the TEA the names of the locally developed courses, programs, institutions of higher education, and internships in which the district's students have enrolled as authorized by the TEC, §28.002(g-1). The TEA shall make available information provided under this subsection to other districts. If a district chooses, it may submit any locally developed course for approval under §74.27 of this title as an innovative course.

(n) [(m)] Each school district shall annually report to the TEA the names of cybersecurity courses approved by the board of trustees for credit and the institutions of higher education in which the district's students have enrolled as authorized by the TEC, §28.002(g-3). The TEA shall make available information provided under this subsection to other districts. If a district chooses, it may submit any locally developed course for approval under §74.27 of this title as an innovative course.

(o) [(n)] A school district shall permit a student to comply with the curriculum requirements under the Foundation High School Program by successfully completing appropriate courses in the core curriculum of an institution of higher education (IHE). A student who has completed the core curriculum of an IHE in accordance with TEC, §61.822, as certified by the IHE in accordance with §4.28 of this title (relating to Core Curriculum):

(1) is considered to have earned an endorsement by successfully completing the appropriate courses for that endorsement;

(2) is considered to have earned a distinguished level of achievement under the Foundation High School Program; and

(3) is entitled to receive a high school diploma.

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 December 7, 2020.

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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



## TITLE 22. EXAMINING BOARDS

### PART 6. TEXAS BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS

#### CHAPTER 134. LICENSING, REGISTRATION, AND CERTIFICATION FOR SURVEYORS SUBCHAPTER G. EXAMINATIONS

##### 22 TAC §134.67

The Texas Board of Professional Engineers and Land Surveyors (Board) proposes a new rule to 22 Texas Administrative Code, Chapter 134, Licensing, Registration, and Certification for Surveyors, §134.67 regarding the examination process for professional land surveyors in Texas. These proposed changes are referred to as "proposed rule."

##### EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 22 Texas Administrative Code Chapter 134 implement Texas Occupations Code, Chapter 1001, the Texas Engineering Practice Act, and Occupations Code, Chapter 1071, the Professional Land Surveying Practices Act.

The proposed rule implements necessary changes as required by House Bill (HB) 1523, 86th Legislature, Regular Session (2019), related to the merger of operations of the Texas Board of Professional Engineers and the Texas Board of Professional Land Surveying (TBPLS) into the Texas Board of Professional Engineers and Land Surveyors (TBPELS).

As required by HB 1523, the operations of the two agencies have been merged into one, including the registration of Surveyors-in-Training (SIT) and Registered Professional Land Surveyors (RPLS), and the licensure of Licensed State Land Surveyors (LSLS). The TBPLS' rules (22 Texas Administrative Code, Chapter 661), related to registration of land surveyors, have been merged into Chapter 134 per the guidance of the Secretary of State. These rules have been formatted to be similar to the licensure rules for engineers (Chapter 133) and edits made for format and clarity.

##### SECTION-BY-SECTION SUMMARY

The proposed rule creates a new section §134.67 concerning the examination on the Principles and Practice of Surveying. It consolidates portions of TBPLS rules §§661.41 and 661.45 by creating a rule that only addresses the Principles and Practice

of Surveying exam. In addition to the examination developed by the TBPELS, the proposed rules expand the examination options to include the Principles and Practice of Surveying (PS) exam offered by the National Council of Examiners for Engineering and Surveying (NCEES). This addition was noted by the TBPLS 2019 Sunset Commission report. TBPELS prepared a review of examination options and determined the pros and cons of moving to the NCEES PS exams. After review of the various examination options, the Surveying Advisory Committee and the Board concurred to move forward with allowing the NCEES PS exam as an exam option. By creating a single rule that addresses the Principles and Practice of Surveying exam, it is easier for an applicant to locate the rule.

The proposed rule was previously proposed in the August 7, 2020, issue of the *Texas Register*. During the public comment period, public comments were received from the Texas Society of Professional Surveyors (TSPS) as submitted by Steven Freeman, RPLS; Mr. Josh Leamons, RPLS; and Mr. Bill O'Hara, RPLS, LSLS.

TSPS, Mr. Freeman, and Mr. Leamons emphasized that surveying practice in Texas has certain technical topics, legal cases, and terminology that are jurisdiction specific. The Professional Land Surveying Exam should reflect this content. They also noted that the National Council of Examiners for Engineering and Surveying (NCEES) are working to revise the current national Professional Surveying Exam to a modular format that may be more appropriate for registration in Texas. They recommended that the Board not convert to the national exam until NCEES has completed this conversion.

Mr. Bill O'Hara commented that he supported the conversion to the NCEES national examination and that the national exam, coupled with a state-specific examination, would be sufficient for registration in Texas.

The Surveying Advisory Committee reviewed all comments, as well as an analysis of conversion to the national exam, and recommended modifications to the originally proposed rule that removes a start date for conversion to the national exam and clarifies that the decision to convert to the national exam would be a vote of the board. At the November 19, 2020, board meeting the board concurred with this recommendation. The revised rule amendment was reviewed by legal counsel and was considered to be substantively different than the original intent of the proposed rule; therefore the previous rule proposal has been withdrawn and this rule proposed.

#### FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Dr. Lance Kinney, Ph.D., P.E., Executive Director for the Board, has determined that for each year of the first five years 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. The rule imposes no additional costs. HB 1523 transferred regulatory authority from TBPLS to TBPELS, and this rule merely reflects that transfer of authority.

Dr. Kinney 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. The proposed move to a national surveying exam would replace the need for the board to develop, maintain, and deliver a full surveying exam with the need to develop, maintain, and deliver a state specific exam, with no significant impact to the agency budget.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

Dr. Kinney has determined that the proposed rule will not affect the local economy, so the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

#### PUBLIC BENEFITS

Dr. Kinney has determined that for each year of the first five-year period the proposed rule is in effect, the public benefit will be the clear requirements for the efficient and effective registration and licensure and exam delivery of professional land surveyors by the TBPELS in accordance with HB 1523 and Texas Occupations Code chapters 1001 and 1071. Adding the option of the NCEES PS exam will test the knowledge of land surveying, land surveying laws, and the general fitness to practice the profession.

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

Dr. Kinney has determined that for each year of the first five-year period the proposed rule is in effect, the rules related to registration do not make substantive changes to the registration process and have no additional costs for registrants or the agency. The National Professional Surveying examination is more expensive than the current RPLS exam (\$150 for current exam; National exam is \$300) and is not significant because it will impact fewer than 100 individually annually. TBPELS is a self-directed semi-independent agency, therefore Texas Government Code 2001.045 does not apply.

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

There will be no adverse effect on small businesses, micro-businesses, or rural communities as a result of the proposed rule. The exam fee is applied to individual applicants and not businesses or public entities. Since 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 rule does 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 Government Code §2001.0045. In addition, TBPELS is a self-directed semi-independent agency, therefore Texas Government Code 2001.045 does not apply.

#### GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rules.

HB 1532 transferred the regulation of land surveying to the TBPELS, and these rules reflect a transfer of that regulatory authority from the former Board of Professional Land Surveying to the TBPELS without any growth in government. Therefore, for each year of the first five years the proposed rules are in effect, the agency has determined the following:

1. The proposed rule does not create or eliminate a government program.
2. Implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions.
3. Implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency.
4. The proposed rule does not require an increase or decrease in fees paid to the agency.
5. The proposed rule does not create a new regulation.
6. The proposed rule does not expand, limit, or repeal a regulation, except as provided by HB 1532, which transferred the regulation of land surveying to the TBPELS, and these rules reflect a transfer of that regulatory authority from the former Board of Professional Land Surveying to the TBPELS.
7. The proposed rule does not increase the number of individuals subject to the rule's applicability.
8. The proposed rule does not positively or adversely affect this state's economy.

#### TAKINGS IMPACT ASSESSMENT

The Board has determined that no private real property interests are affected by the proposed rule and the proposed rule does 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 rule does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

#### ENVIRONMENTAL RULE ANALYSIS

The Board has determined that the proposed rule is not brought with the specific intent to protect the environment or reduce risks to human health from environmental exposure; thus, the Board asserts the proposed rule is not a "major environmental rule," as defined by Government Code §2001.0225. As a result, the Board asserts preparation of an environmental impact analysis, as provided by §2001.0225, is not required.

#### PUBLIC COMMENTS

Any comments or request for a public hearing may be submitted, no later than 30 days after the publication of this notice, to Lance Kinney, Ph.D., P.E., Executive Director, Texas Board of Professional Engineers, 1917 S. Interstate 35, Austin, Texas 78741, faxed to his attention at (512) 440-0417 or sent by email to [rules@pels.texas.gov](mailto:rules@pels.texas.gov).

#### STATUTORY AUTHORITY

The rule is proposed pursuant to Texas Occupations Code §§ 1001.101 and 1001.202, which authorize the Board to regulate engineering and land surveying and make and enforce all rules and regulations and bylaws consistent with the Act and Texas Occupations Code §1071 as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state. The rule is also proposed under Texas Occupations Code §1001.2721, which authorizes the Board to adopt, recognize, develop, or contract for examinations, and §1001.302, which requires passing an examination for licensure. No other codes, articles, or statutes are affected by this proposal.

#### §134.67. Examination on the Principles and Practice of Surveying.

(a) The examination on the principles and practice of surveying is open only to applicants who have received board approval to take the exam and Texas registered professional land surveyors who wish to take the examination for record purposes.

(b) An applicant approved to take the examination on the principles and practice of surveying:

(1) shall be advised of the date he or she is eligible.

(2) shall be solely responsible for timely scheduling for the examination and any payment of examination fees.

(3) shall have no more than three examination attempts and those attempts must be completed within a four-year period starting with the date of the first exam taken by the applicant. No extensions shall be granted except as provided for in §134.61(i) of this chapter (relating to Surveying Examinations Required for a License to Practice as a Professional Surveyor.)

(4) shall have no more than eight years from the date of approval to complete the allowed exam attempts.

(c) For the purposes of this section, exam attempt means a unique administration of an examination or exam component for which attendance is documented.

(d) An applicant who does not pass the examination on the principles and practice of surveying within the approved examination period described in subsection (b) of this section is considered not approved and may not re-apply for approval until he or she has obtained at least one (1) year of additional surveying experience as described in Subchapter E of this chapter (relating to Experience) or until the applicant has completed at least six (6) additional semester hours of formal college level classroom courses relevant to land surveying. The time period to obtain additional surveying experience or enroll in additional college courses commences on the date of the last exam attempt or when the approved examination period expired. Applicants meeting the additional experience or education requirements must apply in accordance with §134.21 of this chapter (relating to Application for Standard License) and receive approval for additional exam attempts.

(e) The examination on the principles and practice of surveying shall be offered according to the schedule determined by the NCEES or by the board.

(f) The principles and practice of surveying exam shall be constructed according to §1071.256 of the Surveying Act. The examination shall be written and so designed to aid the Board in determining the applicant's knowledge of land surveying, mathematics, land surveying laws, and his/her general fitness to practice the profession as outlined in the Surveying Act.

(g) The board may develop an examination to meet the requirements of this section (relating to Examination on the Principles and Practice of Surveying).

(h) The board may approve the national NCEES Principles and Practice of Surveying examination, in conjunction with a state-specific Texas Land Surveying examination, to meet the requirements of this section (relating to Examination on the Principles and Practice of Surveying).

(i) The state-specific Texas Land Surveying examination shall be developed by the board to supplement the NCEES Principles and Practice of Surveying examination and cover any topic areas specific to the professional practice of land surveying in Texas that are not covered by the NCEES Principles and Practice of Surveying examination. The

state-specific Texas Land Surveying examination shall not exceed four hours in duration.

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

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 December 6, 2020.

TRD-202005261

Lance Kinney, Ph.D., P.E.

Executive Director

Texas Board of Professional Engineers and Land Surveyors

Earliest possible date of adoption: January 17, 2021

For further information, please call: (512) 440-3080



## PART 11. TEXAS BOARD OF NURSING

### CHAPTER 211. GENERAL PROVISIONS

#### 22 TAC §211.6

The Texas Board of Nursing (Board) proposes amendments to §211.6(b), relating to Committees of the Board. The amendments are being proposed under the authority of the Occupations Code §301.151.

**Background.** Pursuant to the Government Code §2001.034, the Board is authorized to adopt rules on an emergency basis if the Board finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of the rule on fewer than 30 days' notice. Under the Board's current rules, a quorum of the thirteen-member Board is required to convene in order to deliberate and vote on the adoption of emergency rules. Coordinating the appearance of a quorum of the Board on short notice can cause delay in situations that require flexibility, fluidity, and a rapid response. The proposed amendments authorize the Eligibility and Disciplinary Committee (Committee) of the Board to convene and consider and approve the adoption of emergency rules. The Committee is a standing committee comprised of three members of the Board, one consumer member and two nurse members. Because Committee members are pre-assigned to serve on the Committee in three month intervals, convening the three-member Committee, as opposed to a quorum of the full Board, is less likely to cause delay in the adoption of rules under emergency conditions. The conditions of the Government Code §2001.034 would still be required to be met in order for the Committee to consider the adoption of emergency rules.

**Section by Section Overview.** Proposed amended §211.6(b)(3)(ii) authorizes the Eligibility and Disciplinary Committee to approve the adoption of rules on an emergency basis pursuant to Tex. Gov't Code §2001.034. The remainder of the proposed changes re-order paragraph (3) appropriately.

**Fiscal Note.** Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no change in the revenue to state government as a result of the enforcement or administration of the proposal.

**Public Benefit/Cost Note.** Ms. Thomas has also determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit will be the adoption of a more efficient process for Board approval of emergency rules. The proposed process should eliminate unnecessary scheduling delays when emergency circumstances arise. There are no anticipated costs of compliance. The proposed rules do not affect individual licensees or any other entity subject to the Board's jurisdiction. Rather, the proposed rules only affect the Board's internal proceedings.

**Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses.** 2 The Board has determined that there will be no economic impact on small businesses, micro businesses, or rural communities because there are no anticipated costs of compliance associated with the proposal. As such, an economic impact statement and regulatory flexibility analysis is not required.

**Government Growth Impact Statement.** The Board is required, pursuant to Tex. Gov't Code §2001.0221 and 34 Texas Administrative Code §11.1, to prepare a government growth impact statement. The Board has determined for each year of the first five years the proposed amendments will be in effect: (i) the proposal does not create or eliminate a government program; (ii) the proposal is not expected to have an effect on existing agency positions; (iii) implementation of the proposal does not require an increase or decrease in future legislative appropriations to the Board; (iv) the proposal does not require an increase or decrease in fees paid to the Board; (v) the proposal delegates a new responsibility to the Board's Eligibility and Disciplinary Committee, in the event an emergency rule needs to be adopted; (vi) the proposal modifies an existing regulation; (vii) the proposal does not increase or decrease the number of individuals subject to the rule's applicability; and (viii) the proposal does not have an effect on the state's economy.

**Takings Impact Assessment.** The Board has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

**Request for Public Comment.** To be considered, written comments on this proposal should be submitted to James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to dusty.johnston@bon.texas.gov, or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

**Statutory Authority.** The amendments are proposed under the authority of the Occupations Code §301.151.

**Section 301.151 addresses the Board's rulemaking authority.** Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders under Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

**Cross Reference To Statute.** The following statutes are affected by this proposal: the Occupations Code §301.151.

§211.6. *Committees of the Board.*

- (a) (No change.)
- (b) Eligibility and Disciplinary Committee.
  - (1) - (2) (No change.)
  - (3) Duties and powers.

(A) The Committee shall have the authority to determine all matters of eligibility for licensure and discipline of licenses, including temporary suspension of a license, administrative and civil penalties, and consideration and resolution of a default dismissal from the State Office of Administrative Hearings pursuant to Tex. Gov't Code §2001.058(d-1).

(B) The Committee shall have the authority to approve the adoption of rules on an emergency basis pursuant to Tex. Gov't Code §2001.034.

(3) Duties and powers. The disciplinary committee shall have the authority to determine all matters of eligibility for licensure and discipline of licenses, including temporary suspension of a license, administrative and civil penalties, and consideration and resolution of a default dismissal from the State Office of Administrative Hearings pursuant to Tex. Gov't Code §2001.058(d-1).

- (4) - (5) (No change.)

- (c) - (f) (No change.)

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 December 7, 2020.

TRD-202005265

Jena Abel

Deputy General Counsel

Texas Board of Nursing

Earliest possible date of adoption: January 17, 2021

For further information, please call: (512) 305-6822



## CHAPTER 213. PRACTICE AND PROCEDURE

### 22 TAC §213.1

The Texas Board of Nursing (Board) proposes amendments to §213.1, relating to Definitions. The amendments are being proposed under the authority of the Occupations Code §301.151.

Background. The proposed amendments to §213.1 are necessary to correct outdated references to the Texas Board of Nurse Examiners.

Fiscal Note. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no change in the revenue to state government as a result of the enforcement or administration of the proposal.

Public Benefit/Cost Note. Ms. Thomas has also determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit will be the adoption of rules that correctly reference the Texas Board of Nursing and are consistent with the other sections of the Board's rules. There

is no anticipated cost to the public as a result of these editorial changes.

Costs Under the Government Code §2001.0045. The Government Code §2001.0045 prohibits agencies from adopting a rule that imposes costs on regulated persons unless the agency repeals a rule that imposes a total cost on regulated persons that is equal to or greater than the total cost imposed on regulated persons by the proposed rule or amends a rule to decrease the total cost imposed on regulated persons by an amount that is equal to or greater than the cost imposed on the persons by the proposed rule. This amendment will have no economic impact on any regulated persons.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. Because it is not anticipated that the proposal will impose any costs of compliance on an entity that meets the definition of a small business, micro business, or rural community pursuant to the Government Code §2006.001(1), §2006.001(2), or §2006.001(1-a), the Board is not required to prepare an economic impact statement and regulatory flexibility analysis.

Government Growth Impact Statement. The Board is required, pursuant to Tex. Gov't Code §2001.0221 and 34 Texas Administrative Code §11.1, to prepare a government growth impact statement. The Board has determined for each year of the first five years the proposed amendments will be in effect: (i) the proposal does not create or eliminate a government program; (ii) the proposal is not expected to have an effect on current agency positions; (iii) implementation of the proposal does not require an increase or decrease in future legislative appropriations to the Board; (iv) the proposal does not affect the fees paid to the Board; (v) the proposal amends an existing regulation; (vi) the proposal does not expand, limit, or repeal an existing regulation; (vii) the proposal does not extend to new entities not previously subject to the rule; and (viii) the proposal will not affect the state's economy.

Takings Impact Assessment. The Board has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

Request for Public Comment. To be considered, written comments on this proposal should be submitted to James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to [Dusty.Johnston@bon.texas.gov](mailto:Dusty.Johnston@bon.texas.gov), or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

Statutory Authority. The amendments are proposed under the authority of the Occupations Code §301.151.

Section 301.151 addresses the Board's rulemaking authority. Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders under Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Cross Reference To Statute. The following statutes are affected by this proposal: Texas Occupations Code §301.151.

§213.1. *Definitions.*

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

(1) (No change.)

(2) Address of record--The address of each licensee as provided to the Board of Nursing [Nurse Examiners] (as required by Board rules relating to Change of Name and/or Address) and currently found in §217.7 of this title (relating to Change of Name and/or Address).

(3) - (7) (No change.)

(8) Board--The Board of Nursing [Nurse Examiners] appointed pursuant to Texas Occupations Code Annotated §301.051. For purposes of this section, "Board" also includes a three member standing committee designated by the Board to determine matters of eligibility for licensure and discipline of licensees.

(9) - (16) (No change.)

(17) Executive director--The executive director of the Board of Nursing [Nurse Examiners].

(18) - (27) (No change.)

(28) Party--A person who holds a license issued by the Board of Nursing [Nurse Examiners] or multistate licensure privilege, a person who seeks to obtain, retain, modify his or her license, or a multistate licensure privilege, or the Board of Nursing [Nurse Examiners].

(29) - (38) (No change.)

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 December 7, 2020.

TRD-202005269

John Vanderford

Assistant General Counsel

Texas Board of Nursing

Earliest possible date of adoption: January 17, 2021

For further information, please call: (512) 305-6879



## 22 TAC §213.20

The Texas Board of Nursing (Board) proposes amendments to §213.20, relating to Informal Proceedings and Alternative Dispute Resolution (ADR). The amendments are being proposed under the authority of the Occupations Code §301.151.

Background. The proposed amendments to §213.20 are necessary to correct outdated references to the Texas Board of Nurse Examiners within the text of the rule.

Fiscal Note. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no change in revenue to state government as a result of the enforcement or administration of the proposal.

Public Benefit/Cost Note. Ms. Thomas has also determined that for each year of the first five years the proposed amendments

are in effect, the anticipated public benefit will be the adoption of rules that correctly reference the Texas Board of Nursing and are consistent with the other sections of the Board's rules. There is no anticipated cost to the public as a result of these editorial changes.

Costs Under the Government Code §2001.0045. The Government Code §2001.0045 prohibits agencies from adopting a rule that imposes costs on regulated persons unless the agency repeals a rule that imposes a total cost on regulated persons that is equal to or greater than the total cost imposed on regulated persons by the proposed rule or amends a rule to decrease the total cost imposed on regulated persons by an amount that is equal to or greater than the cost imposed on the persons by the proposed rule. This amendment will have no economic impact on any regulated persons.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. 1 Because it is not anticipated that the proposal will impose any costs of compliance on an entity that meets the definition of a small business, micro business, or rural community pursuant to the Government Code §2006.001(1), §2006.001(2), or §2006.001(1-a), the Board is not required to prepare an economic impact statement and regulatory flexibility analysis.

Government Growth Impact Statement. The Board is required, pursuant to Tex. Gov't Code §2001.0221 and 34 TAC §11.1, to prepare a government growth impact statement. The Board has determined for each year of the first five years the proposed amendments will be in effect: (i) the proposal does not create or eliminate a government program; (ii) the proposal is not expected to have an effect on current agency positions; (iii) implementation of the proposal does not require an increase or decrease in future legislative appropriations to the Board; (iv) the proposal does not affect the fees paid to the Board; (v) the proposal amends an existing regulation; (vi) the proposal does not expand, limit, or repeal an existing regulation; (vii) the proposal does not extend to new entities not previously subject to the rule; and (viii) the proposal will not affect the state's economy.

Takings Impact Assessment. The Board has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

Request for Public Comment. To be considered, written comments on this proposal should be submitted to James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to Dusty.Johnston@bon.texas.gov, or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

Statutory Authority. The amendments are proposed under the authority of the Occupations Code §301.151.

Section 301.151 addresses the Board's rulemaking authority. Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders under Chapter 301; and (iv) determine whether an act



constitutes the practice of professional nursing or vocational nursing.

Cross Reference To Statute. The following statutes are affected by this proposal: the Occupations Code §301.151.

§213.20. *Informal Proceedings and Alternate Dispute Resolution (ADR).*

(a) - (g) (No change.)

(h) Referral to peer assistance after report to the Board.

(1) A nurse required to be reported under Texas Occupations Code Annotated §§301.401 - 301.409, may obtain informal disposition through referral to a peer assistance program as specified in Texas Occupations Code Annotated §301.410, as amended, if the nurse:

(A) - (B) (No change.)

(C) makes a written contract with the Board of Nursing through its executive director promising to:

(i) - (iii) (No change.)

(iv) waive confidentiality and privilege and authorize release of information about the nurse's impairment and rehabilitation to the peer assistance program and the executive director of the Board of Nursing [Nurse Examiners].

(2) (No change.)

(3) In the event the nurse fails to comply with the nurse's contract with the Board of Nursing [Nurse Examiners] or the nurse's participation agreement with the peer assistance program, such non-compliance will be considered by the executive director at an informal proceeding after notice to the nurse of the non-compliance and opportunity to respond. At the informal proceeding, the executive director may consider facts relevant to the alleged non-compliance, modify or extend the contract or participation agreement, declare the contract satisfied or impose §301.453 sanctions on the nurse which will result in public discipline and reporting to the National Council of State Boards of Nursing's Disciplinary Data Bank.

(i) - (l) (No change.)

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 December 7, 2020.

TRD-202005270

John Vanderford

Assistant General Counsel

Texas Board of Nursing

Earliest possible date of adoption: January 17, 2021

For further information, please call: (512) 305-6879



## CHAPTER 215. PROFESSIONAL NURSING EDUCATION

### 22 TAC §215.2

The Texas Board of Nursing (Board) proposes amendments to §215.2, relating to Definitions. The amendments are being proposed under the authority of the Occupations Code §301.157(b) and §301.151.

Background. Minimum examination pass rates are required for a nursing education program's continued approval status. Examination pass rates are determined based upon a program's examination year. The current examination year for Texas professional nursing education programs is October 1 - September 30. This is a different time period than the examination year for Texas vocational nursing education programs, which is based on the calendar year (January 1 - December 31). The proposed rule amendments align the professional nursing education program exam year with the vocational nursing education program exam year, as well as with the exam year utilized by most accreditors and other boards of nursing.

The current examination year for Texas professional nursing education programs causes inconsistencies in reported NCLEX pass rates, since education programs have different academic years and graduation schedules. The National Council State Boards of Nursing (NCSBN) reports NCLEX state data based upon the calendar year, and many non-education settings require calendar year information. Accreditation agencies usually base their data on the calendar year, as well. Aligning program exam years would also permit the Board to calculate and report pass rates for all nursing education programs at the same time.

The Board distributed a survey, through NCSBN, to other member boards on August 14, 2020. Thirty-four (34) member boards responded to the survey. Eighteen percent (18%) of the responding member boards indicated their examination year was an academic year (one with a specific beginning and ending other than the calendar year); seventy-four percent (74%) indicated their examination year was the calendar year; and eight percent (8%) indicated they used another measure ('other'). The Board also consulted nursing accreditation agencies and other state agencies in Texas to determine if changing the exam year for Texas professional nursing education programs would result in unforeseen consequences or concerns. None were identified.

Section by Section Overview. Proposed amended §215.1(20) defines the examination year for a professional nursing education program, for the purpose of determining its annual NCLEX-RN® examination pass rate, as beginning January 1 and ending December 31.

Fiscal Note. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no change in the revenue to state government as a result of the enforcement or administration of the proposal.

Public Benefit/Cost Note. Ms. Thomas has also determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit will be consistency among all nursing education programs in Texas with regard to their examination pass rate data. This should make it easier for interested parties to compare nursing education program pass rate data, accreditation data, and NCSBN data. There are no anticipated costs of compliance. The proposed rules do not impose new requirements on professional nursing education programs or their students. The Board's rules currently define a professional nursing education program's examination year. Changing the time period of the examination year is unlikely to result in any costs to the programs. The proposed rules do not amend any of the other existing requirements for the nursing education programs.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. The Board has determined that

there will be no economic impact on small businesses, micro businesses, or rural communities because there are no anticipated costs of compliance associated with the proposal. As such, an economic impact statement and regulatory flexibility analysis is not required.

**Government Growth Impact Statement.** The Board is required, pursuant to Tex. Gov't Code §2001.0221 and 34 TAC §11.1, to prepare a government growth impact statement. The Board has determined for each year of the first five years the proposed amendments will be in effect: (i) the proposal does not create or eliminate a government program; (ii) the proposal is not expected to have an effect on existing agency positions; (iii) implementation of the proposal does not require an increase or decrease in future legislative appropriations to the Board; (iv) the proposal does not require an increase or decrease in fees paid to the Board; (v) the proposal does not implement new legislation; (vi) the proposal modifies an existing regulation; (vii) the proposal does not increase or decrease the number of individuals subject to the rule's applicability; and (viii) the proposal does not have an effect on the state's economy.

**Takings Impact Assessment.** The Board has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

**Request for Public Comment.** To be considered, written comments on this proposal should be submitted to both Kristin Benton, Director of Nursing, and James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to Kristin.Benton@bon.texas.gov and Dusty.Johnston@bon.texas.gov, or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

**Statutory Authority.** The amendments are proposed under the authority of the Occupations Code §301.157 and §301.151.

Section 301.157(b) provides that the Board shall: (1) prescribe two programs of study to prepare a person to receive an initial vocational nurse license under Chapter 301, as follows: (A) a program conducted by an educational unit in nursing within the structure of a school, including a college, university, or proprietary school; and (B) a program conducted by a hospital; (2) prescribe and publish the minimum requirements and standards for a course of study in each program that prepares registered nurses or vocational nurses; (3) prescribe other rules as necessary to conduct approved schools of nursing and educational programs for the preparation of registered nurses or vocational nurses; (4) approve schools of nursing and educational programs that meet the Board's requirements; (5) select one or more national nursing accrediting agencies, recognized by the United States Department of Education and determined by the Board to have acceptable standards, to accredit schools of nursing and educational programs; and (6) deny or withdraw approval from a school of nursing or educational program that: (A) fails to meet the prescribed course of study or other standard under which it sought approval by the Board; (B) fails to meet or maintain accreditation with the national nursing accrediting agency selected by the Board under Subdivision (5) under which it was approved or sought approval by the board; or (C) fails to maintain the approval of the state board of nursing of another state and the board under which it was approved.

Section 301.151 addresses the Board's rulemaking authority. Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders under Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

**Cross Reference To Statute.** The following statutes are affected by this proposal: the Occupations Code §301.157(b) and §301.151.

#### *§215.2. Definitions.*

Words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

(1) - (19) (No change.)

(20) Examination year--the period beginning January 1 [~~October 4~~] and ending December 31 [~~September 30~~] used for the purposes of determining a professional nursing education program's annual NCLEX-RN® examination pass rate.

(21) - (45) (No change.)

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 December 7, 2020.

TRD-202005267

Jena Abel

Deputy General Counsel

Texas Board of Nursing

Earliest possible date of adoption: January 17, 2021

For further information, please call: (512) 305-6822



## CHAPTER 222. ADVANCED PRACTICE REGISTERED NURSES WITH PRESCRIPTIVE AUTHORITY

### 22 TAC §222.4

The Texas Board of Nursing (Board) proposes amendments to §222.4, relating to Minimum Standards for Prescribing or Ordering Drugs and Devices. The amendments are being proposed under the authority of the Occupations Code §301.151 and the Health & Safety Code §§481.075, 481.0755, and 481.0756.

**Background.** House Bill (HB) 2174, enacted during the 86th Legislative Session, requires prescriptions for controlled substances to be issued electronically after January 1, 2021, unless certain prescribed exceptions apply. One of the specified statutory exceptions provides for a waiver process. Pursuant to the Health & Safety Code §481.0755(a)(9) and §481.0756, a prescriber may issue a non-electronic prescription for a controlled substance if the prescriber has received a waiver from the prescriber's respective licensing agency. The waiver is valid for one year after issuance. A prescriber may re-apply for a subsequent waiver not earlier than 30 days prior to the expiration of the waiver, so long as circumstances that necessitated the waiver continue. The

proposed amendments are necessary to implement the Board's waiver process under HB 2174.

Pursuant to the Health & Safety Code §481.0756(d), the Texas Pharmacy Board must adopt rules establishing eligibility for a waiver, including economic hardship; technological limitations not reasonably within the control of the prescriber; or other exceptional circumstances demonstrated by the prescriber. Further, pursuant to §481.0756(e), the Board is required to adopt rules for the granting of waivers that are consistent with those rules adopted by the Texas Pharmacy Board. The Board has worked cooperatively with the Texas Pharmacy Board to ensure that the Board's proposed rules are consistent with the amendments proposed (45 TexReg 6949) and adopted by the Texas Pharmacy Board (45 TexReg 8866).

Section by Section Overview. Proposed amended §222.4(c) sets forth the Board's waiver process from electronic prescribing requirements.

Proposed §222.4(c)(1) makes clear that licensee prescribers must issue their prescriptions electronically beginning January 1, 2021, unless one of the specified circumstances in the Health & Safety Code §481.0755(a) applies.

Under proposed §222.4(c)(2), a licensee prescriber may request a waiver from electronic prescribing requirements by submitting a waiver request to the Board that demonstrates the circumstances necessitating a waiver from the electronic prescribing requirements, including: (A) economic hardship, taking into account factors including: (i) any special situational factors affecting either the cost of compliance or ability to comply; (ii) the likely impact of compliance on profitability or viability; and (iii) the availability of measures that would mitigate the economic impact of compliance; (B) technological limitations not reasonably within the control of the licensee prescriber; and (C) other exceptional circumstances demonstrated in the waiver request.

Proposed §222.4(c)(3) limits the waiver to a one-year period, consistent with the Health & Safety Code §481.0756(f). If circumstances that originally necessitated the waiver continue beyond that time period, the proposal permits the licensee prescriber to re-apply to the Board for a subsequent waiver no earlier than the 30th day prior to the expiration of the original waiver. This is also consistent with the limitations of §481.0756(f).

The remainder of the proposed amendments re-order the section appropriately.

Fiscal Note. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no change in the revenue to state government as a result of the enforcement or administration of the proposal.

Public Benefit/Cost Note. Ms. Thomas has also determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit will be the adoption of rules that implement the statutory requirements of HB 2174 and establish a waiver process for Board licensees.

Any costs of compliance with the proposal are anticipated to be negligible. First, the proposed rules only apply to those licensees that hold prescriptive authority. Second, the proposed rules only apply to licensees prescribing controlled substances. Third, the proposed rules do not require licensees prescribing controlled substances to utilize the waiver process. Because HB 2174 mandates that all controlled substance prescriptions must be issued electronically beginning January 1, 2021, the

proposed amendments provide a waiver process for those prescribers who will be unable to meet the statute's requirements.

Under the proposed rules, a licensee may request a waiver from electronic prescribing for up to one year. If the provider can establish that his/her circumstances warrant an additional waiver beyond the one-year time frame, the proposed amendments also allow for that option. The proposed rules only require a licensee prescriber wishing to avail him/herself of the waiver process to submit a waiver form to the Board outlining the circumstances that justify the waiver. Any potential costs associated with submitting a waiver form to the Board are expected to be negligible, and are limited to the nominal costs associated with mailing, faxing, e-mailing, or uploading a form to the Board. The proposed waiver process may actually result in a total costs savings to this group of prescribers, since implementing and utilizing a system to issue electronic prescriptions may be costly, and receiving a waiver from this process may delay or temporarily relieve some of these costs. Further, the proposed amendments implement the statutory requirements of HB 2174, and any potential costs associated with the proposal are a result of the implementation of the Health and Safety Code §481.0756 and are not a result of this proposal.

Costs Under the Government Code §2001.0045. The Government Code §2001.0045 prohibits agencies from adopting a rule that imposes costs on regulated persons unless the agency repeals a rule that imposes a total cost on regulated persons that is equal to or greater than the total cost imposed on regulated persons by the proposed rule or amends a rule to decrease the total cost imposed on regulated persons by an amount that is equal to or greater than the cost imposed on the persons by the proposed rule. Pursuant to §2001.0045(c)(9), this prohibition does not apply to a rule that is necessary to implement legislation, unless the legislature specifically states §2001.0045 applies to the rule. The proposal is necessary to implement the requirements of the Health & Safety Code §481.0756(e), and as such, is not subject to the requirements of §2001.0045.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. 2 The Government Code §2006.002(c) and (f) require, that if a proposed rule may have an economic impact on small businesses, micro businesses, or rural communities, state agencies must prepare, as part of the rule-making process, an economic impact statement that assesses the potential impact of the proposed rule on these businesses and communities and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule.

The Government Code §2006.001(2) defines a small business as a legal entity, including a corporation, partnership, or sole proprietorship, that: (i) is formed for the purpose of making a profit; (ii) is independently owned and operated; and (iii) has fewer than 100 employees or less than \$6 million in annual gross receipts. The Government Code §2006.001(1) defines a micro business as a legal entity, including a corporation, partnership, or sole proprietorship that: (i) is formed for the purpose of making a profit; (ii) is independently owned and operated; and (iii) has not more than 20 employees. The Government Code §2006.001(1-a) defines a rural community as a municipality with a population of less than 25,000.

Only individual licensee prescribers choosing to avail themselves of the waiver process will be subject to the proposal in their individual capacity. As such, it is not anticipated that the proposal will impose any costs of compliance on an entity that meets the definition of a small business, micro business, or rural

community. Therefore, the Board is not required to prepare an economic impact statement and regulatory flexibility analysis.

**Government Growth Impact Statement.** The Board is required, pursuant to Tex. Gov't Code §2001.0221 and 34 Texas Administrative Code §11.1, to prepare a government growth impact statement. The Board has determined for each year of the first five years the proposed amendments will be in effect: (i) the proposal does not create or eliminate a government program; (ii) the proposal is not expected to have an effect on current agency positions; (iii) implementation of the proposal does not require an increase or decrease in future legislative appropriations to the Board; (iv) the proposal does not affect the fees paid to the Board; (v) the proposal creates a new regulation pursuant to the mandates of the Health & Safety Code §481.0756; (vi) the proposal does not expand, limit, or repeal an existing regulation; (vii) the proposal does not extend to new entities not previously subject to the rule; and (viii) the proposal will not affect the state's economy.

**Takings Impact Assessment.** The Board has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

**Request for Public Comment.** To be considered, written comments on this proposal should be submitted to both Kristin Benton, Director of Nursing, and James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to Kristin.Benton@bon.texas.gov and Dusty.Johnston@bon.texas.gov, or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

**Statutory Authority.** The amendments are proposed under the authority of the Occupations Code §301.151 and the Health & Safety Code §§481.075, 481.0755, and 481.0756.

Section 301.151 addresses the Board's rulemaking authority. Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders under Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Section 481.075(a) requires a practitioner who prescribes a controlled substance listed in Schedule II to, except as provided by Section 481.074(b-1) or 481.0755 or a rule adopted under Section 481.0761, record the prescription in an electronic prescription that includes the information required by this section.

Section 481.0755(a) provides that, notwithstanding Sections 481.074 and 481.075, a prescription for a controlled substance is not required to be issued electronically and may be issued in writing if the prescription is issued: (1) by a veterinarian; (2) in circumstances in which electronic prescribing is not available due to temporary technological or electronic failure, as prescribed by board rule; (3) by a practitioner to be dispensed by a pharmacy located outside this state, as prescribed by board rule; (4) when the prescriber and dispenser are in the same location or under the same license; (5) in circumstances in which necessary elements are not supported by the most

recently implemented national data standard that facilitates electronic prescribing; (6) for a drug for which the United States Food and Drug Administration requires additional information in the prescription that is not possible with electronic prescribing; (7) for a non-patient-specific prescription pursuant to a standing order, approved protocol for drug therapy, collaborative drug management, or comprehensive medication management, in response to a public health emergency or in other circumstances in which the practitioner may issue a non-patient-specific prescription; (8) for a drug under a research protocol; (9) by a practitioner who has received a waiver under Section 481.0756 from the requirement to use electronic prescribing; (10) under circumstances in which the practitioner has the present ability to submit an electronic prescription but reasonably determines that it would be impractical for the patient to obtain the drugs prescribed under the electronic prescription in a timely manner and that a delay would adversely impact the patient's medical condition; or (11) before January 1, 2021.

Section 481.0756(a) provides that the appropriate regulatory agency that issued the license, certification, or registration to a prescriber is authorized to grant a prescriber a waiver from the electronic prescribing requirement under the provisions of this section. Section 481.0756(b) provides that the board shall convene an interagency workgroup that includes representatives of each regulatory agency that issues a license, certification, or registration to a prescriber. Section 481.0756(c) states that the work group described by Subsection (b) shall establish recommendations and standards for circumstances in which a waiver from the electronic prescribing requirement is appropriate and a process under which a prescriber may request and receive a waiver. Section 481.0756(d) provides that the board shall adopt rules establishing the eligibility for a waiver, including: (1) economic hardship; (2) technological limitations not reasonably within the control of the prescriber; or (3) other exceptional circumstances demonstrated by the prescriber. Section 481.0756(e) states that each regulatory agency that issues a license, certification, or registration to a prescriber shall adopt rules for the granting of waivers consistent with the board rules adopted under Subsection (d). Section 481.0756(f) states that a waiver may be issued to a prescriber for a period of one year. A prescriber may reapply for a subsequent waiver not earlier than the 30th day before the date the waiver expires if the circumstances that necessitated the waiver continue.

**Cross Reference To Statute.** The following statutes are affected by this proposal: the Occupations Code §301.151 and the Health & Safety Code §§481.075, 481.0755, and 481.0756.

*§222.4. Minimum Standards for Prescribing or Ordering Drugs and Devices.*

(a) - (b) (No change.)

(c) Waivers from Electronic Prescribing Requirements.

(1) Beginning January 1, 2021, licensee prescribers must issue prescriptions for controlled substances electronically unless one of the circumstances specified in Tex. Health & Safety Code §481.0755(a) applies.

(2) A licensee prescriber may request a waiver from the electronic prescribing requirements by submitting a waiver request to the Board that demonstrates the circumstances necessitating a waiver from the electronic prescribing requirements, including:

(A) economic hardship, taking into account factors including:

(i) any special situational factors affecting either the cost of compliance or ability to comply;

(ii) the likely impact of compliance on profitability or viability; and

(iii) the availability of measures that would mitigate the economic impact of compliance;

(B) technological limitations not reasonably within the control of the licensee prescriber; and

(C) other exceptional circumstances demonstrated in the waiver request.

(3) A waiver may be granted for a period of one year. If circumstances that necessitated the waiver continue beyond that time period, a licensee prescriber may re-apply to the Board for a subsequent waiver no earlier than the 30th day prior to the expiration of the original waiver.

(d) [(e)] Generic Substitution. The APRN shall authorize or prevent generic substitution on a prescription in compliance with the current rules of the Texas State Board of Pharmacy relating to generic substitution.

(e) [(d)] An APRN may order or prescribe medications for sexually transmitted diseases for partners of an established patient, if the APRN assesses the patient and determines that the patient may have been infected with a sexually transmitted disease. Nothing in this subsection shall be construed to require the APRN to issue prescriptions for partners of patients.

(f) [(e)] APRNs may order or prescribe only those medications that are FDA approved unless done through protocol registration in a United States Institutional Review Board or Expanded Access authorized clinical trial. "Off label" use, or prescription of FDA-approved medications for uses other than that indicated by the FDA, is permitted when such practices are:

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

(g) [(f)] The APRN with full licensure and a valid prescriptive authorization number shall cooperate with representatives of the Board and the Texas Medical Board during an inspection and audit relating to the operation and implementation of a prescriptive authority agreement.

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 December 7, 2020.

TRD-202005266

Jena Abel

Deputy General Counsel

Texas Board of Nursing

Earliest possible date of adoption: January 17, 2021

For further information, please call: (512) 305-6822



## CHAPTER 223. FEES

### 22 TAC §223.1

Introduction. The Texas Board of Nursing (Board) proposes amendments to §223.1, concerning Fees. The amendments

are proposed under the authority of the Texas Occupations Code §301.151 and §301.155.

Background. On October 8, 2019, the Office of the Governor requested that occupational licensing agencies review their licensing rules and policies to identify areas where they could remove burdensome or unreasonable obstacles to licensure, specifically developing and implementing plans to reduce license application fees to 75% or less of the national average for equivalent or comparable occupations. In response, the Board reviewed the 2018 member profiles maintained by the National Council of State Boards of Nursing, which reports comprehensive, detailed fee information from the responding boards of nursing. The profile revealed that the Board's current endorsement licensure fee is at 81% of the national fee average. The proposed amendments are necessary to reduce the Board's current endorsement fee from \$161 to \$125 in order to meet the Office of the Governor's request and maintain legislative budget requirements.

Section by Section Overview. Proposed amended §223.1(a)(2) sets the endorsement licensure fee at \$125.

Fiscal Note. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendments will be in effect, there may be an approximate \$288,000 total annual decrease in revenue to state government. This estimate is based on the following factors. The proposed amendment will decrease the endorsement fee for licensed vocational nurses and registered nurses from \$161 to \$125. Based upon processing approximately 8,000 endorsement applications per fiscal year and reducing the fee by \$36, the Board estimates this will result in an approximate \$288,000 annual decrease in revenue to state government.

Public Benefit/Cost Note. Ms. Thomas has also determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit will be the reduction of its current endorsement fee to 75% or less of the national average for equivalent or comparable occupations while maintaining the Board's ability to provide its essential functions, including licensing, enforcement, public protection, and educational services.

Potential Costs for Persons Required to Comply with the Proposal. There are no anticipated costs associated with the proposal. To the contrary, the proposed change will result in a cost savings to individuals applying for licensure endorsement in Texas.

Economic Impact Statement and Regulatory Flexibility Analysis for Small Businesses, Micro Businesses, and Rural Communities. The Board has determined that there will be no economic impact on small businesses, micro businesses, or rural communities because there are no costs associated with the proposal. As such, an economic impact statement and regulatory flexibility analysis is not required.

Government Growth Impact Statement. The Board is required, pursuant to Tex. Gov't Code §2001.0221 and 34 Texas Administrative Code §11.1, to prepare a government growth impact statement. The Board has determined for each year of the first five years the proposed amendments will be in effect: (i) the proposal does not create or eliminate a government program; (ii) the proposal does not affect agency positions; (iii) implementation of the proposal may require an increase in future legislative appropriations to the Board; (iv) the proposal implements a decrease in the Board's endorsement fee; (v) the proposal does not create a new regulation; (vi) the proposal amends the existing endorsement fee for licensed vocational and registered nurses in Texas;

(vii) the proposal does not extend to new entities not previously subject to the rule; and (viii) the proposal may have a slight effect on the state's economy, only to the extent the decrease in endorsement fees may result in \$288,000 less revenue to state government.

**Takings Impact Assessment.** The Board has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

**Request for Public Comment.** Comments on this proposal should be submitted to both Mark Majek, Director of Operations, and James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to mark.majek@bon.texas.gov and dusty.johnston@bon.texas.gov, or faxed to (512) 305-8101. Comments must be received no later than thirty (30) days from the date of publication of this proposal. If a hearing is held, written and oral comments presented at the hearing will be considered.

**Statutory Authority.** The amendments are proposed under the Occupations Code §301.151 and §301.155.

Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Section 301.155(a) provides that the Board by rule shall establish fees in amounts reasonable and necessary to cover the costs of administering the Occupations Code Chapter 301. Further, §301.155(a) provides that the Board may not set a fee that existed on September 1, 1993, in an amount less than the amount of that fee on that date.

**Cross Reference To Statute.** This proposal affects the Texas Occupations Code §301.151 and §301.155.

*§223.1. Fees.*

(a) The Texas Board of Nursing has established reasonable and necessary fees for the administration of its functions.

- (1) (No change.)
- (2) Endorsement: \$125 [~~\$161~~];
- (3) - (21) (No change.)

(b) (No change.)

**Certification.** This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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 December 7, 2020.

TRD-202005268

Jena Abel

Deputy General Counsel

Texas Board of Nursing

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For further information, please call: (512) 305-6822



## **TITLE 25. HEALTH SERVICES**

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

#### **CHAPTER 133. HOSPITAL LICENSING**

##### **SUBCHAPTER C. OPERATIONAL REQUIREMENTS**

###### **25 TAC §133.46**

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §133.46, concerning Hospital Billing.

###### **BACKGROUND AND PURPOSE**

The proposal is necessary to comply with Senate Bill (S.B.) 1264, 86th Legislature, Regular Session, 2019, which requires HHSC to adopt rules relating to consumer protections against certain medical and health care billing by out-of-network licensed health care facilities, including abortion facilities, ambulatory surgical centers, birthing centers, chemical dependency treatment facilities, crisis stabilization units, end stage renal disease facilities, freestanding emergency medical care facilities, general and special hospitals, narcotic treatment programs, private psychiatric hospitals, and special care facilities.

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

The proposed amendment to §133.46 adds language prohibiting a general or special hospital from violating a law that prohibits balance billing and requires hospitals to comply with S.B. 1264 and related Texas Department of Insurance rules. This change is consistent with the provision in S.B. 1264 requiring HHSC to adopt rules relating to consumer protections against certain medical and health care billing by out-of-network licensed health care facilities.

The proposed amendment to subsection (d) updates the complaint investigation procedures to the agency responsible for the procedures.

###### **FISCAL NOTE**

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

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

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

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because there is no requirement to alter current business practices.

#### LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

#### COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule is necessary to protect the health, safety, and welfare of the residents of Texas; does not impose a cost on regulated persons; and is necessary to implement legislation.

#### PUBLIC BENEFIT AND COSTS

David Kostroun, HHSC Deputy Executive Commissioner of Regulatory Services, has determined that for each year of the first five years the rule is in effect, the public will benefit from increased consumer protections against certain medical and health care billing by out-of-network licensed health care facilities, including abortion facilities, ambulatory surgical centers, birthing centers, chemical dependency treatment facilities, crisis stabilization units, end stage renal disease facilities, free-standing emergency medical care facilities, general and special hospitals, narcotic treatment programs, private psychiatric hospitals, and special care facilities.

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

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4900 North Lamar Boulevard, Austin, Texas 78751; or emailed to HCR\_PRT@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If 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 20R045" in the subject line.

#### STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by the health and human services system; Texas Health and Safety Code §241.026, which requires HHSC to develop, establish, and enforce standards for the construction, maintenance, and operation of licensed hospitals; and Texas Insurance Code §752.0003, which authorizes regulatory agencies to take action against facilities and providers that violate a balance billing prohibition.

The amendment implements Texas Government Code §531.0055, Texas Health and Safety Code Chapter 241, and Texas Insurance Code Chapter 752.

#### §133.46. Hospital Billing.

(a) Itemized statements. A hospital shall adopt, implement, and enforce a policy to ensure that the hospital complies with the Health and Safety Code (HSC), §311.002 (Itemized Statement of Billed Services).

(b) Audits of billing. A hospital shall adopt, implement, and enforce a policy to ensure that the hospital complies with HSC, §311.0025(a) (relating to Audits of Billing).

#### (c) Balance Billing.

(1) A hospital may not violate a law that prohibits the hospital from billing a patient who is an insured, participant, or enrollee in a managed care plan an amount greater than an applicable copayment, coinsurance, and deductible under the insured's, participant's, or enrollee's managed care plan or that imposes a requirement related to that prohibition.

(2) A hospital shall comply with Senate Bill 1264, 86th Legislature, Regular Session, 2019, and with related Texas Department of Insurance rules at 28 TAC Chapter 21, Subchapter OO, §§21.4901 - 21.4904 (relating to Disclosures by Out-of-Network Providers) to the extent this subchapter applies to the hospital.

#### (d) [(e)] Complaint investigation procedures.

(1) A complaint submitted to HHSC's Complaint and Incident Intake [the Department of State Health Services (department)] relating to billing must specify the patient for whom the bill was submitted.

(2) Upon receiving a complaint warranting an investigation, HHSC [the department] shall send the complaint to the hospital requesting the hospital to conduct an internal investigation. Within 30 days of the hospital's receipt of the complaint, the hospital shall submit to HHSC [the department]:

(A) a report outlining the hospital's investigative process;

(B) the resolution or conclusions reached by the hospital with the patient, third party payor or complainant; and

(C) corrections, if any, in the hospital's policies or protocols which were made as a result of its investigative findings.

(3) In addition to the hospital's internal investigation, HHSC [the department] may also conduct an investigation to audit any billing and patient records of the hospital.

(4) HHSC [~~The department~~] shall inform in writing a complainant who identifies himself by name and address:

(A) of the receipt of the complaint;

(B) if the complainant's allegations are potential violations of the Act or this chapter warranting an investigation;

(C) whether the complaint will be investigated by HHSC [~~the department~~];

(D) if the complaint was referred to the hospital for internal investigation;

(E) whether and to whom the complaint will be referred;

(F) of the results of the hospital's investigation and the hospital's resolution with the complainant; and

(G) of HHSC's [~~the department's~~] findings if an on-site audit investigation was conducted.

(5) HHSC [~~The department~~] shall refer investigative reports of billing by health care professionals who have provided improper, unreasonable, or medically or clinically unnecessary treatments or billed for treatments which were not provided to the appropriate licensing agency.

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 December 2, 2020.

TRD-202005198

Karen Ray

Chief Counsel

Department of State Health Services

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For further information, please call: (512) 834-4591



## CHAPTER 135. AMBULATORY SURGICAL CENTERS

### SUBCHAPTER A. OPERATING REQUIREMENTS FOR AMBULATORY SURGICAL CENTERS

#### 25 TAC §135.4

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §135.4, concerning Ambulatory Surgical Center (ASC) Operation.

#### BACKGROUND AND PURPOSE

The proposal is necessary to comply with Senate Bill (S.B.) 1264, 86th Legislature, Regular Session, 2019, which requires HHSC to adopt rules relating to consumer protections against certain medical and health care billing by out-of-network licensed health care facilities, including abortion facilities, ambulatory surgical centers, birthing centers, chemical dependency treatment facilities, crisis stabilization units, end stage renal disease facilities, freestanding emergency medical care facilities,

general and special hospitals, narcotic treatment programs, private psychiatric hospitals, and special care facilities.

#### SECTION-BY-SECTION SUMMARY

The proposed amendment to §135.4 adds language prohibiting an ASC from violating a law that prohibits balance billing and requires an ASC to comply with S.B. 1264 and related Texas Department of Insurance rules. This change is consistent with the provision in S.B. 1264 requiring HHSC to adopt rules relating to consumer protections against certain medical and health care billing by out-of-network licensed health care facilities.

#### FISCAL NOTE

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

#### GOVERNMENT GROWTH IMPACT STATEMENT

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

(1) the proposed rule will not create or eliminate a government program;

(2) implementation of the proposed rule will not affect the number of HHSC employee positions;

(3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;

(4) the proposed rule will not affect fees paid to HHSC;

(5) the proposed rule will not create a new rule;

(6) the proposed rule will expand existing rules;

(7) the proposed rule will not change the number of individuals subject to the rules; and

(8) the proposed rule will not affect the state's economy.

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because there is no requirement to alter current business practices.

#### LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

#### COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule is necessary to protect the health, safety, and welfare of the residents of Texas; does not impose a cost on regulated persons; and is necessary to implement legislation.

#### PUBLIC BENEFIT AND COSTS

David Kostroun, HHSC Deputy Executive Commissioner of Regulatory Services, has determined that for each year of the first five years the rule is in effect, the public will benefit from increased consumer protections against certain medical and health care billing by out-of-network licensed health care facilities, including abortion facilities, ambulatory surgical centers, birthing centers, chemical dependency treatment facilities, crisis stabilization units, end stage renal disease facilities, free-



standing emergency medical care facilities, general and special hospitals, narcotic treatment programs, private psychiatric hospitals, and special care facilities.

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

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4900 North Lamar Boulevard, Austin, Texas 78751; or emailed to HCR\_PRT@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If 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 20R045" in the subject line.

#### STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by the health and human services system; Texas Health and Safety Code §243.009, which requires HHSC to adopt rules for licensing of ASCs; Texas Health and Safety Code §243.010, which requires those rules to include minimum standards applicable to ASCs; and Texas Insurance Code §752.0003, which authorizes regulatory agencies to take action against facilities and providers that violate a balance billing prohibition.

The amendment implements Texas Government Code §531.0055, Texas Health and Safety Code Chapter 243, and Texas Insurance Code Chapter 752.

#### §135.4. Ambulatory Surgical Center (ASC) Operation.

(a) The ASC shall have a governing body that sets policy and assumes full legal responsibility for the total operation of the ASC.

(b) The governing body shall be responsible for assuring that medical staff bylaws are current and on file.

(c) The governing body shall address and is fully responsible, either directly or by appropriate professional delegation, for the operation and performance of the ASC. Governing body responsibilities include, but are not limited to:

(1) determining the mission, goals, and objectives of the ASC;

(2) assuring that facilities and personnel are adequate and appropriate to carry out the mission;

(3) establishing an organizational structure and specifying functional relationships among the various components of the ASC;

(4) adopting bylaws or similar rules and regulations for the orderly development and management of the ASC;

(5) adopting policies or procedures necessary for the orderly conduct of the ASC;

(6) assuring that the quality of care is evaluated and that identified problems are addressed;

(7) reviewing all legal and ethical matters concerning the ASC and its staff and, when necessary, responding appropriately;

(8) maintaining effective communication throughout the ASC;

(9) establishing a system of financial management and accountability that includes an audit appropriate to the ASC;

(10) developing, implementing, and enforcing a policy on the rights of patients;

(11) approving all major contracts or arrangements affecting the medical care provided under its auspices, including, but not limited to, those concerning:

(A) the employment of health care practitioners;

(B) an effective procedure for the immediate transfer to a hospital of patients requiring emergency care beyond the capabilities of the ASC. The ASC shall have a written transfer agreement with a hospital or all physicians performing surgery at the ASC shall have admitting privileges at a local hospital;

(C) the use of external laboratories;

(D) an effective procedure for obtaining emergency laboratory, radiology, and pharmaceutical services if laboratory, X-ray, and pharmacy services are not provided on site; and

(E) the provision of education to students and postgraduate trainees if the ASC participates in such programs;

(12) formulating long-range plans in accordance with the mission, goals, and objectives of the ASC;

(13) operating the ASC without limitation because of race, creed, sex, or national origin;

(14) assuring that all marketing and advertising concerning the ASC does not imply that it provides care or services which it is not capable of providing; and

(15) developing a system of risk management appropriate to the ASC including, but not limited to:

(A) periodic review of all litigation involving the ASC, its staff, and health care practitioners regarding activities in the ASC;

(B) periodic review of all incidents reported by staff and patients;

(C) review of all deaths, trauma, or adverse reactions occurring on premises; and

(D) evaluation of patient complaints.

(d) The governing body shall provide for full disclosure of ownership to the department.

(e) The governing body shall meet at least annually and keep such minutes or other records as may be necessary for the orderly conduct of the ASC.

(f) If the governing body elects, appoints, or employs officers and administrators to carry out its directives, the authority, responsibility, and functions of all such positions shall be defined.

(g) When a majority of its members are physicians, the governing body, either directly or by delegation, shall make (in a manner consistent with state law and based on evidence of the education, training, and current competence of the physician) initial appointments, reappointments, and assignment or curtailment of medical privileges. When a majority of the members of the governing body are not physicians, the ASC's bylaws or similar rules and regulations shall specify a procedure for establishing medical review for the purpose of making (in a manner consistent with state law and based on evidence of the education, training, and current competence of the physician) initial appointments, reappointments, and assignment or curtailment of medical privileges.

(h) The governing body shall provide (in a manner consistent with state law and based on evidence of education, training, and current competence) for the initial appointment, reappointment, and assignment or curtailment of privileges and practice for nonphysician health care personnel and practitioners.

(i) The governing body shall encourage personnel to participate in continuing education that is relevant to their responsibilities within the ASC.

(j) The governing body shall adopt, implement, and enforce written policies to ensure compliance with Health and Safety Code, Chapter 324, Consumer Access to Health Care Information.

(k) The governing body shall adopt, implement and enforce written policies to ensure compliance with applicable state laws.

(l) An ASC that performs abortions shall adopt, implement and enforce a policy to ensure compliance with Health and Safety Code, Chapters 245 and 171, Subchapters A and B (relating to Abortion and Informed Consent).

(m) Balance Billing.

(1) An ASC may not violate a law that prohibits the ASC from billing a patient who is an insured, participant, or enrollee in a managed care plan an amount greater than an applicable copayment, coinsurance, and deductible under the insured's, participant's, or enrollee's managed care plan or that imposes a requirement related to that prohibition.

(2) An ASC shall comply with Senate Bill 1264, 86th Legislature, Regular Session, 2019, and with related Texas Department of Insurance rules at 28 TAC Chapter 21, Subchapter OO, §§21.4901 - 21.4904 (relating to Disclosures by Out-of-Network Providers) to the extent this subchapter applies to the ASC.

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 December 2, 2020.

TRD-202005199

Karen Ray

Chief Counsel

Department of State Health Services

Earliest possible date of adoption: January 17, 2021

For further information, please call: (512) 834-4591



## CHAPTER 137. BIRTHING CENTERS

### SUBCHAPTER D. OPERATIONAL AND CLINICAL STANDARDS FOR THE PROVISION AND COORDINATION OF TREATMENT AND SERVICES

#### 25 TAC §137.39

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §137.39, concerning General Requirements for the Provision and Coordination of Treatment and Services.

#### BACKGROUND AND PURPOSE

The proposal is necessary to comply with Senate Bill (S.B.) 1264, 86th Legislature, Regular Session, 2019, which requires HHSC to adopt rules relating to consumer protections against certain medical and health care billing by out-of-network licensed health care facilities, including abortion facilities, ambulatory surgical centers, birthing centers, chemical dependency treatment facilities, crisis stabilization units, end stage renal disease facilities, freestanding emergency medical care facilities, general and special hospitals, narcotic treatment programs, private psychiatric hospitals, and special care facilities.

#### SECTION-BY-SECTION SUMMARY

The proposed amendment to §137.39 adds language prohibiting a birthing center from violating a law that prohibits balance billing and requires a birthing center to comply with S.B. 1264 and related Texas Department of Insurance rules. This change is consistent with the provision in S.B. 1264 requiring HHSC to adopt rules relating to consumer protections against certain medical and health care billing by out-of-network licensed health care facilities.

#### FISCAL NOTE

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

#### GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because there is no requirement to alter current business practices.

#### LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

#### COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule is necessary to protect the health, safety, and welfare of the residents of Texas; does not impose a cost on regulated persons; and is necessary to implement legislation.

#### PUBLIC BENEFIT AND COSTS

David Kostroun, HHSC Deputy Executive Commissioner of Regulatory Services, has determined that for each year of the first five years the rule is in effect, the public will benefit from increased consumer protections against certain medical and health care billing by out-of-network licensed health care facilities, including abortion facilities, ambulatory surgical centers, birthing centers, chemical dependency treatment facilities, crisis stabilization units, end stage renal disease facilities, free-standing emergency medical care facilities, general and special hospitals, narcotic treatment programs, private psychiatric hospitals, and special care facilities.

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

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4900 North Lamar Boulevard, Austin, Texas 78751; or emailed to [HCR\\_PRT@hhsc.state.tx.us](mailto:HCR_PRT@hhsc.state.tx.us).

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If 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 20R045" in the subject line.

#### STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by the health and human services system; Texas Health and Safety Code §244.009, which requires HHSC to adopt rules for licensing of birthing centers; Texas Health and Safety Code §244.010, which requires those rules to include minimum standards applicable to birthing centers; and Texas

Insurance Code §752.0003, which authorizes regulatory agencies to take action against facilities and providers that violate a balance billing prohibition.

The amendment implements Texas Government Code §531.0055, Texas Health and Safety Code Chapter 244, and Texas Insurance Code Chapter 752.

*§137.39. General Requirements for the Provision and Coordination of Treatment and Services.*

(a) A center shall develop, implement, and enforce policies for the provision and coordination of treatment and services.

(b) The center is responsible for all care provided to center clients on its licensed premises.

(c) A center and the client shall have a written agreement for services. The center shall obtain an acknowledgment of receipt of the agreement. The center shall comply with the terms of the agreement. The written agreement shall include the following:

- (1) services to be provided;
- (2) who will provide the services; and
- (3) charges for services rendered.

(d) When services are provided through a contract, a center must assure that these services are also provided in a safe and effective manner. If a center utilizes independent contractors, there shall be a written agreement between such independent contractors (i.e., per hour, per visit) and the center. The agreement shall be enforced by the center and clearly designate:

- (1) that clients are accepted for care only by the center;
- (2) the services to be provided by both parties;

(3) the necessity to conform to the Act, this chapter, and all applicable center policies, including personnel qualifications; and

(4) the manner in which services will be coordinated and evaluated by the center.

(e) A center shall not commit an intentional or negligent act that adversely affects the health or safety of a client.

(f) A center must ensure that its licensed health care professionals practice within the scope of their practice and within the constraints of applicable state laws and regulations governing their practice and must follow the facility's written policies and procedures.

(g) A center may accept student midwives to provide them with clinical experience.

(h) If a center has a contract or agreement with an accredited school of health care to use their center for a portion of a student's clinical experience, those students may provide care under the following conditions.

(1) Students may be used in centers, provided the instructor gives classroom supervision and assumes responsibility for all student activities occurring within the center.

(2) A student may administer medications only if:

(A) on assignment as a student of their school of health care; and

(B) the birth attendant within their licensed scope of practice is on the premises and directly supervises the administration of medication by the student.

(3) Students shall not be considered when determining staffing needs required by the center.

(i) Balance Billing.

(1) A center may not violate a law that prohibits the center from billing a patient who is an insured, participant, or enrollee in a managed care plan an amount greater than an applicable copayment, coinsurance, and deductible under the insured's, participant's, or enrollee's managed care plan or that imposes a requirement related to that prohibition.

(2) A center shall comply with Senate Bill 1264, 86th Legislature, Regular Session, 2019, and with related Texas Department of Insurance rules at 28 TAC Chapter 21, Subchapter OO, §§21.4901-21.4904 (relating to Disclosures by Out-of-Network Providers) to the extent this subchapter applies to the center.

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 December 2, 2020.

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Karen Ray

Chief Counsel

Department of State Health Services

Earliest possible date of adoption: January 17, 2021

For further information, please call: (512) 834-4591



## CHAPTER 139. ABORTION FACILITY REPORTING AND LICENSING SUBCHAPTER D. MINIMUM STANDARDS FOR LICENSED ABORTION FACILITIES

### 25 TAC §139.60

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §139.60, concerning Other State and Federal Compliance Requirements.

#### BACKGROUND AND PURPOSE

The proposal is necessary to comply with Senate Bill (S.B.) 1264, 86th Legislature, Regular Session, 2019, which requires HHSC to adopt rules relating to consumer protections against certain medical and health care billing by out-of-network licensed health care facilities, including abortion facilities, ambulatory surgical centers, birthing centers, chemical dependency treatment facilities, crisis stabilization units, end stage renal disease facilities, freestanding emergency medical care facilities, general and special hospitals, narcotic treatment programs, private psychiatric hospitals, and special care facilities.

#### SECTION-BY-SECTION SUMMARY

The proposed amendment to §139.60 adds language prohibiting an abortion facility from violating a law that prohibits balance billing and requires an abortion facility to comply with S.B. 1264 and related Texas Department of Insurance rules. This change is consistent with the provision in S.B. 1264 requiring HHSC to adopt rules relating to consumer protections against certain medical and health care billing by out-of-network licensed health care facilities.

#### FISCAL NOTE

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

#### GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because there is no requirement to alter current business practices.

#### LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

#### COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule is necessary to protect the health, safety, and welfare of the residents of Texas; does not impose a cost on regulated persons; and is necessary to implement legislation.

#### PUBLIC BENEFIT AND COSTS

David Kostroun, HHSC Deputy Executive Commissioner of Regulatory Services, has determined that for each year of the first five years the rule is in effect, the public will benefit from increased consumer protections against certain medical and health care billing by out-of-network licensed health care facilities, including abortion facilities, ambulatory surgical centers, birthing centers, chemical dependency treatment facilities, crisis stabilization units, end stage renal disease facilities, freestanding emergency medical care facilities, general and special hospitals, narcotic treatment programs, private psychiatric hospitals, and special care facilities.

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

#### TAKINGS IMPACT ASSESSMENT

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

## PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4900 North Lamar Boulevard, Austin, Texas 78751; or emailed to HCR\_PRT@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If 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 20R045" in the subject line.

## STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by the health and human services system; Texas Health and Safety Code §245.009, which requires HHSC to adopt rules for licensing of abortion facilities; Texas Health and Safety Code §245.010, which requires those rules to include minimum standards to protect the health and safety of a patient of an abortion facility and comply with Texas Health and Safety Code Chapter 171; and Texas Insurance Code §752.0003, which authorizes regulatory agencies to take action against facilities and providers that violate a balance billing prohibition.

The amendment implements Texas Government Code §531.0055, Texas Health and Safety Code Chapters 245 and 171, and Texas Insurance Code Chapter 752.

### *§139.60. Other State and Federal Compliance Requirements.*

(a) A licensed abortion facility shall be in compliance with all state and federal laws pertaining to handling of drugs.

(b) A licensed abortion facility that provides laboratory services shall meet the Clinical Laboratory Improvement Amendments of 1988, 42 United States Code, §263a, Certification of Laboratories (CLIA 1988). CLIA 1988 applies to all facilities with laboratories that examine human specimens for the diagnosis, prevention, or treatment of any disease or impairment of, or the assessment of the health of, human beings.

(c) A licensed abortion facility shall ensure that its physicians comply with the Medical Practice Act, Occupations Code, Chapters 151 - 160 and 162 - 165, while functioning in his or her capacity at or for the facility.

(d) A licensed abortion facility utilizing the services of a physician assistant(s) shall ensure that its physician assistants comply with the Physician Assistant Licensing Act, Occupations Code, Chapter 204, while functioning in his or her capacity at or for the facility.

(e) A licensed abortion facility utilizing the services of a registered nurse shall ensure that its registered nurses comply with the Nursing Practice Act, Occupations Code, Chapters 301 and 304, while functioning in his or her capacity at or for the facility.

(f) A licensed abortion facility utilizing the services of a licensed vocational nurse(s) shall ensure that its vocational nurse(s) comply with the Nursing Practice Act, Occupations Code, Chapters 301 and 304, while functioning in his or her capacity at or for the facility.

(g) A licensed abortion facility that provides pharmacy services shall obtain a license as a pharmacy if required by the Texas Pharmacy Act, Occupations Code, Chapters 551 - 569.

(h) A licensed abortion facility shall comply with the following federal Occupational Safety and Health Administration requirements:

(1) 29 Code of Federal Regulations, Subpart E, §1910.38, concerning emergency action plan and §1910.39, concerning fire prevention plans;

(2) 29 Code of Federal Regulations, Subpart I, §1910.132, concerning general requirements for personal protective equipment;

(3) 29 Code of Federal Regulations, Subpart I, §1910.133, concerning eye and face protection;

(4) 29 Code of Federal Regulations, Subpart I, §1910.138, concerning hand protection;

(5) 29 Code of Federal Regulations, Subpart K, §1910.151, concerning medical services and first aid;

(6) 29 Code of Federal Regulations, Subpart L, §1910.157, concerning portable fire extinguishers;

(7) 29 Code of Federal Regulations, Subpart Z, §1910.1030, concerning bloodborne pathogens; and

(8) 29 Code of Federal Regulations, Subpart Z, §1910.1200, Appendices A - E, concerning hazard communication (hazardous use of chemicals).

(i) A licensed abortion facility shall not use adulterated or misbranded drugs or devices in violation of the Health and Safety Code, §431.021. Adulterated drugs and devices are described in Health and Safety Code, §431.111. Misbranded drugs or devices are described in Health and Safety Code, §431.112.

(j) A licensed abortion facility shall not commit a false, misleading, or deceptive act or practice as that term is defined in the Deceptive Trade Practices-Consumer Protection Act, Business and Commerce Code, §17.46.

(k) A licensed abortion facility shall comply with the requirements of the Family Code, §33.002, relating to a Consent Form.

(l) A licensed abortion facility shall comply with the requirements of Health and Safety Code, Chapter 171, the Woman's Right to Know Act.

(m) A licensed abortion facility shall comply with the requirements of Occupations Code, Chapter 102, Solicitation of Patients.

### (n) Balance Billing.

(1) A licensed abortion facility may not violate a law that prohibits the licensed abortion facility from billing a patient who is an insured, participant, or enrollee in a managed care plan an amount greater than an applicable copayment, coinsurance, and deductible under the insured's, participant's, or enrollee's managed care plan or that imposes a requirement related to that prohibition.

(2) A licensed abortion facility shall comply with Senate Bill 1264, 86th Legislature, Regular Session, 2019, and with related Texas Department of Insurance rules at 28 TAC Chapter 21, Subchapter OO, §§21.4901 - 21.4904 (relating to Disclosures by Out-of-Network Providers) to the extent this subchapter applies to the licensed abortion facility.

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 December 2, 2020.

TRD-202005201

Karen Ray

Chief Counsel

Department of State Health Services

Earliest possible date of adoption: January 17, 2021

For further information, please call: (512) 834-4591



## CHAPTER 217. MILK AND DAIRY

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), proposes amendments to §217.1 and §217.2, concerning Grade Specifications and Requirements for Milk; the repeal of §§217.21 - 217.33 and new §§217.21 - 217.34, concerning Grade A Raw for Retail Milk and Milk Products.

### BACKGROUND AND PURPOSE

The proposed rules are necessary to clarify and reflect current knowledge industry practices, update language and best practices, address long-standing issues pertaining to the sale of raw milk and the delivery of raw milk to individual purchasers, and address labeling requirements.

Subchapters A and B are also being revised to comply with Texas Government Code, §2001.039, which requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Texas Government Code, Chapter 2001. The rules have been reviewed and DSHS has determined that reasons for adopting the section continue to exist because a rule on this subject is required by statute.

### SECTION-BY-SECTION SUMMARY

The proposed amendment to §217.1, Definitions, revises, removes, adds, and reorganizes definitions to clarify and reflect updated milk and dairy practices.

The proposed amendment to §217.1 revises the following definitions for "adulterated milk and milk products," "aseptically processed milk and milk products," "bulk milk hauler/sampler," "certified milk sampler," "dairy farm," "dairy plant sampler," "dairy product," "department," "distributor," "Federal Food, Drug, and Cosmetic Act," "frozen dessert," "goat milk ice cream," "Grade A Pasteurized Milk Ordinance," "Grade A raw milk and Grade A raw milk products," "homogenized," "ice cream and frozen custard," "milk hauler," "milk producer," "milk transport tank or tanker," "misbranded milk and milk products," "official laboratory," "officially designated laboratory," "pasteurization," "producer dairy farm," "quiescently frozen confection," "quiescently frozen dairy confection," "sale," "sherbet," "sterilized," "3-A Sanitary Standards and Accepted Practices," and "ultra-pasteurized."

The proposed amendment to §217.1 adds the following definitions for "abnormalities of milk," "approved source," "automatic milking installation (AMI)," "batch number," "food allergen," "food allergen cross-contact," "Grade A raw milk processor," "Grade A

raw milk processor dairy farm," "label," "non-grade A dairy product manufacturer," "Principal Display Panel," and "thermometer."

The proposed amendment to §217.1 renames "3-A Sanitary Committee" to "3-A Steering Committee."

The proposed amendment to §217.1 deletes the following definitions for "dairy plant or plant," "dairy product manufacturer," "Grade A retail raw milk," "milk distributors," and "milk for manufacturing purposes."

The proposed amendment to §217.2, Grade A Pasteurized Milk Ordinance, changes the title to "Adopted Regulations and Standards" and includes the adoption of 21 Code of Federal Regulations Part 117, Subparts A, B, and C.

The proposed repeal of §§217.21 - 217.33 removes the rules from Subchapter B to delete duplicative language and update the rule language in new Subchapter B to reflect current knowledge and practices.

Proposed new Subchapter B, renames the subchapter to Grade A Raw Milk and Raw Milk Products, §§217.21 - 217.34.

Proposed new §217.21, Purpose, provides the purpose of the subchapter that establishes the procedures for Grade A raw milk and raw milk products.

Proposed new §217.22, Adulterated or Misbranded Milk or Milk Products, provides the language concerning adulterated or misbranded milk or milk products.

Proposed new §217.23, Permits, updates language to reflect permit requirements.

Proposed new §217.24, Labeling, updates the minimum standards for Grade A raw milk processor labeling requirements for all Grade A raw milk and Grade A raw milk products.

Proposed new §217.25, Inspection of Grade A Raw Milk Processor Dairy Farms, updates the language for Grade A raw milk processor inspections for compliance with minimum standards.

Proposed new §217.26, Examination of Grade A Raw Milk and Grade A Raw Milk Products, updates the language for Grade A raw milk processor sampling for compliance with minimum standards. The new language changes the frequency for required testing to "at least quarterly."

Proposed new §217.27, Standards for Grade A Raw Milk and Raw Milk Products, updates the language for Grade A raw milk and raw milk products to reflect current milk and dairy practices.

Proposed new §217.28, Sanitation Requirements for Grade A Raw Milk and Raw Milk Products, updates the language to reflect current milk and dairy practices.

Proposed new §217.29, Animal Health, updates the language to better clarify the rule text and adds that "all required tests in this section must be performed by a licensed veterinarian or a veterinarian in the employment of an appropriate state or federal agency."

Proposed new §217.30, Plans for Grade A Raw Milk Processor Dairy Farms, updates the language to include new milk and dairy technology concerning automatic milking installations.

Proposed new §217.31, Selling of Raw Milk to the Consumer, adds new language to reflect current Grade A raw milk processor practices and provides minimum standards for the sale and delivery of raw milk to the consumer.

Proposed new §217.32, Disease Control and Employee Health, adds new language concerning the responsibility of disease control and employee health for the raw milk processor.

Proposed new §217.33, Records, adds new language for the minimum standards regarding record keeping for all Grade A raw milk processors, including a requirement for the processor to post in the milk house and store front and make sample results available to consumers upon request.

Proposed new §217.34, New Technologies, adds new language regarding the department's approval of new technologies not currently addressed in rule.

#### FISCAL NOTE

Donna Sheppard, Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules does not have foreseeable implications regarding costs or revenues of state or local governments.

#### 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 not affect the number of 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 new rules;
- (6) the proposed rules will expand and repeal existing rules;
- (7) the proposed rules will not change the number of individuals subject to the rules; and
- (8) the proposed rules will not affect the state's economy.

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

The rules do not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rules.

Donna Sheppard, Chief Financial Officer, has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

#### LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

#### COSTS TO REGULATED PERSONS

Texas Government Code, §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas; and the rules do not impose a cost on regulated persons.

#### PUBLIC BENEFIT AND COSTS

Stephen Pahl, Associate Commissioner, Consumer Protection Division, has determined that for the first five years the rules are in effect, the public benefit will be the implementation of standards for the delivery of raw milk to consumers and new labeling

requirements that will allow consumers of raw milk to make more informed decisions.

Donna Sheppard, has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed to Sofia Stifflemire, R.S., at (512) 834-6758 in the DSHS Policy, Standards & Quality and Assurance, Milk and Dairy Unit and Kevin Veal, at (512) 231-5658 in the DSHS Policy, Standards & Quality and Assurance Section.

Written comments on the proposal may be submitted to Sofia Stifflemire, Milk and Dairy Unit, Texas Department of State Health Services, P.O. Box 149347, Mail Code 1987, Austin, Texas 78714-9347, street address 8407 Wall Street, Austin Texas 78754; fax (512) 834-6756 or by email to [milk.regulatory@dshs.texas.gov](mailto:milk.regulatory@dshs.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) faxed or emailed before midnight on the last day of the comment period. If 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 faxing or emailing comments, please indicate "Comments on Chapter 217 Milk and Raw Milk Products Rules 20R051" in the subject line.

#### SUBCHAPTER A. GRADE SPECIFICATIONS AND REQUIREMENTS FOR MILK

##### 25 TAC §217.1, §217.2

#### STATUTORY AUTHORITY

The amendments are authorized by Texas Health and Safety Code, Chapter 435, which provided for DSHS to define what constitutes Grade A raw milk, Grade A raw milk products, Grade A pasteurized milk, Grade A pasteurized milk products, milk for manufacturing, and dairy products; and provide specifications for the production and handling of milk and milk products listed in §435.003 Subdivision (1) according to the safety and food value of the milk and milk products and the sanitary conditions under which they are produced and handled. The rules must also be based on and consistent with the most recent federal definitions, specifications, rules, and regulations relating to milk and milk products. The rules are also authorized by Texas Government Code, §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, including by DSHS. Under Texas Health and Safety Code, Chapter 1001, the DSHS Commissioner is authorized to assist the Executive Commissioner in the development of rules relating to the matters with DSHS jurisdiction.

The amendments will implement Texas Health and Safety Code, Chapter 435.

§217.1. *Definitions.*

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

(1) Abnormalities of milk--The following types of lacteal secretions are not suitable for sale:

(A) abnormal milk that is visibly changed in color, odor, or texture; or

(B) undesirable milk expected to be unsuitable for consumption, such as milk containing colostrum or blood; or

(C) contaminated milk unfit for human consumption due to treatment of the animal with any products not labeled for lactating dairy animals, antibiotics which have not met the withhold requirements, or treatment with medicines or insecticides not approved for use on dairy animals by the United States Food and Drug Administration (FDA) or the Environmental Protection Agency.

(2) [(4)] Acidified milk--The food produced by souring cream, milk, partially skimmed milk, or skim milk or any combination, with acetic acid, adipic acid, citric acid, fumaric acid, glucono-delta-lactone, hydrochloric acid, lactic acid, malic acid, phosphoric acid, succinic acid, or tartaric acid, with or without the addition of characterizing microbial organisms. Acidified milk is further defined in Title 21, Code of Federal Regulations (CFR), §131.111.

(3) [(2)] Acidified sour cream--The product resulting from the souring of pasteurized cream with safe and suitable acidifiers, with or without addition of lactic acid producing bacteria, and as further defined in Title 21, CFR, §131.162.

(4) [(3)] Adulterated milk and milk products--Any milk or milk product shall be deemed to be adulterated if:

(A) it bears or contains any poisonous or deleterious substance in a quantity which may render it injurious to health;

(B) it bears or contains any added poisonous or deleterious substance for which no safe tolerance has been established by State or Federal regulation, or in excess of such tolerance if one has been established;

(C) it consists, in whole or in part, of any substance unfit for human consumption;

(D) it has been produced, prepared, packed, or held under unsanitary conditions;

(E) its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

(F) any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight or reduce its quality or strength or make it appear better or of greater value than it is; [or]

(G) any milk or milk product shall be deemed to be adulterated if one or more of the conditions described in the Federal Food, Drug and Cosmetic Act, §402, as amended (21 U.S.C. §342) exist; or [-]

(H) it is deemed by the department to be abnormal milk.

(5) Approved Source--A supply of food or products that complies with applicable state and federal laws and is licensed, if required, and inspected by the regulatory authority having jurisdiction over the processing and distribution of food or products.

(6) [(4)] Aseptic processing--The term "aseptic processing," when used to describe a milk product, means that the product has

been subjected to sufficient heat processing, and packaged in a hermetically sealed container, to conform to the applicable requirements of Title 21, CFR, Part 113 and maintain the commercial sterility of the product under normal non-refrigerated conditions.

(7) [(5)] Aseptically processed milk and milk products--Products hermetically sealed in a container and so thermally processed in conformance with Title 21, CFR, Part 113 and the provisions of the "Grade A Pasteurized Milk Ordinance" which is adopted by reference in §217.2 of this title (relating to Adopted Regulations and Standards [Grade A Pasteurized Milk Ordinance]), so as to render the product free of microorganisms capable of reproducing in the product under normal non-refrigeration ~~nonrefrigeration~~ conditions of storage and distribution. The product shall be free of viable microorganisms (including spores) of public health significance.

(8) Automatic milking installation (AMI)--The entire installation of one or more milking units, including the hardware and software utilized in the operation of individual automatic milking units, the animal selection system, the automatic milking machine, the milk cooling system, the system for cleaning and sanitizing the automatic milking unit, the teat cleaning system, and the alarm systems associated with the process of milking, cooling, cleaning, and sanitization.

(9) Batch number--A designation that is printed on the label of the milk product that allows the history of its production and packaging to be traced.

(10) [(6)] Bulk milk hauler/sampler--A bulk milk hauler/sampler is any person who collects official samples and may transport raw milk from a farm and/or raw milk products to or from a milk plant, receiving station, ~~or~~ transfer station, frozen dessert manufacturer, or non-grade A dairy product manufacturer, and has in his or her ~~their~~ possession a certification from the department.

(11) [(7)] Bulk milk pickup tanker--A vehicle, including the truck, tank and those appurtenances necessary for its use, used by a milk hauler to transport bulk raw milk for pasteurization from a dairy farm to a milk plant, receiving station, or transfer station.

(12) [(8)] Certified milk sampler ~~[sampler/collector]~~--Any industry personnel, other than the milk hauler~~[,]~~ or dairy plant sampler who collects milk ~~[milk]~~ or stores an official milk sample.

(13) [(9)] C-I-P or cleaned-in-place--The procedure by which sanitary pipelines or pieces of equipment are mechanically cleaned-in-place by circulation.

(14) [(10)] Concentrated (condensed) milk--A fluid product, unsterilized and unsweetened, resulting from the removal of a considerable portion of the water from the milk, which, when combined with potable water in accordance with instructions printed on the container, results in a product conforming to the milkfat and milk solids not fat levels of milk as defined in this section.

(15) [(11)] Concentrated (condensed) milk products--Homogenized concentrated (condensed) milk, concentrated (condensed) skim milk, concentrated (condensed) low fat milk, and similar concentrated (condensed) products made from concentrated (condensed) milk or concentrated (condensed) skim milk, and which, when combined with potable water in accordance with instructions printed on the container, conform to the definitions of the corresponding milk products in this section.

(16) [(12)] Cream--The liquid milk product, high in milkfat, separated from milk, which may have been adjusted by adding thereto: milk, concentrated (condensed) milk, dry whole milk, skim milk, concentrated skim milk, or nonfat dry milk, and contains not less than 18% milkfat.



(17) [(13)] Cultured milk--The food produced by culturing cream, milk, partially skimmed milk, or skim milk, used alone or in combination with characterizing microbial organisms. Cultured milk is further defined in Title 21, CFR, §131.112.

(18) [(44)] Dairy farm--Any place or premises where one or more cows or goats [lactating animals (cows, goats or sheep, water buffalo, or other hooved animal)] are kept, and from which a part or all of the milk or milk products [product(s)] is provided, sold, or offered for sale to a milk plant [, receiving station,] or transfer station.

[(15) Dairy plant or plant--Any place, premise, or establishment where milk or milk products are received or handled for processing or manufacturing.]

(19) [(46)] Dairy plant sampler--A department employee responsible for the collection of official samples for regulatory purposes. [outlined in §6 of the "Grade A Pasteurized Milk Ordinance."]

(20) [(47)] Dairy product--Butter, cheese, dry cream, plastic cream, dry whole milk, nonfat dry milk, dry buttermilk, dry whey, whey protein concentrates, evaporated milk (whole or skim), condensed whole milk and condensed skim milk (plain or sweetened), and such other products derived from milk, as may be specified under the statutory standard for butter (Title 21, U.S.C. Part 321a), and the Federal Standards of Identity for Cheese and [Cheese] Related Cheese Products (Title 21, CFR, Part 133).

[(18) Dairy product manufacturer--Any place, premises or establishment where milk or milk products for manufacturing purposes are collected, handled, processed, dried, stored, pasteurized, ultra-pasteurized, aseptically processed, bottled, or prepared for distribution.]

(21) [(49)] Department--The Department of State Health Services, the Commissioner of Health, or an [his] authorized representative of the Commissioner. [For purposes of this chapter, the Texas Department of Health is an equivalent term.]

(22) [(20)] Distributor--Any person who offers for sale or sells to another person any pasteurized milk, pasteurized milk products, dairy product, or frozen dessert product.

(23) [(24)] Drug--The term "drug" includes:

(A) articles recognized in the official United States Pharmacopeia, official Homeopathic Pharmacopeia of the United States or official National Formulary, or any supplement to any of them;

(B) articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals;

(C) articles (other than food) intended to affect the structure or any function of the body of man or other animals; and

(D) articles intended for use as a component of any articles specified in subparagraphs (A), (B) or (C) of this paragraph, but does not include devices or their components, parts or accessories.

(24) [(22)] Eggnog--The food containing cream, milk, partially skimmed milk, or skim milk, used alone or in combination, liquid egg yolk, frozen egg yolk, dried egg yolk, liquid whole eggs, frozen whole eggs, dried whole eggs, or any one or more of the foregoing egg yolk containing products with liquid egg white or frozen egg white, and a nutritive carbohydrate sweetener. Eggnog is further defined in Title 21, CFR, §131.170.

(25) [(23)] Federal Food, Drug, and Cosmetic Act [(FFDCA)]--The United States laws pertaining to food, drugs, and cosmetics as specified in 21 U.S.C. §301, et seq.

(26) Food allergen--A major food allergen is:

(A) milk, egg, fish (e.g., bass, flounder, or cod), Crustacean shellfish (e.g., crab, lobster, or shrimp), tree nuts (e.g., almonds, pecans, or walnuts), wheat, peanuts, and soybeans; or

(B) a food ingredient that contains protein derived from a food specified in subparagraph (A) of this paragraph, except the following:

(i) any highly refined oil derived from a food specified in subparagraph (A) of this paragraph, and any ingredient derived from such highly refined oil; or

(ii) a food ingredient that is exempt under U.S.C. Title 21 Chapter 9, Subchapter IV, §343(w)(6) and (7).

(27) Food allergen cross-contact--The unintentional incorporation of a food allergen into a food.

(28) [(24)] Freezer--A piece of equipment which converts mix and/or other ingredients to a hardened or semi-hardened state using the technique of freezing during processing or manufacturing of those products commonly known as ice cream, ice cream mix, frozen dessert, frozen dessert mix, and nondairy frozen dessert mix.

(29) [(25)] Frozen dessert [desserts]--Any of the following: ice cream, light ice cream, ice milk, frozen custard, fruit sherbet, non-fruit water ice, frozen dietary dairy dessert, frozen yogurt, quiescently frozen confection, quiescently frozen dairy confection, mel-lorine, lorine, parevine, freezer-made milk shake, or nondairy frozen dessert. The term also includes mix used in the freezing of one of those frozen desserts.

(30) [(26)] Frozen dessert manufacturer or plant--A person who manufactures, processes, converts, partially freezes or freezes any mix, be it dairy, nondairy frozen desserts for distribution or sale at wholesale. This definition shall not include a frozen dessert retail establishment.

(31) [(27)] Frozen dietary dairy dessert and frozen dietary dessert--A food for any special dietary use, prepared by freezing, with or without agitation, composed of a pasteurized mix which may contain fat, protein, carbohydrates, flavoring, stabilizers, emulsifiers, vitamins, and minerals.

(32) [(28)] Frozen low fat yogurt and mix (also called low fat frozen yogurt)--Complies with the provisions of frozen yogurt, except that:

(A) the milk fat content of the finished food is not less than 0.5%, but not more than 2.0%; and

(B) the name of the food is "frozen low fat yogurt."

(33) [(29)] Frozen low fat yogurt dry mix--The unfrozen dry powdered combination of ingredients which, when combined with potable water and when frozen while stirring, will produce a product conforming to the definition of frozen low fat yogurt.

(34) [(30)] Frozen milk concentrate--A frozen milk product with a composition of milkfat and milk solids not fat in such proportions that when a given volume of concentrate is mixed with a given volume of water the reconstituted product conforms to the milkfat and milk solids not fat requirements of whole milk. In the manufacturing process, water may be used to adjust the primary concentrate to the final desired concentration. The adjusted primary concentrate is pasteurized, packaged, and immediately frozen. This product is stored, transported, and sold in the frozen state.

(35) [(31)] Frozen skim milk yogurt--Complies with the provision of frozen yogurt, except that:

(A) the milkfat content of the finished food is less than 0.5%; and

(B) the name of the food is either "frozen skim milk yogurt" or "frozen nonfat yogurt."

(36) [(32)] Frozen yogurt--

(A) Frozen yogurt is the food which is prepared by freezing, while stirring, a mix composed of one or more of the optional dairy ingredients provided for in ice cream and frozen custard, and which may contain other safe and suitable ingredients.

(B) The dairy ingredient(s), with or without other ingredients, is/are pasteurized and subsequently cultured with bacterial cultures acceptable to the state health authority.

(C) The titratable acidity of the cultured frozen yogurt is not less than 0.5%, calculated as lactic acid, except if the frozen yogurt is flavored by the addition of a non-fruit characterizing ingredient(s).

(D) The milkfat content of frozen yogurt is not less than 3.25% by weight, except that when bulky characterizing ingredients are used the percentage milkfat is not less than 2.5%.

(E) The finished frozen yogurt shall weigh not less than five pounds per gallon.

(F) The name of the food is "frozen yogurt."

[(33) Goats milk ice cream--The food defined in Title 21, CFR, §135.110(a) - (f)].

(37) [(34)] Goat milk--The normal lacteal secretion, practically free of colostrum, obtained by the complete milking of one or more healthy goats. Goat milk sold in retail packages shall contain not less than 2.5% milkfat and not less than 7.5% milk solids not fat. The word "milk" includes goat milk.

(38) Goat milk ice cream--The food defined in Title 21, CFR, §135.115.

(39) [(35)] Grade A dry milk and whey products--Products which have been produced for use in Grade A pasteurized or aseptically processed milk products and which have been manufactured under the provisions of the most current revision of the "Grade A Pasteurized Milk Ordinance."

(40) [(36)] Grade A Pasteurized Milk Ordinance--The document published by the United States Department of Health and Human Services, Public Health Service/Food and Drug Administration. The document consists of the following parts: The Grade A Pasteurized Milk Ordinance with Administrative Procedures; illustrations, tables, supplements, appendices; and an index. Copies are on file in the Milk Group, Consumer Protection Division [for Regulatory Services], Department of State Health Services, 8407 Wall Street, Austin, Texas, and are available for review during normal business hours. For purposes of this chapter, "U.S. Public Health Services Grade A Pasteurized Milk Ordinance" is an equivalent term.

[(37) Grade A retail raw milk--Milk as defined in paragraph (49) of this section, that is produced under the provisions of Subchapter B of this chapter (relating to Grade A Raw for Retail Milk and Milk Products), and is offered for sale to the public without benefit of pasteurization.-]

(41) [(38)] Grade A [retail] raw milk and Grade A raw milk products--Milk products that are manufactured in compliance with [under] the provisions of Subchapter B of this chapter (relating to Grade A Raw Milk and Raw Milk Products), and are offered for sale to the public without [benefit of] pasteurization.

(A) These products include, but are not limited to, plain raw milk, raw flavored milk, raw low-fat milk, raw low-fat flavored milk, raw skim milk, raw skim flavored milk, raw cultured milk, raw cultured low fat milk, raw cultured skim milk, raw cream, raw heavy cream, raw light cream, raw sour cream, raw acidified sour cream, raw cultured sour cream, raw light whipping cream, raw heavy whipping cream, raw whipped cream, raw light whipped cream, raw plain yogurt, raw flavored yogurt, raw low fat yogurt, raw nonfat yogurt, raw drinkable yogurt, raw drinkable probiotic yogurt, raw buttermilk, raw half-and-half, raw sour half-and-half, raw acidified sour half-and-half, raw cultured sour half-and-half, raw eggnog, raw whey, raw flavored whey, raw whey protein, raw flavored whey protein, and raw keifer [cream, light cream, light whipping cream, heavy cream, heavy whipping cream, whipped cream, whipped light cream, sour cream, acidified sour cream, cultured sour cream, half-and-half, sour half-and-half, acidified sour half-and-half, cultured sour half-and-half, skim milk, low fat milk, eggnog, buttermilk, cultured milk, cultured low fat milk, cultured skim milk, yogurt, low fat yogurt, and nonfat yogurt].

(B) Grade A raw milk and raw milk products do not include the following.

(i) Infant formula, ice cream or other frozen desserts, butter, or raw cheese that is not aged a minimum of 60 days.

(ii) Raw milk or raw milk products that are a blend of raw milk from more than one raw milk processor dairy farm.

(42) Grade A raw milk processor--A person who processes milk as defined in paragraph (55) of this section, that is produced in compliance with the provisions of Subchapter B of this chapter and is offered for sale to the public without pasteurization.

(43) Grade A raw milk processor dairy farm--Any place or premise where one or more lactating animals (cows, goats, sheep, water buffalo, or other hooved animals) are kept, and from which a part of or all the raw milk and raw milk products are produced, processed, bottled, and offered, sold, or offered for sale to the public.

(44) [(39)] Half-and-half--The food consisting of a mixture of milk and cream which contains not less than 10.5% but less than 18% milkfat. Half-and-half is further defined in Title 21, CFR, §131.180.

(45) [(40)] Heavy cream or heavy whipping cream--Cream which contains not less than 36% milkfat and as further defined in Title 21, CFR, §131.150.

(46) [(41)] Hermetically sealed container--A container that is designed and intended to be secure against the entry of microorganisms and thereby maintain the commercial sterility of its contents after processing.

(47) [(42)] Homogenized--Milk [The term "homogenized" means that milk] or a milk product has been treated to ensure [insure] breakup of the fat globules to such an extent that, after 48 hours of quiescent storage at 4.4 degrees Celsius (40 degrees Fahrenheit), no visible cream separation occurs on the milk; and the fat percentage of the top 100 milliliters of milk in a quart, or of proportionate volumes in containers of other sizes, does not differ by more than 10% from the fat percentage of the remaining milk as determined after thorough mixing.

(48) [(43)] Ice cream and frozen custard--The foods defined in Title 21, CFR, §135.110 [§135.110(a) - (f)].

(49) Label--A display of written, printed, or graphic matter upon the immediate container of a product or wrappers accompanying such a container.

(50) [(44)] Light cream--Cream which contains not less than 18% but less than 30% milkfat, and as further defined in Title 21, CFR, §131.155.

(51) [(45)] Light whipping cream--Cream which contains not less than 30% but less than 36% milkfat, and as further defined in Title 21, CFR, §131.157.

(52) [(46)] Lorine--The food prepared from the same ingredients and in the same manner prescribed for mellorine and complies with all the provisions for mellorine except that:

(A) its content of fat is at least 2% but less than 6%;

(B) its content of milk solids not fat is not less than 10%;

(C) caseinates may be added when the content of total milk solids is not less than 10%;

(D) the provision for reduction in fat and milk solids not fat from the addition of bulky ingredients in mellorine does not apply;

(E) the quantity of food solids per gallon is not less than 1.2 pounds; and

(F) the name of the food is "Lorine."

(53) [(47)] Low fat yogurt--The food produced by culturing cream, milk, partially skimmed milk, or skim milk, used alone or in combination with a characterizing bacterial culture that contains the lactic acid-producing bacteria, *Lactobacillus bulgaricus* and *Streptococcus thermophilus*. Low fat yogurt is further defined in Title 21, CFR, §131.203.

(54) [(48)] Mellorine--The food defined in Title 21, CFR, §135.130(a) - (d).

(55) [(49)] Milk--The lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy cows, sheep, goats, water buffaloes or other hooved animals, and as further defined in Title 21, CFR, §131.110.

~~[(50) Milk distributors--Any person who offers for sale or sells to another person any milk or milk products.]~~

(56) [(51)] Milk hauler--A [Any] person who transports raw milk and [and/or] raw milk products to or from a milk plant, receiving station, [or] transfer station, frozen dessert manufacturer, or non-grade A dairy product manufacturer.

(57) [(52)] Milk plant--Any place, premises or establishment where milk or milk products are collected, handled, processed, dried, stored, pasteurized, ultra-pasteurized aseptically processed, bottled, or prepared for distribution. This term also means a processing plant, manufacturing plant, or bottling plant in these sections.

(58) [(53)] Milk producer--Any person who operates a producer dairy farm and provides, sells, or offers milk for sale to a milk plant, receiving station, [or] transfer station, frozen dessert manufacturer, or non-grade A dairy product manufacturer.

(59) [(54)] Milk products--

(A) Milk products include cream, light cream, light whipping cream, heavy cream, heavy whipping cream, whipped cream, whipped light cream, sour cream, acidified sour cream, cultured sour cream, half-and-half, sour half-and-half, acidified sour half-and-half, cultured sour half-and-half, reconstituted or recombined milk and milk products, concentrated (condensed) milk, concentrated (condensed) milk products, reduced fat milk, nonfat (skim) milk, low fat milk, frozen milk concentrate, eggnog, buttermilk, cultured milk, cultured low fat milk, cultured nonfat (skim) milk, yogurt, low fat yogurt, nonfat yogurt, acidified milk, acidified low fat milk, acidified nonfat

(skim) milk, low-sodium milk, low-sodium low fat milk, low-sodium nonfat (skim) milk, lactose-reduced milk, lactose-reduced low fat milk, lactose-reduced nonfat (skim) milk, aseptically processed and packaged milk and milk products as defined in this section, milk, low fat milk, or nonfat (skim) milk with added safe and suitable microbial organisms, and any other milk product made by the addition or subtraction of milkfat or addition of safe and suitable optional ingredients for protein, vitamin, or mineral fortification of milk products defined herein.

(B) Milk products also include those dairy foods made by modifying the federally standardized products listed in this section in accordance with Title 21, CFR, §130.10, Requirements for foods named by use of nutrient content claim and standardized term.

(C) This definition shall include those milk and milk products, as defined herein, which have been aseptically processed and then packaged.

(D) Milk and milk products which have been retort processed after packaging or which have been concentrated, condensed, or dried are included in this definition only if they are used as an ingredient to produce any milk or milk product defined herein, or if they are labeled as Grade A.

(E) This definition is not intended to include dietary products (except as defined herein), infant formula, ice cream or other desserts, butter, or cheese.

~~[(55) Milk for manufacturing purposes--Milk and milk products for human consumption, but not subject to Grade A requirements.]~~

(60) [(56)] Milk tank truck--The term used to describe both a bulk milk pickup tanker and a milk transport tank.

(61) Milk tank truck cleaning facility--Any place, premise, or establishment, separate from a milk plant, receiving, or transfer station, where a milk tank truck is cleaned and sanitized.

(62) [(57)] Milk tank truck driver--A milk tank truck driver is any person who transports raw or pasteurized milk products to or from a milk plant, receiving station, or transfer station. Any transportation of a direct farm pickup requires the milk tank truck driver to have responsibility for accompanying official samples.

(63) [(58)] Milk transport tank or tanker--A vehicle, including the truck and tank, used by a milk hauler to transport bulk shipments of milk from a milk plant, receiving station, [or] transfer station, frozen dessert manufacturer, or non-grade A dairy product manufacturer to another milk plant, receiving station, [or] transfer station, frozen dessert manufacturer, or non-grade A dairy product manufacturer.

(64) Milk transportation company--An entity responsible for ensuring milk tank trucks are in compliance with the provisions of Subchapter D of this chapter (relating to Bulk Milk Regulations).

(65) [(59)] Misbranded milk and milk products--Milk and milk products are misbranded if:

(A) their container bears or is [its container(s) bear or are] accompanied by any false or misleading written, printed, or graphic matter;

(B) milk labeling does not conform to the definitions as contained in this chapter [these rules];

(C) they are [milk is] not labeled in accordance with §217.24 [§217.25] of this title (relating to Labeling) for Grade A Raw [for Retail] Milk and Raw Milk Products; §217.43 of this title (relating

to Labeling) for Rules for the Manufacture of Frozen Desserts; and §217.81 of this title (relating to Labeling) for Dairy Products and Milk for Manufacturing Purposes [Product Manufacturers]; or

(D) one or more of the conditions described in [§403 of] the Federal Food, Drug and Cosmetic Act, §403, as amended (21 U.S.C. §343) exists [exist].

[(60) Milk transportation company--A milk transportation company is the person responsible for a milk tank truck(s).]

(66) [(64)] Multi-use container--Any container having a product-contact surface and used in the packaging, handling, storing, or serving of milk or milk products, which, if it remains in good repair and is properly washed and sanitized, may be utilized for multiple usage.

(67) [(62)] Nondairy frozen dessert--

(A) Nondairy frozen dessert is the food which is prepared by freezing, while stirring, a nondairy frozen dessert mix composed of one or more of the optional characterizing ingredients specified in subparagraph (B) of this paragraph, sweetened with one or more of the optional sweetening ingredients specified in subparagraph (C) of this paragraph. The nondairy product, with or without water added, may be seasoned with salt. One or more of the ingredients specified in subparagraph (D) of this paragraph may be used. Pasteurization is not required. The optional caseinates specified in subparagraph (D)(i) of this paragraph are deemed not to be dairy products.

(B) The optional flavoring ingredients referred to in subparagraph (A) of this paragraph are natural and artificial flavoring and characterizing food ingredients.

(C) The optional sweetening ingredients referred to in subparagraph (A) of this paragraph are sugar (sucrose), dextrose, invert sugar (paste or syrup), glucose syrup, dried glucose syrup, corn sweetener, dried corn sweetener, malt syrup, malt extract, dried malt syrup, dried malt extract, maltose syrup and dried maltose syrup.

(D) Other optional ingredients referred to in subparagraph (A) of this paragraph are:

(i) casein prepared by precipitation with gums, ammonium, caseinate, calcium caseinate, potassium caseinate, or sodium caseinate;

(ii) hydrogenated and partially hydrogenated vegetable oil;

(iii) dipotassium phosphate;

(iv) coloring, including artificial coloring;

(v) monoglycerides, diglycerides, or polysorbates; and

(vi) thickening ingredients such as agar-agar, algin (sodium alginate), egg white, gelatin, gum acacia, guar seed gum, gum karaya, locus bean gum, oat gum, gum tragacanth, hydroxypropyl, cethyl cellulose, carrageenan, salts of carrageenan, furcelleran, salts of furcelleran, propylene glycol alginate, pectin, psyllium seed husk, and sodium carboxymethylcellulose.

(E) Such nondairy frozen desserts are deemed "processed" when manufactured as a dry powdered mix. The addition of water is merely the manner in which such nondairy frozen desserts are served.

(F) The label shall comply with labeling requirements for frozen desserts with the additional clear and concise statement that the product is nondairy.

(68) [(63)] Nonfat yogurt--The food produced by culturing skim milk, used alone or in combination with a characterizing bacterial culture that contains the lactic acid-producing bacteria, *Lactobacillus bulgaricus* and *Streptococcus thermophilus*. Nonfat yogurt is further defined in Title 21, CFR, §131.206.

(69) Non-grade A dairy product manufacturer--Any place, premise, or establishment where dairy products are produced or prepared for distribution for human consumption but is not subject to Grade A requirements.

(70) [(64)] Novelties--Frozen desserts, either alone or in combination with other foods such as cookies, wafers, cones, coating, confections, etc., which are packaged in single-serving units.

(71) [(65)] Official laboratory--A biological, chemical or physical laboratory which is under the [direct] supervision of the department conducting the analysis of milk, milk products, milk for manufacturing, or frozen dessert. Full service laboratories are official laboratories [State or a local regulatory agency].

[(66) Overrun--The trade expression used to reference the increase in volume of frozen product over the volume of the mix. This increase in volume is due to air being whipped into the product during the freezing process. It is expressed as a percent of the volume of the mix.]

(72) [(67)] Officially designated laboratory--A commercial laboratory or a milk industry laboratory [authorized to do official work by the regulatory or supervision agency, or a milk industry laboratory] officially designated by the department [regulatory agency] for the analysis [examination] of milk, milk products, milk for manufacturing, or frozen desserts.

(73) Overrun--The increase in volume of frozen product over the volume of the mix due to air being whipped into the product during the freezing process. It is expressed as a percent of the volume of the mix.

(74) [(68)] Pasteurization--

(A) The [terms "pasteurization," "pasteurized," and similar terms shall mean the] process of heating every particle of milk or milk product, in properly designed and operated equipment, and held continuously at or above a certain temperature for at least the corresponding specified time [as shown in the following chart and] referenced in the most current revision of the "Grade A Pasteurized Milk Ordinance."  
[Figure: 25 TAC §217.1(68)(A)]

[(B) Provided, that eggnog and frozen dessert mixes shall be heated to at least the temperature and time specifications in the following chart.]  
[Figure: 25 TAC §217.1(68)(B)]

(B) [(C)] Provided further, that nothing shall be construed as barring any other process found equivalent to pasteurization for milk and milk products, which has been recognized by the FDA [United States Food and Drug Administration (FDA)] as provided in 21 U.S.C. §343(h)(3) of the Federal Food, Drug and Cosmetic Act. Only such FDA recognized processes and no other shall be considered by the department.

(75) [(69)] Permit--A license or certification to engage in the activity listed on the permit, license, or certificate.

(76) [(70)] Person--The word "person" shall include any individual, plant operator, partnership, corporation, company, firm, trustee, association, or institution.

(77) Principal Display Panel--The part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

(78) [(71)] Producer dairy farm--Any place or premises where one or more lactating animals (cows, goats or sheep, water buffalo, or other hooved animal) are kept, and from which a part or all of the milk or milk products [~~product(s)~~] is provided, sold, or offered for sale to a milk plant, transfer station, [~~or~~] receiving station, frozen dessert manufacturer, or non-grade A dairy product manufacturer.

(79) [(72)] Quiescently frozen confection--A clean and wholesome frozen, sweetened, flavored product in the manufacture of which freezing has not been accompanied by stirring or agitation (generally known as quiescent freezing). This confection may be acidulated with food grade acid, may contain water, may be made with or without added natural or artificial flavoring, and with or without harmless coloring. The finished product contains [~~shall contain~~] not less than 17% by weight of total food solids. No [~~In the production of this food, no~~] processing or mixing shall be used that develops in the finished food mix any physical expansion in excess of 10%.

(80) [(73)] Quiescently frozen dairy confection--A clean and wholesome frozen product made from water, milk products and sugar, with added harmless natural or artificial flavoring, with or without added coloring, with or without added stabilizer, with or without added emulsifier; and in the manufacture of which freezing has not been accompanied by stirring or agitation (generally known as quiescent freezing). It contains not less than 13% by weight of total milk solids, and not less than 33% by weight of total food solids. In the production of quiescently frozen dairy confections, no processing or mixing before [~~prior to~~] quiescently freezing is [~~shall be~~] used that develops in the finished confection mix any physical expansion in excess of 10%.

(81) [(74)] Receiving station--Any place, premises, or establishment where raw milk is received, collected, handled, stored, or cooled and prepared for further transporting.

(82) [(75)] Reconstituted or recombined milk and milk products--Milk or milk products defined in this section which result from reconstituting or recombining of milk constituents with potable water when appropriate.

(83) [(76)] Regulatory agency--The Department of State Health Services. For purposes of this chapter, Texas Department of Health is an equivalent term.

(84) [(77)] Safe and suitable--Ingredients which perform an appropriate function in the food in which they are used, and are used at a level no higher than necessary to achieve their intended purpose in the food.

(85) [(78)] Sale--The term "sale" or "sell" means a monetary transaction, barter, offer, or trade that involves the transfer of milk, milk products, raw milk, raw milk products, dairy products, or frozen dessert products. The term also includes transactions conducted as part of animal shares, animal pools, involving the transfer of milk from the farmer to the consumer. [~~Shall mean any of the following:~~]

[(A) the manufacture, production, processing, packing, exposure, offer, or holding of any milk, milk product, or frozen dessert product;]

[(B) the sale, dispensing, or giving of any milk, milk product, or frozen dessert product; or]

[(C) the supplying of any milk, milk product, or frozen dessert to a retail establishment or to a consumer.]

(86) [(79)] Sanitization--The application of any effective method or substance to a clean surface for the destruction of pathogens and other organisms as far as is practicable. Such treatment shall not adversely affect the equipment, the milk or milk product, or the health of consumers, and shall be acceptable to the regulatory agency.

(87) [(80)] Sherbet--The food defined in Title 21, CFR, §135.140 [~~§135.140(a) - (i)~~].

(88) [(81)] Single service container--Any container having a milk product or frozen dessert, in contact with the containers surface and used in the packaging, handling, storing, or serving frozen desserts and/or milk products, which is intended for one usage only.

(89) [(82)] Sour cream or cultured sour cream--The product resulting from the souring, by lactic acid producing bacteria, of pasteurized cream, and as further defined in Title 21, CFR, §131.160.

(90) [(83)] Standard methods--Reference to the latest edition of "Standard Methods for the Examination of Dairy Products," a publication of the American Public Health Association, Washington, D.C.

(91) [(84)] Sterilized--The [~~term sterilized when applied to piping, equipment, and containers used for milk and milk products shall mean the~~] condition of piping equipment and containers achieved by the application of heat, chemical sterilant(s), or other appropriate treatment that renders the piping, equipment, and containers free of viable microorganisms.

(92) [(85)] 3-A Sanitary Standards and Accepted Practices--The [~~Refers to the~~] standards for dairy equipment and accepted practices formulated by the 3-A Steering Committee [~~Sanitary Standards committees~~] representing the International Association for Food Protection, the U.S. Public Health Service, and the Dairy Industry Committee that are published by the International Association of Milk, Food, and Environmental Sanitarians, 6200 Aurora Avenue, #200W, Des Moines, Iowa 50322.

(93) [(86)] 3-A Steering [~~Sanitary~~] Committee--The committee composed of appointees from the International Association for Food Protection, and the Food and Drug Administration/Public Health Service that reviews and establishes standards for production and processing equipment intended for use in this country.

[(87) Milk tank truck cleaning facility--Any place, premise, or establishment, separate from a milk plant, receiving, or transfer station, where a milk tank truck is cleaned and sanitized.]

(94) Thermometer--A temperature measuring device that is either mercury-in-glass, alcohol/spirit-in-glass, electronic/digital, or dial immersed in liquid and accurate within the appropriate range of designated use.

(95) [(88)] Transfer station--Any place, premises, or establishment where milk or milk products are transferred directly from one milk tank truck to another.

(96) [(89)] Ultra-pasteurized--The term "ultra-pasteurized," when used to describe a dairy product, means that such product shall have been thermally processed at or above 138 degrees Celsius (280 degrees Fahrenheit) for at least two seconds, either before or after packaging, so as to extend a product [~~produce a product which has an extended~~] shelf life under refrigerated conditions.

(97) [(90)] Unloading station--Any receiving station, transfer station, or milk processing plant where milk or milk products are unloaded from milk tank trucks.

(98) [(91)] Water ices--The foods defined in Title 21, CFR, §135.160.

(99) [(92)] Whipped cream--Cream or light whipping cream, into which air or gas has been incorporated.

(100) [(93)] Whipped light cream--Light cream into which air or gas has been incorporated.

(101) [(94)] Yogurt--The food produced by culturing cream, milk, partially skimmed milk, or skim milk, used alone or in combination with a characterizing bacterial culture that contains the lactic acid-producing bacteria, *Lactobacillus bulgaricus* and *Streptococcus thermophilus*. Yogurt is further defined in Title 21, CFR, §131.200.

§217.2. Adopted Regulations and Standards [Grade A Pasteurized Milk Ordinance].

(a) The Department of State Health Services adopts by reference the document entitled, "Grade A Pasteurized Milk Ordinance," published by the United States Department of Health and Human Services, Public Health Service/Food and Drug Administration. The document consists of the following parts: The Grade A Pasteurized Milk Ordinance with Administrative Procedures; illustrations, tables, supplements, appendices; and an index. [Copies are on file in the Milk Group, Division for Regulatory Services, Department of State Health Services, 8407 Wall Street, Austin, Texas, and are available for review during normal business hours.]

(b) The Department of State Health Services adopts by reference the most current revision, 21 CFR Part 117, Subparts A General Provisions, B Current Good Manufacturing Practice, and C Hazard Analysis and Risk-Based Preventative Controls.

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 December 3, 2020.

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Department of State Health Services

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For further information, please call: (512) 834-6758



## SUBCHAPTER B. GRADE A RAW FOR RETAIL MILK AND MILK PRODUCTS

### 25 TAC §§217.21 - 217.33

#### STATUTORY AUTHORITY

The repeals are authorized by Texas Health and Safety Code, Chapter 435, which provided for DSHS to define what constitutes Grade A raw milk, Grade A raw milk products, Grade A pasteurized milk, Grade A pasteurized milk products, milk for manufacturing, and dairy products; and provide specifications for the production and handling of milk and milk products listed in §435.003 Subdivision (1) according to the safety and food value of the milk and milk products and the sanitary conditions under which they are produced and handled. The rules must also be based on and consistent with the most recent federal definitions, specifications, rules, and regulations relating to milk and milk products. The rules are also authorized by Texas Government Code, §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision

of services by the health and human services system, including by DSHS. Under Texas Health and Safety Code, Chapter 1001, the DSHS Commissioner is authorized to assist the Executive Commissioner in the development of rules relating to the matters with DSHS jurisdiction.

The repeals will implement Texas Health and Safety Code, Chapter 435.

§217.21. *Grade A Raw for Retail Milk and Milk Products.*

§217.22. *Purpose.*

§217.23. *Adulterated or Misbranded Milk or Milk Products.*

§217.24. *Permits.*

§217.25. *Labeling.*

§217.26. *Inspection of Dairy Farms.*

§217.27. *Examination of Milk and Milk Products.*

§217.28. *Standards for Grade A Raw for Retail Milk and Milk Products.*

§217.29. *Sanitation Requirements for Grade A Raw for Retail Milk. Animal Health.*

§217.30. *Plans for Grade A Raw for Retail Milk Dairy Farms.*

§217.32. *Selling of Raw Milk to the Consumer.*

§217.33. *Procedure When Infection Is Suspected.*

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) 834-6758



## SUBCHAPTER B. GRADE A RAW MILK AND RAW MILK PRODUCTS

### 25 TAC §§217.21 - 217.34

#### STATUTORY AUTHORITY

The new sections are authorized by Texas Health and Safety Code, Chapter 435, which provided for DSHS to define what constitutes Grade A raw milk, Grade A raw milk products, Grade A pasteurized milk, Grade A pasteurized milk products, milk for manufacturing, and dairy products; and provide specifications for the production and handling of milk and milk products listed in §435.003 Subdivision (1) according to the safety and food value of the milk and milk products and the sanitary conditions under which they are produced and handled. The rules must also be based on and consistent with the most recent federal definitions, specifications, rules, and regulations relating to milk and milk products. The rules are also authorized by Texas Government Code, §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, including by DSHS. Under Texas Health and Safety Code, Chapter 1001, the DSHS Commissioner is authorized to assist the Executive Commissioner in the development of rules relating to the matters with DSHS jurisdiction.

The new sections will implement Texas Health and Safety Code, Chapter 435.

§217.21. Purpose.

The purpose of these rules is to regulate the production, handling, sampling, examination, grading, labeling and sale of Grade A raw milk and Grade A raw milk products at the dairy farm; the inspection of dairy herds and dairy farms; and the issuing and revocation of permits and related penalties.

§217.22. Adulterated or Misbranded Milk or Milk Products.

No person shall, within the State of Texas, produce, sell, offer for sale, or have in possession with intent to sell, any milk or milk product which is adulterated, misbranded, or ungraded.

§217.23. Permits.

A person must have a permit to sell or provide Grade A raw milk and Grade A raw milk products. A person must comply with the provisions of this subchapter to receive a Grade A Raw for Retail Milk permit.

§217.24. Labeling.

(a) All bottles, containers, and packages enclosing Grade A raw milk and Grade A raw milk products as defined in §217.1(41) of this title (relating to Definitions) must be conspicuously labeled immediately upon bottling on the principal display panel to include:

(1) the product name, which must contain the phrase "Grade A Raw" and include the product name as given in the definition in §217.1(41) of this title;

(2) the batch number of the Grade A raw milk or Grade A raw milk products, which must consist of the date the Grade A raw milk or Grade A raw milk product was bottled or packaged;

(3) the quantity of the contents;

(4) the name, address, zip code, telephone number, and permit number of the Grade A raw milk processor;

(5) all ingredients listed in descending order of predominance;

(6) any allergens that must be identified with bold letters in the ingredient statement or having a "Contains" statement immediately after the ingredient statement; and

(7) the following statement: "This product contains unpasteurized milk. Consuming raw foods, including raw dairy products, may increase your risk of foodborne illness. Persons at higher risk for foodborne illness include pregnant and nursing women, children, the elderly, and people with weakened immune systems."

(b) Labeling information is required on all bottles, containers or packages of Grade A raw milk and Grade A raw milk products and must be in letters of an acceptable size, font, and color satisfactory to the department and must contain no marks or words which are misleading. All labeling must be easily legible under ordinary conditions of purchase. All labeling on Grade A raw milk and Grade A raw milk product containers must be approved by the department before the distribution or sale of the Grade A raw milk or Grade A raw milk product.

§217.25. Inspection of Grade A Raw Milk Processor Dairy Farms.

(a) Each Grade A raw milk processor dairy farm whose milk is produced and intended for consumption within the State of Texas must be inspected by the department before the issuance of a permit.

(b) Following the issuance of a permit, each Grade A raw milk processor dairy farm shall be inspected at least quarterly by the department.

(c) A violation of the requirements set forth in §217.27 of this title (relating to Standards for Grade A Raw Milk and Raw Milk Products) shall be denoted on the Grade A raw milk processor dairy farm inspection form.

(d) A copy of the most recent inspection report must be posted in a conspicuous place on an inside wall of the Grade A raw milk processor dairy farm.

(e) Every Grade A raw milk processor must allow officially designated persons to access all parts of the dairy farm during normal business hours to determine compliance with the provisions of this subchapter.

(f) Every Grade A raw milk processor must furnish the department, upon request, for official use only, a true statement of the actual quantities of Grade A raw milk and Grade A raw milk products sold, records of inspections, and temperature records.

(g) When a condition is found which constitutes an imminent health hazard, the department may take immediate enforcement action.

§217.26. Examination of Grade A Raw Milk and Grade A Raw Milk Products.

(a) The department will sample, at least quarterly, each Grade A raw milk processor dairy farm whose Grade A raw milk and Grade A raw milk products are produced and intended for consumption within the State of Texas.

(b) At a minimum, cooling temperature checks, antibiotic tests, somatic cell counts, bacterial counts, coliform counts, pathogenic bacteria, water adulteration and random aflatoxin testing are performed on Grade A raw milk and Grade A raw milk product samples.

(c) Samples shall be analyzed at an official or officially designated laboratory as defined in §217.1(71) and §217.1(72) of this title (relating to Definitions).

(d) The coliform sample required by subsection (b) of this section may be collected by a certified sampler and submitted to an official or officially designated laboratory as defined in §217.1(71) and §217.1(72) of this title at the expense of the Grade A raw milk processor. The lab report must be provided to the department within seven days after receiving the results. To meet the requirements of subsection (b) of this section, samples must be collected in January, April, July, and October. The Grade A raw milk processor must notify the department in writing informing the department that the Grade A raw milk processor will be responsible for collecting its own coliform sample. The notice form must be received at least 30 days before the collection month. If a dairy provides such notice and then fails to collect and submit the milk sample as provided in the rules of this subchapter, the department shall collect coliform samples for a period of 12 months for that dairy.

(e) Whenever the pathogenic bacteria, coliform counts, bacteria counts, somatic cell counts, water adulteration, or cooling temperatures of a sample exceed the limit of the standard for the Grade A raw milk or Grade A raw milk product, an additional sample shall be collected by the department on a date determined by the department.

(f) The department may issue a detention, recall order, cessation from commerce, or emergency order, in accordance with §217.92 of this title (relating to Enforcement) or seek court action, whenever a consecutive sample violates the standards of this subchapter for bacteria counts, somatic cell counts, coliform counts, water adulteration, or cooling temperatures.

(g) The department may issue a detention, recall order, cessation from commerce, or emergency order, in accordance with §217.92 of this title or seek court action, if a sample exceeds standards in

§217.27 of this title (relating to Standards for Grade A Raw Milk and Raw Milk Products) for antibiotic, pathogenic bacteria, or aflatoxin. The sampled product exceeding the standards must be removed from supplies intended for human consumption.

§217.27. Standards for Grade A Raw Milk and Raw Milk Products. All Grade A raw milk and Grade A raw milk products must be produced and handled in conformity with the following chemical, bacteriological, and temperature standards, and the sanitation requirements stated in §217.28 of this title (relating to Sanitation Requirements for Grade A Raw Milk and Raw Milk Products).

(1) Temperature: Cooled to 45 degrees Fahrenheit (7 degrees Celsius) or less within two hours after milking.

(2) Antibiotics: No positive results on drug residue detection methods.

(3) Somatic Cells: Individual raw milk shall not exceed 750,000 cell count per milliliter (ml). Goat milk shall not exceed 1,500,000 per ml.

(4) Bacteria Limits: 20,000 per ml. Cultured products are exempt from this standard.

(5) Coliform: Not to exceed 10 per ml.

(6) Pathogen: Zero.

(7) Aflatoxin: less than 0.5 parts per billion (ppb).

(8) Water Adulteration: cryoscope reading of -0.524 or above.

§217.28. Sanitation Requirements for Grade A Raw Milk and Raw Milk Products.

(a) Abnormalities in milk.

(1) Milk from animals treated with or exposed to insecticides not approved for use on dairy cattle by the U.S. Environmental Protection Agency must not be offered for sale.

(2) The department may require additional tests for the detection of abnormalities in milk.

(3) Milk containing abnormalities must be handled and disposed of to prevent the infection of other animals and the contamination of milk utensils and equipment. Milk containing abnormalities may not be offered for human consumption.

(4) Animals secreting milk with abnormalities must be milked last or with separate equipment, in order to prevent the contamination of the wholesome supply.

(5) Equipment, utensils, and containers used for the handling of milk containing abnormalities must not be used for the handling of milk to be offered for sale, unless they are first cleaned and sanitized.

(b) Milking barn, stable, parlor, or Automatic Milking Installation (AMI)--construction.

(1) A milking barn, stable, parlor, or AMI must be present on all Grade A raw milk processor dairy farms to house the milking herd during milking time operations. The areas used for milking purposes must:

(A) have floors constructed of concrete or equally impervious material graded to drain, which are smooth, easily cleanable, maintained in good repair, and free of excessive breaks or worn areas that may create pools of water, wastes, or other liquids;

(B) have gutters and feed troughs constructed of good quality concrete or equally impervious material;

(C) be constructed to ensure manure does not pile or pool in the milking barn, stable, parlor, or AMI and is approved by the department;

(D) have finished walls and ceilings that are smooth, easily cleanable, impervious to moisture, light colored, dust tight, and in good repair;

(E) have ceilings that are dust-tight;

(F) have wall partitions, doors, shelves, and windows kept in good repair, and surfaces must be refinished whenever wear or discoloration is evident;

(G) ensure feed stored overhead does not allow the sifting of chaff and dust into the milking barn, stable, parlor, or AMI;

(H) ensure hay openings have a dust-tight door, which is kept closed during milking operations;

(I) have separate stalls or pens for non-lactating animals;

(J) have lighting equivalent of at least 10 foot candles in all working areas during milking hours;

(K) provide sufficient air space and air circulation to prevent condensation and excessive odors throughout the milking barn, stable, parlor, or AMI;

(L) not be overcrowded; and

(M) have dust-tight covered boxes, bins, or separate storage facilities for ground, chopped, or concentrated feed.

(2) The department may approve a barn without four walls extending from floor to roof, or a shed-type barn, provided the requirements of subsection (c) of this section, concerning animals and fowl entering the barn are met. Animal-housing areas (stables without stanchions, such as loose housing tables, pen stables, resting barns, free stall barns, holding barns, loafing sheds, wandering sheds) may be of shed-type construction, provided no milking is conducted therein.

(c) Milking barn, stable, parlor, or AMI--cleanliness.

(1) The interior of the milking barn, stable, parlor, or AMI must be kept clean.

(2) Leftover feed in feed mangers must appear dry and fresh.

(3) The bedding material, if used, must be free from excessive manure.

(4) Outside surfaces of pipeline systems located in the milking barn, stable, parlor, or AMI must be clean.

(5) All animal pens, if not separated from the milking barn, stable, parlor, or AMI, must be clean.

(6) Swine and fowl must be kept out of the milking barn, parlor, and AMI.

(7) Gravity flow manure channels in milking barns, if used, must be maintained and be cleaned.

(8) Floors must be cleaned after each milking.

(A) In barns provided with water under pressure, the floors must be scrubbed after each milking with a stiff-bristled brush.

(B) In barns in which water under pressure is not available, the floors may be brushed dry and limed, or have phosphate applied evenly in a thin coat. Care should be exercised to prevent caking of the lime.



(d) Animal yard.

(1) The animal yards, which are the enclosed or unenclosed areas adjacent to the milking barn, and AMIs in which the animals may congregate, including animal housing areas and feed lots, must be graded and drained and must have no standing pools of water or accumulations of animal manure.

(2) Animal lanes must be reasonably dry.

(3) Approaches to the barn door, surroundings of stock watering, and feeding stations must be solid to the footing of the animal.

(4) Loafing and animal housing areas must have animal droppings and soiled bedding removed, or clean bedding added, at sufficient intervals to prevent the soiling of the animal's udders and flanks.

(5) Waste feed must not accumulate.

(6) Manure packs must be properly drained and must provide reasonably firm footing.

(7) Swine must be kept out of the animal yard.

(e) Milkhouse or room--construction and facilities.

(1) A milkhouse or room of sufficient size, a minimum of 30 inch spacing around equipment to allow for cleaning and inspection on all sides, must be provided for the cooling, handling, and storing of milk, and the washing, sanitizing, and storing of milk containers and utensils except as provided for in subsection (1) of this section.

(2) The milkhouse floor must be smooth, easily cleanable, and constructed of concrete or equally impervious material. The floors must be maintained in good repair free of cracks, breaks, depressions, and surface peeling.

(3) The floor shall be sloped to drain to prevent pools of standing water.

(4) The joints between the floor and walls must be watertight.

(5) Liquid waste shall be disposed of in a sanitary manner. All floor drains shall be accessible and shall be trapped if connected to a sanitary sewer system.

(6) The walls and ceilings must be smooth, easily cleanable, impervious to moisture, covered with light colored paint, and in good repair.

(7) Surfaces and joints must be tight and smooth.

(8) The milkhouse must have a minimum of 20 foot candles of adequate natural or artificial light.

(9) The milkhouse must be adequately ventilated to minimize odors and condensation of floors, walls, ceilings, and clean utensils.

(10) Vents, if installed, and lighting fixtures must be installed to preclude the contamination of bulk milk tanks or clean utensil storage areas.

(11) The milkhouse shall be used for no other purpose than milkhouse operations as described in §217.28(e)(1) of this subchapter (relating to Sanitation Requirements for Grade A Raw Milk and Raw Milk Products).

(12) There shall be no direct opening from the milkhouse into any barn, stable, parlor, AMI, or room used for domestic purposes, except that an opening between the milkhouse and milking barn, stable, parlor, or AMI is permitted when a tight-fitting, self-closing solid door is provided.

(13) A vestibule must comply with the applicable milkhouse construction requirements.

(14) Water under pressure must be piped into the milkhouse.

(15) The milkhouse must be provided with facilities for heating water in sufficient quantity and necessary temperatures, based on the cleaning agent's specifications, for the effective cleaning of all equipment and utensils.

(16) The milkhouse shall be equipped with a two-compartment wash vat of sufficient size to accommodate the largest utensil and container used.

(17) A refrigerator of sufficient size must:

(A) be provided for storage of cooling bottled Grade A raw milk and Grade A raw milk products;

(B) be capable of maintaining the Grade A raw milk and Grade A raw milk products at the proper temperature; and

(C) be equipped with a suitable thermometer approved by the department before use.

(f) Milkhouse or room-cleanliness.

(1) The floors, walls, ceilings, windows, tables, shelves, cabinets, wash vats, non-product-contact surfaces of milk containers, utensils and equipment, and other milkroom equipment must be clean.

(2) Only articles directly related to milkroom activities are allowed in the milkroom. The milkroom must be kept free of trash, animals, and fowl.

(3) Vestibules must be kept clean.

(g) Toilet.

(1) Every Grade A raw milk processor dairy farm shall provide one or more toilets, conveniently located by the milking barn, parlor, stable, AMI, and the milkroom. The toilet room must be properly constructed with walls, floors, and ceilings that are smooth, easily cleanable, impervious to moisture, light colored, and operated and maintained in a sanitary manner.

(2) Human defecation or urination must only occur in the toilet room.

(3) The toilet room must not open directly into the milkroom.

(4) Doors to toilet rooms must be tight-fitting and self-closing, and all outer openings in toilet rooms must be screened or otherwise protected against the entrance of flies.

(5) The toilet room shall be cleaned and kept free of odors.

(6) The toilet must be connected to a public sewer system or to an individual sewage-disposal system and must be constructed and operated in accordance with the most current revision of the Texas Commission on Environmental Quality rules regulating on-site sewage facilities.

(h) Water supply.

(1) A Grade A raw milk processor dairy farm's water source must meet the following requirements to establish the absence of coliform bacteria and thus be considered a "safe water source":

(A) Water samples must be taken before the permit approval of the physical structure and found negative for the presence of coliform bacteria.

(B) Water samples must be taken after any repair, alteration, or maintenance of the water supply system and found negative for the presence of coliform bacteria.

(C) Water hauled to the Grade A raw processor dairy farm must be sampled for the presence of coliform bacteria at the point of use.

(2) Water for milkhouse and milking operations must be from a supply properly located, protected, and operated, easily accessible, and of adequate sanitary quality, and must be a safe water source.

(A) All water supply systems must be approved as safe and comply with the specifications of the Texas Commission on Environmental Quality 30 TAC §290.41.

(B) No cross-connections between a safe water supply and any unsafe or questionable water supply or any other source of pollution are permitted.

(C) There must be no submerged inlets through which a safe water supply may be contaminated.

(D) The water source must be located and constructed in a manner that neither the underground nor surface contamination from any sewage systems, or other pollution can reach the water supply. Well casing and seal must be located above the ground surface.

(E) All new water supply systems, which have been repaired or otherwise become contaminated, must be thoroughly disinfected and approved as safe before being placed in use.

(F) All containers and tanks used in the transportation of water must be sealed and protected from possible contamination and must be approved by the department before use.

(i) The containers and tanks must be thoroughly cleaned and have a bacteriological treatment before filling with potable water to be used at the dairy farm.

(ii) To minimize the possibility of contamination of the water during the transfer from the potable tanks to the elevated or ground-water storage at the dairy farm, a suitable pump, hose, and fittings must be provided.

(iii) When the pump, hose, and fittings are not being used, the outlets must be capped and stored in a suitable dust proof enclosure to prevent contamination.

(iv) The storage tank at the dairy farm must be constructed of impervious material, provided with a dust and rainproof cover, and provided with an approved vent and roof hatch.

(v) All reservoirs must be disinfected before placing them into service.

(i) Containers, utensils and equipment--construction.

(1) All multi-use containers, equipment, and utensils used in the handling, or storage of Grade A raw milk and Grade A raw milk products must be made of smooth, nonabsorbent, corrosion resistant, nontoxic materials, free of breaks, and be easily cleaned. Safe materials of the following types are allowed:

(A) stainless steel of the American Iron and Steel Institute (AISI) 300 series;

(B) equally corrosion-resistant, nontoxic metal;

(C) heat-resistant glass; or

(D) plastic or rubber and rubberlike materials, which:

(i) are relatively inert, resistant to scratching, scoring, decomposition, crazing, chipping, and distorting under normal use conditions;

(ii) are nontoxic, fat-resistant, relatively nonabsorbent, relatively soluble, and do not release component chemicals or impart flavor or odor to the product; and

(iii) must maintain these properties under repeated use conditions.

(2) All milk pails used for foremilk stripping must be seamless and hooded.

(3) Strainers, if used, must be of perforated metal design, or constructed to utilize single-service strainer media. Multiple-use woven material must not be used for straining milk.

(4) All single-service articles must be manufactured, packaged, transported, and handled in a sanitary manner and obtained from an approved source.

(5) Articles intended by the manufacturer for single-service use must not be reused.

(6) Farm holding/cooling tanks with welded sanitary piping must be smooth and free from pits, cracks, or inclusions.

(7) Cleaned-in-place milk pipelines and return solution lines must be self-draining.

(8) Gaskets, if used, must be self-positioning and of material meeting specifications described in §217.28(i)(1) of this subchapter, and must form a smooth, flush interior surface.

(9) If gaskets are not used, all fittings must have self-positioning faces designed to form a smooth, flush interior surface.

(10) All interior surfaces of welded joints in pipelines must be smooth and free of pits, cracks, and inclusions.

(11) Detailed plans for cleaned-in-place pipeline systems must be submitted to the department for written approval before installation. No alteration or addition may be made to any milk pipeline system without prior written approval from the department.

(12) All milking machines, including heads, milk claws, milk tubing, and other milk-contact surfaces, must be easily cleaned and inspected. Pipelines, milking equipment, and other equipment requiring a screwdriver or special tool must be easily accessible for inspection and the necessary tools must be available at the milkhouse.

(13) Farm holding/cooling tanks and welded sanitary piping must comply with all applicable requirements set forth in this section.

(j) Containers, utensils and equipment--cleaning. The product-contact surfaces of all multi-use containers, equipment, and utensils used in the handling, storage, or transportation of milk must be cleaned after each usage.

(k) Containers, utensils and equipment--sanitization. The product-contact surfaces of all multi-use containers, equipment and utensils used in the handling, storage, or transportation of milk must be sanitized before each usage by one of the following methods, or by an equally effective method:

(1) Complete immersion in hot water at a temperature of at least 170 degrees Fahrenheit (77 degrees Celsius) as determined by use of a suitable accurate thermometer (at the outlet) for at least five minutes; or

(2) Complete immersion for at least one minute in, or exposure for at least one minute to, a flow of a chemical sanitizer which must meet the manufacture's recommendation of acceptable strength for milk contact surfaces. All product-contact surfaces must be wetted by the sanitizing solution, and piping must be filled. Sanitizing sprays may be used.

(A) Chemical solution, once used, may not be reused for sanitizing.

(B) When chemicals are used for sanitization, a test kit or device accurately measuring parts per million concentration must be provided and used. The solution must be tested before use.

(l) Containers, utensils and equipment--storage.

(1) All containers, utensils and equipment used in the handling, storage, or transportation of milk, unless stored in sanitizing solutions, must be stored to ensure complete drainage and be protected from contamination before use.

(2) Pipeline milking equipment, such as milk claws, inflations, weight jars, meters, milk hoses, milk receivers, and milk pumps, which are designed for mechanical cleaning, may be stored in the milking barn, parlor, or AMI only if the pipeline milking equipment is designed, installed, and operated to protect the product and solution contact surfaces from contamination at all times.

(3) When manual cleaning of product-contact surfaces is necessary, the cleaning must be done in the milkhouse.

(4) Clean cans or other containers may only be stored in the milkhouse.

(5) Strainer pads, parchment papers, gaskets, and similar single-service articles must be stored in a suitable container or cabinet and protected against contamination.

(6) Single service bottles must be stored at least six inches above the floor in a storage area.

(m) Containers, utensils and equipment--handling.

(1) After sanitizing, all containers, utensils, and equipment must be handled in such manner as to prevent contamination of any milk product-contact surfaces, including farm holding or cooling tank openings, and outlets.

(2) Any sanitized milk product-contact surface exposed to contamination must be cleaned and sanitized before use.

(n) Milking flanks, udders, and teats.

(1) Milking must be done in the milking barn, stable, parlor, or AMI.

(2) The flanks, udders, bellies, and tails of all milking animals must be free from visible dirt and other debris.

(3) The hair on the udders shall be of such length that it is not incorporated with the teat in the inflation during milking.

(4) All brushing must be completed before milking.

(5) The udders and teats of all milking animals shall be cleaned and treated with an approved sanitizing solution just before the time of milking and must be dry before milking.

(6) Wet hand milking is prohibited.

(o) Milking--surcingles, milk stools, and antikickers.

(1) Surcingles, milk stools, and antikickers must be kept clean and stored above the floor in a clean place in the milking barn, stable, parlor, or milkhouse when not in use.

(2) Milk stools must not be padded and must be constructed to be easily cleaned.

(p) Protection from contamination.

(1) Equipment and operations within the milking barn, AMI, and milkhouse shall be located to prevent overcrowding or contamination of cleaned and sanitized containers or utensils.

(2) No milk shall be strained, poured, transferred, or stored unless it is properly protected from contamination.

(3) During milking, pipelines and equipment used to contain milk and milk products must be effectively separated from tanks or circuits containing cleaning and sanitizing solutions.

(4) All milk which has overflowed, leaked, spilled, or been improperly handled must be discarded.

(5) All milk product-contact surfaces or containers, equipment, and utensils must be covered or otherwise protected to prevent the access of insects, dust, condensation, and other contamination.

(6) All openings, including valves and piping attached to milk storage and transport tanks, pumps, or vats, must be capped or otherwise properly protected. Gravity-type strainers in the milkhouse do not have to be covered.

(7) Milk pipelines used to convey milk from pre-coolers to the bulk tank must be fitted with effective drip deflectors.

(8) The receiving receptacle must be raised above the floor or placed at a distance from the cows to protect it against manure and splash when milk is poured or strained in the milking barn. The receiving receptacle must have a tight-fitting cover, which must be closed except when milk is being poured.

(9) Each pail or container of milk must be transferred immediately after milking from the milking barn, stable, parlor, or AMI into the milkhouse.

(10) Pails, cans, and other equipment containing milk must be properly covered during transfer and storage.

(11) Air under pressure used for the agitation or movement of milk, or being directed at a milk-contact surface, must be free of oil, dust, rust, excessive moisture, extraneous materials, and odor.

(12) Antibiotics and medicinal products must be stored in a manner that does not contaminate the milk or any milk product-contact surface.

(q) Bottling and capping.

(1) All bottling and capping must be performed on approved mechanical equipment. Hand capping is allowed, provided:

(A) milk is withdrawn through the bottom (outlet) valve of the tank, and dipping out of the tank is prohibited;

(B) containers for transporting milk from tank to filling area are constructed of seamless, stainless steel material, and sanitized before usage; and

(C) filling of food grade containers is performed in a sanitary manner to preclude possible contamination, and food grade container filling by the consumer is prohibited.

(2) Returnable food grade containers must be washed, rinsed, and sanitized before filling. Lids for returnable food grade containers must not be reused. Sanitized, food grade containers must be provided by the dairy farm.

(A) There shall be a separate room with three-compartment wash vat for washing, rinsing, and sanitizing of returnable food grade containers at the dairy farm.

(B) Single-service food grade containers, returnable food grade containers, and lids must come from a licensed and inspected entity. Single-service food grade containers may not be reused.

(C) All caps or single-service lids must be kept immersed in a 50 parts per million chlorine solution for a minimum of one minute and immediately placed on the container.

(D) The operator must wear disposable plastic gloves while filling and capping.

(r) Personnel--hand washing facilities.

(1) Adequate hand-washing facilities must be provided, maintained in good repair, and located convenient to the milkhouse, milking barn, stable, parlor, AMI, and flush toilet.

(2) Hand-washing facilities must include:

(A) a lavatory fixture with hot and cold running water;

(B) soap or detergent; and

(C) single-service individual sanitary towels.

(3) Utensil wash and rinse vats may not be used for hand-washing facilities.

(s) Personnel--cleanliness.

(1) Employees hands must be washed, clean, and dried with an individual sanitary towel immediately before milking, before performing any milkhouse function, and immediately after the interruption of any of these activities.

(2) Employees performing any activity inside the milkhouse or milking area shall wear clean outer garments while milking or handling milk, milk containers, utensils, or equipment.

(t) Cooling.

(1) Raw milk must be cooled to 45 degrees Fahrenheit (7 degrees Celsius) or less within two hours after milking.

(2) Recirculated cold water used in plate, tubular coolers, or heat exchangers must be from a safe source and protected from contamination. The water shall be tested semiannually and found free of bacteria by an official or officially designated laboratory.

(u) Insect and rodent control.

(1) Effective measures shall be taken to prevent the contamination of milk, containers, equipment, and utensils by insects and rodents.

(2) Surroundings must be kept neat, clean, and free of conditions, which might harbor or create conditions conducive to the breeding of insects and rodents.

(3) During fly season, manure must:

(A) be spread directly on the fields;

(B) stored for not more than four days in a pile on the ground surface, and then spread on the fields;

(C) stored for not more than seven days in an impervious-floored bin, or on an impervious-curbed platform and then spread on the fields;

(D) stored in a tight-screened and trapped manure shed;

(E) effectively treated with larvicides; or

(F) disposed of in any other manner that controls insect breeding.

(4) Manure packs in loafing areas, stables without stanchions, pen stables, resting barns, wandering sheds, and free-stall housing must be properly bedded and managed to prevent fly breeding.

(5) Milkrooms must be free of insects and rodents.

(6) Milkrooms must be effectively protected against the entrance of vermin.

(7) Exterior milkhouse doors must be tight and self-closing. Screen doors must open outward.

(8) Insecticides and rodenticides not approved for use in the milkhouse may not be stored in the milkhouse.

(9) Only insecticides and rodenticides approved for use by the department and registered with the U.S. Environmental Protection Agency may be used for insect and rodent control.

(10) Insecticides and rodenticides must be applied in accordance with state pesticide law, the manufacturer's label directions, and to prevent the contamination of milk, milk containers, equipment, utensils, feed, and water.

#### §217.29. Animal Health.

(a) All herds and additions thereto shall be tested and found free of tuberculosis and brucellosis before any milk therefrom is sold. All required tests in this section must be performed by a licensed veterinarian or a veterinarian in the employment of an appropriate state or federal agency.

(b) All herds must be retested at least every 12 months and found free of tuberculosis and brucellosis. All test results must be provided to the department.

(c) All bovine herds must participate in the brucellosis milk ring testing program conducted by the Texas Animal Health Commission.

(d) For diseases other than brucellosis and tuberculosis, the department shall require physical, chemical, or bacteriological tests as it deems necessary.

(1) The diagnosis of other diseases in dairy animals shall be based upon the findings of a licensed veterinarian or a veterinarian in the employment of an appropriate state or federal agency.

(2) Any diseased animal disclosed by such tests shall be disposed of in a method approved by the department.

#### §217.30. Plans for Grade A Raw Milk Processor Dairy Farms.

Properly prepared plans for all milkhouses, milking barns, stables, Automatic Milking Installations (AMIs) and parlors regulated under this subchapter, which are hereafter constructed, reconstructed, or extensively altered, shall be submitted to the department for written approval before work is begun.

#### §217.31. Selling of Raw Milk to the Consumer.

(a) Grade A raw milk and Grade A raw milk products may be sold by the Grade A raw milk processor directly to the consumer at the raw milk processor dairy farm, provided that such producer has been issued a Grade A Raw for Retail Permit in accordance with §217.91 of this title (relating to Milk Facilities and Operations Permit and Frozen Dessert License Procedures), and complies with this subchapter.

(b) Grade A raw milk and Grade A raw milk products may be delivered by the permitted processor, or the permitted processor's

employee, to a location determined by the processor and customer, as long as the distribution does not violate a local ordinance, provided that the permitted processor:

(1) Ensures all Grade A raw milk and Grade A raw milk products are delivered in refrigerated sanitary equipment.

(A) If ice is used to keep Grade A raw milk and Grade A raw milk products cold, the ice must come from an approved source or made with approved potable water source and must not contain any dirt, debris, or other contaminations.

(B) Grade A raw milk and Grade A raw milk products must not be completely submerged in ice.

(2) Ensures the Grade A raw milk and Grade A raw milk products internal temperature is maintained at or below 45 degrees Fahrenheit during processing, transportation, and delivery.

(3) Includes a temperature-control-sample in each delivery that is representative of half the size of the largest container for each delivery, and ensures the internal temperature reading of the Grade A raw milk and Grade A raw milk product is maintained at or below 45 degrees Fahrenheit (7 degrees Celsius).

(4) Grade A raw milk and Grade A raw milk products must not be frozen unless unfrozen samples are available for the department to sample. The unfrozen samples must be representative of the most current milking.

#### §217.32. Disease Control and Employee Health.

(a) Any person who, by medical examination or supervisory observation, is shown to have, or appears to have, an illness; open lesion, including boils, sores, or infected wounds; or any other abnormal source of microbial contamination by which there is a reasonable possibility of food, food-contact surfaces, or food-packaging materials becoming contaminated, must be excluded from any operations which may be expected to result in such contamination until the condition is corrected, unless conditions, such as open lesions, boils, and infected wounds are adequately covered (e.g. by an impermeable cover). Personnel must be instructed to report such health conditions to their supervisors.

(b) When reasonable cause exists to suspect the possibility of transmission of infection from any person concerned with the handling of milk, the department is authorized to require any or all the following measures:

(1) the immediate exclusion of that person from milk handling;

(2) the immediate exclusion of the milk supply concerned from distribution and use; and

(3) adequate medical and bacteriological examination of the person, of the person's associates, and their body discharges.

#### §217.33. Records.

(a) Records for the production, processing, bottling, and all sales of Grade A raw milk and Grade A raw milk products must be maintained and provided to the department, upon request, and must include the following.

(1) The monitoring of all temperature controls during the production, processing, bottling, sale, and delivery.

(2) The corrective actions taken when there is a failure to maintain product at the required temperature of 45 degrees Fahrenheit (7 degrees Celsius).

(3) The amount of Grade A raw milk and Grade A raw milk products produced daily.

(4) The amount of Grade A raw milk and Grade A raw milk products processed daily.

(5) The amount of Grade A raw milk and Grade A raw milk products sold and delivered daily.

(6) The batch number for each Grade A raw milk and Grade A raw milk product that is bottled daily.

(7) Herd health records, which must be provided to the department annually.

(b) A processor must post the most recent lab results in the milk house or store front and notify customers that testing results performed in §217.26 of this title (relating to Examination of Grade A Raw Milk and Grade A Raw Milk Products) are available upon request. The testing results must be supplied to the customer within 24 hours of the request.

#### §217.34. New Technologies.

Technologies not addressed in current rule must be approved and accepted by the department before implementation and use.

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 December 3, 2020.

TRD-202005218

Barbara L. Klein

General Counsel

Department of State Health Services

Earliest possible date of adoption: January 17, 2021

For further information, please call: (512) 834-6758



## CHAPTER 229. FOOD AND DRUG SUBCHAPTER J. MINIMUM STANDARDS FOR NARCOTIC TREATMENT PROGRAMS

### 25 TAC §229.144

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §229.144, concerning State and Federal Statutes and Regulations.

#### BACKGROUND AND PURPOSE

The proposal is necessary to comply with Senate Bill (S.B.) 1264, 86th Legislature, Regular Session, 2019, which requires HHSC to adopt rules relating to consumer protections against certain medical and health care billing by out-of-network licensed health care facilities, including abortion facilities, ambulatory surgical centers, birthing centers, chemical dependency treatment facilities, crisis stabilization units, end stage renal disease facilities, freestanding emergency medical care facilities, general and special hospitals, narcotic treatment programs, private psychiatric hospitals, and special care facilities.

#### SECTION-BY-SECTION SUMMARY

The proposed amendment to §229.144 adds language prohibiting a narcotic treatment program from violating a law that prohibits balance billing and requires a narcotic treatment program to comply with S.B. 1264 and related Texas Department of Insur-

ance rules. This change is consistent with the provision in S.B. 1264 requiring HHSC to adopt rules relating to consumer protections against certain medical and health care billing by out-of-network licensed health care facilities.

The proposed amendment to subsection (a) updates the law references for a narcotic treatment program.

#### FISCAL NOTE

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

#### GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because there is no requirement to alter current business practices.

#### LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

#### COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule is necessary to protect the health, safety, and welfare of the residents of Texas; does not impose a cost on regulated persons; and is necessary to implement legislation.

#### PUBLIC BENEFIT AND COSTS

David Kostroun, HHSC Deputy Executive Commissioner of Regulatory Services, has determined that for each year of the first five years the rule is in effect, the public will benefit from increased consumer protections against certain medical and health care billing by out-of-network licensed health care facilities, including abortion facilities, ambulatory surgical centers, birthing centers, chemical dependency treatment facilities, crisis stabilization units, end stage renal disease facilities, free-standing emergency medical care facilities, general and special hospitals, narcotic treatment programs, private psychiatric hospitals, and special care facilities.

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

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4900 North Lamar Boulevard, Austin, Texas 78751; or emailed to HCR\_PRT@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If 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 20R045" in the subject line.

#### STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by the health and human services system; Texas Health and Safety Code §466.004, which authorizes HHSC to administer and enforce rules to ensure the proper use of approved narcotic drugs in the treatment of persons with a narcotic drug dependency; and Texas Insurance Code §752.0003, which authorizes regulatory agencies to take action against facilities and providers that violate a balance billing prohibition.

The amendment implements Texas Government Code §531.0055, Texas Health and Safety Code Chapter 466, and Texas Insurance Code Chapter 752.

#### *§229.144. State and Federal Statutes and Regulations.*

(a) A permit holder shall assure that the narcotic treatment program (NTP) is in compliance with all State of Texas laws and rules regulating chemical dependency treatment facilities including, but not limited to, the following laws: Health and Safety Code, Chapters 464 and 466; the Medical Practice Act, Occupations Code, Chapters 151-160 and 162-165 [151-165]; the Nurse Practice Act, Occupations Code, Chapter 301; [~~Licensed Vocational Nurses, Occupations Code, Chapter 302;~~] the Texas Pharmacy Act, Occupations Code, Chapters 551-566 [551-567]; and the Licensed Professional Counselor Act, Occupations Code, Chapter 503.

(b) The permit holder shall assure the NTP is in compliance with Title 42, Code of Federal Regulations, Part 8, titled, "Opioid Drugs in Maintenance and Detoxification Treatment of Opiate Addiction." To the extent that the Code of Federal Regulation conflicts with these sections, these sections shall prevail.

(c) Balance Billing.

(1) An NTP may not violate a law that prohibits the NTP from billing a patient who is an insured, participant, or enrollee in a managed care plan an amount greater than an applicable copayment, coinsurance, and deductible under the insured's, participant's, or enrollee's managed care plan or that imposes a requirement related to that prohibition.

(2) An NTP shall comply with Senate Bill 1264, 86th Legislature, Regular Session, 2019, and with related Texas Department of Insurance rules at 28 TAC Chapter 21, Subchapter OO, §§21.4901-21.4904 (relating to Disclosures by Out-of-Network Providers) to the extent this subchapter applies to the NTP.

(d) [(e)] All citations in these sections to statutes or regulations include those statutes or regulations as amended.

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 December 2, 2020.

TRD-202005202

Karen Ray

Chief Counsel

Department of State Health Services

Earliest possible date of adoption: January 17, 2021

For further information, please call: (512) 834-4591



## CHAPTER 411. STATE MENTAL HEALTH AUTHORITY RESPONSIBILITIES SUBCHAPTER M. STANDARDS OF CARE AND TREATMENT IN CRISIS STABILIZATION UNITS

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes the repeal of §§411.601 - 411.604, 411.608 - 411.613, 411.617, 411.621 - 411.624, 411.628 - 411.633, 411.637, 411.641, 411.645, 411.646, 411.649, and 411.650 in Texas Administrative Code (TAC), Title 25, Part 1, Chapter 411, Subchapter M, concerning Standards of Care and Treatment in Crisis Stabilization Units.

### BACKGROUND AND PURPOSE

As required by Texas Government Code §531.0201(a)(2)(C), client services functions previously performed by the Department of State Health Services were transferred to the HHSC on September 1, 2016, in accordance with Texas Government Code §531.0201 and §531.02011. The purpose of this proposal is to repeal the rules in Title 25, Part 1, Chapter 411, Subchapter M, Standards of Care and Treatment in Crisis Stabilization Units. New rules in Title 26, Part 1, Chapter 306, Subchapter B, Standards of Care in Crisis Stabilization Units are proposed elsewhere in this issue of the *Texas Register* and are substantially similar as the rules proposed for repeal.

### SECTION-BY-SECTION SUMMARY

The proposed repeal of §§411.601 - 411.604, 411.608 - 411.613, 411.617, 411.621 - 411.624, 411.628 - 411.633, 411.637, 411.641, 411.645, 411.646, 411.649, and 411.650 allows similar

rules to be proposed as new rules in Title 26, Chapter 306, Subchapter B.

### FISCAL NOTE

Liz Prado, HHSC Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of state or local governments.

### GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Liz Prado has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities to comply with the proposal, as they will not be required to alter their current business practices. In addition, the proposal does not impose any additional costs on those required to comply with the rules.

### LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

### COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas and do not impose a cost on regulated persons.

### PUBLIC BENEFIT AND COSTS

Sonja Gaines, Deputy Executive Commissioner, has determined that for each year of the first five years the repeals are in effect, the public will benefit from the removal of rules that were transferred to HHSC in September 2016 and no longer belong to the Department of State Health Services. This will provide clarity to the public.

Liz Prado has also determined that for the first five years the repeals are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules repeals, as they will not be required to alter their current business practices.

### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4900 North Lamar Boulevard, Austin, Texas 78751; or emailed to [HHSRulesCoordinationOffice@hhsc.state.tx.us](mailto:HHSRulesCoordinationOffice@hhsc.state.tx.us).

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If 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 18R040" in the subject line.

## DIVISION 1. GENERAL REQUIREMENTS

### 25 TAC §§411.601 - 411.604

#### STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §577.010, which provides that the Executive Commissioner shall adopt rules and standards necessary and appropriate to ensure the proper care and treatment of patients in mental health facilities required to obtain a license under Chapter 577 of the Texas Health and Safety Code.

The repeals implement Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 577.

§411.601. *Purpose.*

§411.602. *Application.*

§411.603. *Definitions.*

§411.604. *General Provisions.*

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

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Karen Ray

General Counsel

Department of State Health Services

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For further information, please call: (512) 838-4346



## DIVISION 2. ADMISSION

### 25 TAC §§411.608 - 411.613

#### STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §577.010, which provides that the Executive Commissioner shall adopt rules and standards necessary and appropriate to ensure the proper care and treatment of patients in mental health facilities required to obtain a license under Chapter 577 of the Texas Health and Safety Code.

The repeals implement Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 577.

§411.608. *Admission Criteria.*

§411.609. *Voluntary Admission.*

§411.610. *Emergency Detention.*

§411.611. *Admission Under Protective Custody Order.*

§411.612. *Monitoring Upon Admission.*

§411.613. *Voluntary Treatment Following Involuntary Admission.*

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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## DIVISION 3. EMERGENCY TREATMENT

### 25 TAC §411.617

#### STATUTORY AUTHORITY

The repeal is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §577.010, which provides that the Executive Commissioner shall adopt rules and standards necessary and appropriate to ensure the proper care and treatment of patients in mental health facilities required to obtain a license under Chapter 577 of the Texas Health and Safety Code.

The repeal implements Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 577.

§411.617. *Responding to an Emergency Medical Condition of a Prospective Patient or a Patient.*

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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## DIVISION 4. SERVICE REQUIREMENTS

### 25 TAC §§411.621 - 411.624

#### STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §577.010, which provides that the Executive Commissioner shall adopt rules and standards necessary and appropriate to ensure the proper care and treatment of patients in mental health facilities required to obtain a license under Chapter 577 of the Texas Health and Safety Code.

The repeals implement Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 577.

*§411.621. Crisis Stabilization Services and Treatment Planning.*

*§411.622. Medical Services.*

*§411.623. Nursing Services.*

*§411.624. Protection of a Patient.*

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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## DIVISION 5. DISCHARGE

### 25 TAC §§411.628 - 411.633

#### STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §577.010, which provides that the Executive Commissioner shall adopt rules and standards necessary and appropriate to ensure the proper care and treatment of patients in mental health facilities required to obtain a license under Chapter 577 of the Texas Health and Safety Code.

The repeals implement Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 577.

*§411.628. Discharge Planning.*

*§411.629. Discharge Notices.*

*§411.630. Transfer Because of Dangerous Behavior, Restraint or Seclusion, Commitment Orders, or Medical Condition.*

*§411.631. Discharge of a Voluntary Patient.*

*§411.632. Maximum Length of Stay for a Voluntary Patient.*

*§411.633. Discharge of an Involuntary Patient.*

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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## DIVISION 6. DOCUMENTATION

### 25 TAC §411.637

#### STATUTORY AUTHORITY

The repeal is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §577.010, which provides that the Executive Commissioner shall adopt rules and standards necessary and appropriate to ensure the proper care and treatment of patients in mental health facilities required to obtain a license under Chapter 577 of the Texas Health and Safety Code.

The repeal implements Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 577.

*§411.637. Content of Medical Record.*

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

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## DIVISION 7. STAFF DEVELOPMENT

### 25 TAC §411.641

#### STATUTORY AUTHORITY

The repeal is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §577.010, which provides that the Executive

Commissioner shall adopt rules and standards necessary and appropriate to ensure the proper care and treatment of patients in mental health facilities required to obtain a license under Chapter 577 of the Texas Health and Safety Code.

The repeal implements Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 577.

*§411.641. Staff Member Training.*

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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## DIVISION 8. SENTINEL EVENTS AND EXTERNAL REVIEWS

### 25 TAC §411.645, §411.646

#### STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §577.010, which provides that the Executive Commissioner shall adopt rules and standards necessary and appropriate to ensure the proper care and treatment of patients in mental health facilities required to obtain a license under Chapter 577 of the Texas Health and Safety Code.

The repeals implement Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 577.

*§411.645. Reporting and Investigating Sentinel Events.*

*§411.646. Response to External Reviews.*

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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## DIVISION 9. REFERENCES AND DISTRIBUTION

### 25 TAC §411.649, §411.650

#### STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §577.010, which provides that the Executive Commissioner shall adopt rules and standards necessary and appropriate to ensure the proper care and treatment of patients in mental health facilities required to obtain a license under Chapter 577 of the Texas Health and Safety Code.

The repeals implement Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 577.

*§411.649. References.*

*§411.650. Distribution.*

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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## TITLE 26. HEALTH AND HUMAN SERVICES

### PART 1. HEALTH AND HUMAN SERVICES COMMISSION

#### CHAPTER 280. PEDIATRIC TELECONNECTIVITY RESOURCE PROGRAM FOR RURAL TEXAS

##### 26 TAC §§280.1, 280.3, 280.5

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes new §280.1, concerning Purpose; §280.3, concerning Definitions; and §280.5, concerning Grant Program Administration in the Texas Administrative Code (TAC), Title 26, Chapter 280, Pediatric Tele-Connectivity Resource Program for Rural Texas.

#### BACKGROUND AND PURPOSE

The purpose of the proposed new rules is to implement Texas Government Code, Chapter 541, added by House Bill (H.B.) 1697, 85th Legislature, Regular Session, 2017. Chapter 541 directs HHSC to establish a pediatric tele-connectivity resource program for rural Texas to award grants to nonurban health care facilities to connect the facilities with pediatric specialists and pediatric subspecialists who provide telemedicine services. Rider 94 of the 2020-21 General Appropriations Act (H.B. 1, 86th Legislature, Regular Session, 2019, Article II, Special Provisions) appropriates funds to HHSC to implement Chapter 541.

The purpose of this grant program is to provide financial assistance to enable eligible, nonurban healthcare facilities to connect

with pediatric specialists who provide telemedicine services and to cover related expenses, including necessary equipment.

#### SECTION-BY-SECTION SUMMARY

Proposed new §280.1 defines the purpose of the chapter and provides the statutory authority for HHSC to establish a pediatric tele-connectivity resource program for rural Texas by awarding grants to support nonurban health care facilities in establishing the capability to provide pediatric telemedicine services.

Proposed new §280.3 provides definitions for terms used in the chapter.

Proposed new §280.5 provides guidance on administration of the grant program, including a description of roles and responsibilities of all involved parties. Subsection (a) specifies allowable uses of the grant funds by grant recipients. Subsection (b) defines the role of the Texas Health and Human Services Commission (HHSC) in this project. Subsection (c) provides further guidance for identifying and selecting eligible grant recipients. Subsection (d) defines the role of the stakeholder workgroup. Subsection (e) advises no form of compensation for participants of a stakeholder workgroup. Subsection (f) specifies compliance with all program requirements by grant recipients. Subsection (g) tasks HHSC with developing measures for evaluating the grants program. Subsection (h) enables HHSC to set up a schedule for awarding funds. Subsection (i) identifies reporting responsibilities for grant recipients and HHSC. Subsection (j) provides notification of possible audit of grant recipients by the HHSC Office of the Inspector General in accordance with 1 TAC §371.11.

#### FISCAL NOTE

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

The effect on state government for each year of the first five years the proposed rules are in effect is an estimated cost of \$1,210,808 in General Revenue (GR) and \$1,289,193 in Federal Funds (FF) for fiscal year (FY) 2020; \$1,234,177 GR and \$1,265,823 FF for FY 2021; \$1,210,808 GR and \$1,289,193 FF for FY 2022; and \$1,783,925 GR and \$716,075 FF for FY 2023.

#### GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Trey Wood, Chief Financial Officer, has also determined that there could be an adverse economic effect on small businesses, micro-businesses, or rural communities.

The proposed rules limit participation in this program to only non-urban healthcare facilities as defined by Texas Government Code §541.001. HHSC is unable to estimate economic impact and the number of small businesses, micro-businesses, or rural communities subject to this rule.

HHSC did not consider alternative methods for small businesses, micro-businesses, or rural communities subject to the proposed rules, such as establishing different compliance or reporting requirements or exempting them completely or partially from compliance with the rules, because the proposed rules provisions are required in Texas Government Code, Chapter 541, Pediatric Tele-Connectivity Resource Program for Rural Texas.

#### LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

#### COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas; do not impose a cost on regulated persons; and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

#### PUBLIC BENEFIT AND COSTS

Stephanie Stephens, State Medicaid Director, has determined the public benefit will be the availability of enhanced care in rural hospitals and costs savings for on-site treatment in rural areas without the need for medical transport.

Trey Wood has also determined that for the first five years the rules are in effect, persons who are required to comply with the proposed rule may incur economic costs. Compliance with the proposed rules may require the need for equipment purchase, telemedicine services provider contracting, existing facility updates, or other related expenses. Costs may also vary by facility due to some entities having certain components for such program already in place, and others potentially needing to fully initialize a telemedicine program. HHSC does not have sufficient information to determine the economic impact to persons required to comply with the proposed rules.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed to Adriana Rhames, (512) 491-5557 in the HHSC Office of e-Health Coordination.

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4900 North Lamar Boulevard, Austin, Texas 78751; or emailed to [HHRulesCoordinationOffice@hhsc.state.tx.us](mailto:HHRulesCoordinationOffice@hhsc.state.tx.us).

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If 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 faxing or e-mailing comments, please indicate, "Comments on Proposed Rule 20R081", in the subject line.

#### STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies and Texas Government Code, §541.008, which provides that the Executive Commissioner of HHSC may adopt rules necessary to implement that chapter.

The new sections implement Texas Government Code §531.0055 and §541.008.

##### §280.1. Purpose.

(a) This chapter implements Texas Government Code, Chapter 541, which authorizes the Texas Health and Human Services Commission (HHSC) to establish a pediatric tele-connectivity resource program for rural Texas by awarding grants to support nonurban health care facilities in establishing the capability to provide pediatric telemedicine services.

(b) The Pediatric Tele-Connectivity Resource Program for Rural Texas will continue until all appropriations are expended.

##### §280.3. Definitions.

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

(1) Grant Program--The Pediatric Tele-Connectivity Resource Program for Rural Texas.

(2) Grant recipient--A nonurban health care facility awarded a grant under this chapter.

(3) HHSC--The Texas Health and Human Services Commission.

(4) Nonurban health care facility--As defined by Texas Government Code §541.001(1).

(5) Pediatric tele-specialty provider--As defined by Texas Government Code §541.001(4).

(6) Telemedicine medical services--As defined by Texas Government Code §541.001(7).

##### §280.5. Grant Program Administration.

(a) Use of grant funds. A grant recipient uses grant funds awarded under this chapter:

(1) to purchase equipment necessary for implementing telemedicine medical services;

(2) to modernize the facility's information technology infrastructure and secure information technology support to ensure an uninterrupted two-way video signal that is compliant with the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191), as referenced in Texas Government Code, §541.003;

(3) to pay a contracted pediatric tele-specialty provider for telemedicine medical services; or

(4) to pay for other activities, services, supplies, facilities, resources, and equipment that HHSC determines necessary for the grant recipient to use telemedicine medical services.

(b) Role of HHSC. HHSC will administer funding in the form of grants to an eligible nonurban health care facility.

(c) Grant eligibility requirements. To be eligible for a grant under this chapter, a nonurban health care facility must:

(1) have a quality assurance program that measures the compliance of the facility's health care providers with the facility's medical protocols;

(2) have at least one full-time equivalent physician, on staff, who has training and experience in pediatrics and one person who is responsible for ongoing nursery and neonatal support and care;

(3) have a designated neonatal intensive care unit or an emergency department;

(4) have a commitment to obtaining neonatal or pediatric education from a tertiary facility to expand the facility's depth and breadth of telemedicine medical service capabilities; and

(5) have the capability of maintaining records and producing reports that measure the effectiveness of a grant received by the facility under this chapter.

(d) Role of the stakeholder workgroup. HHSC may establish a stakeholder workgroup to assist HHSC:

(1) in developing, implementing, and evaluating the Grant Program; and

(2) in preparing a report on the results and outcomes of the grants awarded under this chapter.

(e) Stakeholder workgroup member compensation. A stakeholder workgroup member is not entitled to any form of compensation for serving on the workgroup and may not be reimbursed for travel or other expenses incurred while conducting the business of the workgroup.

(f) Compliance. A grant recipient must comply with:

(1) the requirements described in this chapter; and

(2) all other applicable state and federal laws, rules, regulations, policies, and guidelines.

(g) Program evaluation. HHSC evaluates the use of grant funds based on criteria as defined by HHSC.

(h) Grant funding distribution. HHSC distributes funding on a schedule defined by HHSC.

(i) Reporting responsibilities and protocol. No later than December 1 of each even-numbered year, HHSC reports the results and outcomes of grants awarded under this chapter to the Governor and members of the Legislature. The report is comprised of information provided by the grant recipient as defined by HHSC.

(j) Audits. A grant recipient is subject to audit and recovery of grant funds by the HHSC Office of the Inspector General, as provided in 1 TAC §371.11 (relating to Scope).

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 491-5557



## CHAPTER 306. BEHAVIORAL HEALTH DELIVERY SYSTEM

### SUBCHAPTER B. STANDARDS OF CARE IN CRISIS STABILIZATION UNITS

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes new Subchapter B, concerning Standards of Care in Crisis Stabilization Units, in new Chapter 306. The new subchapter is comprised of §§306.41, 306.43, 306.45, 306.47, 306.51, 306.53, 306.55, 306.57, 306.59, 306.61, 306.63, 306.65, 306.67, 306.71, 306.73, 306.75, 306.77, 306.79, 306.81, 306.83, 306.85, 306.87, 306.89, 306.91, 306.93, and 306.95.

#### BACKGROUND AND PURPOSE

As required by Texas Government Code §531.0201(a)(2)(C), client services functions previously performed by the Department of State Health Services were transferred to HHSC on September 1, 2016, in accordance with Texas Government Code §531.0201 and §531.0211.

New rules in Title 26, Part 1, Chapter 306, Subchapter B, concerning Standards of Care in Crisis Stabilization Units, address the content of rules in Title 25, Chapter 411, Subchapter M, concerning Standards of Care and Treatment in Crisis Stabilization Units. The rules in Chapter 411 are proposed for repeal elsewhere in this issue of the *Texas Register*.

The purpose of these rules is to establish guidelines for the standards of care and treatment of individuals with mental illness or serious emotional disturbance who are receiving crisis stabilization services in crisis stabilization units (CSUs) licensed under Texas Health and Safety Code, Chapter 577 and Texas Administrative Code (TAC) Title 26, Chapter 510 (relating to Private Psychiatric Hospitals and Crisis Stabilization Units).

The proposed new rules outline the requirements for voluntary or involuntary admission pre-admission screening and assessment, intake processes, treatment, services, and discharge for individuals in CSUs. The new rules establish responsibilities of CSU administrators and staff members, and introduce standards related to services provided to children and adolescents. The new rules also allow the provision of services by licensed physician assistants (PAs) and advanced practice registered nurses (APRNs) to perform physician-delegated medical services within their respective scopes of practice, and peer specialists and qualified mental health professional-community services (QMHP-CS) within their respective scopes of services. The new rules establish standards related to staffing practices, staff training, and credentialing; and permit the use of telecommunication or information technology for the provision of physician telemedicine services.

#### SECTION-BY-SECTION SUMMARY

Proposed new §306.41 establishes the purpose of the subchapter and its application to individuals diagnosed with a mental illness or serious emotional disturbance.

Proposed new §306.43 establishes rule applicability to CSUs licensed under Texas Health and Safety Code, Chapter 577 and 26 TAC Chapter 510 (relating to Private Psychiatric Hospitals and Crisis Stabilization Units).

Proposed new §306.45 provides definitions for terminology used in the subchapter.

Proposed new §306.47 describes general provisions and administrative responsibilities related to CSU policies and procedures. This rule requires CSUs to be open and provide services 24 hours a day, seven days a week, in compliance with HHSC TAC rules, including 25 TAC Chapter 414, Subchapter I (relating to Consent to Treatment with Psychoactive Medications - Mental Health Services) and 25 TAC Chapter 417, Subchapter K (relating to Abuse, Neglect and Exploitation in TDMHMR Facilities). This rule requires the CSU medical director to approve the CSU's written policies and procedures and prohibits a CSU physician from administering electroconvulsive therapy.

Proposed new §306.51 establishes that the CSU medical director must approve the CSU voluntary and involuntary admission criteria for adults diagnosed with a mental illness, or for children and adolescents diagnosed with a serious emotional disturbance. This rule incorporates language prohibiting CSU admission for children under three years of age and for individuals who need specialized care or medical care not available at the CSU.

Proposed new §306.53 establishes requirements for CSU pre-admission screening and assessment processes in the CSU or the community. This rule incorporates language allowing CSU pre-admission screening and assessment interviews to be conducted by appropriately licensed or credentialed staff members within the scope of their practices, including a QMHP-CS and a licensed practitioner of the healing arts (LPHA) credentialed staff members. It also includes language that a physician's examination of an individual requesting voluntary admission to a CSU may not be delegated to a non-physician.

Proposed new §306.55 establishes admission criteria for children, adolescents, and adults requesting voluntary admission to a CSU. This rule requires a physician to conduct, or consult with a physician who has conducted, an admission examination of an individual 72 hours before admission or 24 hours after admission and allows such examinations to be conducted through telemedicine services. The rule establishes intake process requirements and designates staff who may conduct intakes.

Proposed new §306.57 establishes requirements for CSU admission criteria and intake process requirements for individuals of any age who are assessed for emergency detention or who are being involuntarily admitted under an order of emergency detention or order of protective custody. This rule requires a physician to conduct a preliminary examination of an individual under order of emergency detention within 12 hours.

Proposed new §306.59 allows a CSU to provide crisis stabilization services to an individual who was involuntarily admitted under certain conditions.

Proposed new for §306.61 establishes requirements for the provision, monitoring, and evaluation of CSU medical services in

accordance with an individual's recovery or treatment plan. It allows CSU medical services through telemedicine services. This rule further allows, and provides requirements for, the provision of physician-delegated PA and APRN medical services.

Proposed new §306.63 establishes requirements for the provision, monitoring, and evaluation of CSU nursing services.

Proposed new §306.65 establishes requirements for crisis stabilization services and recovery or treatment planning and allows legally authorized representatives to be involved in recovery or treatment planning. This rule includes requirements for assessments and evaluations, including risk of harm, history of trauma, and emerging health issues. This rule further allows the provision of peer specialist services, as available, as a treatment intervention in a CSU recovery or treatment plan.

Proposed new §306.67 establishes standards of care for children and adolescents, including a developmental assessment and history of trauma assessment performed by an LPHA appropriately trained and experienced in assessment and treatment of children in a crisis setting. This rule introduces protocol and procedure for child and adolescent assessments, educational services, and transfers of children and adolescents, including adolescents turning 18 years old while receiving CSU services. This rule also allows adult caregivers, as well as parents and LARs to be involved with an individual's recovery or treatment planning.

Proposed new §306.71 requires a CSU to begin discharge planning at the time of admission. This rule requires discharge planning policies and procedures, discharge planning consultation between a CSU and an individual's assigned local mental health authority, local behavioral health authority, or local intellectual and developmental disability authority, as applicable, prior to an individual's discharge. This rule also includes language related to a physician's ability to request a judicial extension of an individual's detention period when extremely hazardous weather conditions exist, or a disaster occurs.

Proposed new §306.73 establishes requirements for discharge notices for children, adolescents, and adults, including the requirement to notify the Texas Department of Family and Protective Services if notifying a child's or adolescent's parent, LAR, or adult caregiver of the child's or adolescent's discharge is clinically contraindicated. This rule also requires the CSU to provide the Texas protection and advocacy system's contact information, in writing, to the individual being discharged.

Proposed new §306.75 establishes discharge requirements when a voluntarily-admitted individual requests to leave the CSU. This rule includes requirements for physician processes for discharge examination and application for court-ordered treatment of an individual in a CSU. This rule establishes a protocol for discharging an individual under the age of 18.

Proposed new §306.77 establishes requirements for the 14-day maximum length of stay for a voluntarily admitted individual and clarifies CSU response time frames for discharge requests. This rule requires a physician, or physician-designee, to document in an individual's medical record the medical necessity and clinical rationale for extending the individual's length of CSU stay beyond 14 days.

Proposed new §306.79 establishes discharge requirements for an involuntarily admitted individual, including the maximum 48-hour period an individual can be detained under an order of emergency detention. This rule addresses physician determi-

nation related to an individual's discharge or need for continued involuntary treatment under an order of protective custody.

Proposed new §306.81 establishes the information that must be maintained in each individual's medical record, including signed informed consent to treatment forms, release of information forms, medical health information, recovery or treatment plan, and progress notes, as applicable.

Proposed new §306.83 establishes requirements for the provision, documentation, oversight, and required elements, topics, and time frames of CSU staff orientation and training, including specialized training and required competencies required for staff holding specific credentials or providing specialized services.

Proposed new §306.85 establishes CSU minimum staffing requirements and requires a minimum staffing plan that includes the number and availability of licensed, credentialed, and unlicensed staff members required per shift, including a nurse supervisor.

Proposed new §306.87 establishes requirements for protection of an individual in a CSU. This rule includes child and adolescent requirements for lodging and programming separate from adults and environmental safeguards. This rule requires the development and implementation of policies and procedures for ensuring individual rights in a CSU and during transfers when the CSU provides transportation.

Proposed new §306.89 establishes requirements for CSU staff members' response to emergency medical conditions occurring in a CSU. This rule requires the CSU to develop policies and procedures for identifying, treating, and transferring individuals experiencing emergency medical conditions in a CSU. This rule includes requirements for physician protocols, administration of Basic Life Support techniques, and emergency supplies and equipment, including a first aid kit.

Proposed new §306.91 establishes requirements for transfers due to dangerous behavior, restraint, seclusion, medical conditions, or commitment orders. This rule includes requirements for transferring an individual from a child and adolescent CSU program to an inpatient mental health facility serving adults when the adolescent turns 18 years of age and does not meet criteria for discharge from CSU treatment services.

Proposed new §306.93 establishes requirements for developing and implementing procedures for identifying, reporting, and investigating sentinel events, including reporting the sentinel event as soon as possible to the Health Facility Licensing Complaint Line, reporting time frames, and reporting sentinel event determination and documentation.

Proposed new §306.95 establishes requirements for a CSU administrator, or administrator's designee, to develop and implement a written plan to evaluate the effectiveness of any plan of correction the CSU submits to an external review entity.

#### FISCAL NOTE

Liz Prado, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years that the rules will be in effect, there could be fiscal implications to both state and local governments as a result of enforcing and administering the rules. The proposed rules will permit CSU admission to children and adolescents and expand the types of Licensed Practitioners of the Healing Arts (LPHAs), and other credentialed mental health services providers, to work in CSUs, to help fill statewide mental health workforce shortages. Any

CSUs choosing to admit children and adolescents would have to include construction and staffing costs in their funding requests and follow specified rule requirements. If more CSUs open over time, HHSC may also need additional employee positions to monitor CSU compliance with new providers. HHSC lacks sufficient data to provide an estimate of the possible state and local government fiscal impact. **GOVERNMENT GROWTH IMPACT STATEMENT**

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

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

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

Liz Prado has also determined that there could be an adverse economic effect on small businesses, or micro-businesses related to the rules. The proposed rules will permit CSU admission to children and adolescents and expand the types of LPHAs, and other credentialed mental health services providers, to work in CSUs, to help fill statewide mental health workforce shortages. Existing CSUs (3) in the state do not currently admit children or adolescents. HHSC lacks sufficient data to provide an estimate of the economic impact.

No rural communities contract with HHSC in any program or service affected by the proposed rules.

No regulatory analysis was required as there were no alternatives consistent with the health, safety, and welfare of the residents of Texas.

#### **LOCAL EMPLOYMENT IMPACT**

The proposed rules will not affect a local economy.

#### **COSTS TO REGULATED PERSONS**

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

#### **PUBLIC BENEFIT AND COSTS**

Sonja Gaines, Deputy Executive Commissioner, has determined that for each year of the first five years the rules are in effect, the public benefit will be improved standards of care for individuals diverted from inpatient psychiatric units to behavioral health crisis units, regardless of type, or lack, of insurance. Another public benefit will be a reduction of crisis services mental health professional shortages due to the allowance of physician telemedicine services within a CSU, and physician-delegated medical services in a CSU, conducted by licensed PAs and APRNs, within

their respective scopes of practice. In addition, the allowance of the provision of pre-admission screening and assessment interviews, in the CSU and in community-based settings, conducted by staff members credentialed as a QMHP-CS, will help alleviate the state-wide shortage of crisis services mental health professionals.

Liz Prado has also determined that for the first five years the rules are in effect, there could be anticipated economic costs to persons who are required to comply with the proposed rules. The proposed rules will allow CSU admission to children and adolescents and expand the types of LPHAs, and other credentialed mental health services providers, allowed to work in CSUs. Any CSUs choosing to admit children and adolescents would have to include construction and staffing costs in their funding requests and follow specified rule requirements. HHSC lacks sufficient data to provide an estimate of the cost to comply.

#### **TAKINGS IMPACT ASSESSMENT**

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

#### **PUBLIC COMMENT**

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4900 North Lamar Boulevard, Austin, Texas 78751; or emailed to [HHRulesCoordinationOffice@hhsc.state.tx.us](mailto:HHRulesCoordinationOffice@hhsc.state.tx.us).

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 18R040" in the subject line.

### **DIVISION 1. GENERAL REQUIREMENTS**

#### **26 TAC §§306.41, 306.43, 306.45, 306.47**

##### **STATUTORY AUTHORITY**

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies. In addition, Texas Health and Safety Code §577.010 provides that the Executive Commissioner shall adopt rules and standards necessary and appropriate to ensure the proper care and treatment of patients in mental health facilities required to obtain a license under Chapter 577 of the Texas Health and Safety Code.

The new sections implement Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 577.

##### §306.41. Purpose.

The purpose of this subchapter is to establish standards to ensure the proper care and treatment of individuals with a mental illness or serious emotional disturbance who are receiving services in crisis stabilization units licensed in accordance with Chapter 510 of this title (relating to

Private Psychiatric Hospitals and Crisis Stabilization Units) and Texas Health and Safety Code Chapter 577.

§306.43. Application.

This subchapter applies to crisis stabilization units licensed in accordance with Chapter 510 of this title (relating to Private Psychiatric Hospitals and Crisis Stabilization Units) and Texas Health and Safety Code Chapter 577.

§306.45. Definitions.

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

(1) Administrator--A person or entity that has authority to represent a facility and is responsible for implementing and supervising its administrative policies and procedures and for administratively supervising the provision of services to individuals on a day-to-day basis.

(2) Administrator's designee--A staff member designated in a facility's written policies and procedures to act for a specified purpose on behalf of the administrator.

(3) Admission--The acceptance of an individual for crisis stabilization services based on a physician's order issued in accordance with §306.55 (relating to Voluntary Admission Criteria and Intake Process) and §306.57 (relating to Involuntary Admission Criteria and Intake Process) of this subchapter.

(4) Admission examination--A psychiatric examination and physical assessment conducted by a physician, to determine if an individual requesting voluntary admission to an inpatient mental health facility meets clinical criteria for admission, in accordance with Texas Health and Safety Code §572.0025(f).

(5) Adolescent--An individual at least 13 years of age, but younger than 18 years of age.

(6) Adult--An individual 18 years of age or older.

(7) Adult caregiver--An adult person whom a parent has authorized to provide temporary care for a child, as defined in Texas Family Code §34.0015(1).

(8) APRN--Advanced practice registered nurse. A registered nurse licensed by the Texas Board of Nursing and as provided in Texas Occupations Code §301.152.

(9) Assessment--The administrative process an inpatient mental health facility uses to gather information from an individual to determine if the admission is clinically justified, in accordance with Texas Health and Safety Code §572.0025(h)(2), including a medical history and the problem for which the individual is seeking treatment.

(10) Business day--Any day except a Saturday, Sunday, or legal holiday listed in Texas Government Code §662.021.

(11) Child--An individual at least three years of age, but younger than 13 years of age.

(12) Confidential information--Any communication or record (whether oral, written, electronically stored or transmitted, or in any other form) that consists of or includes any or all of the information that must be protected from unauthorized use or disclosure as required by applicable state or federal laws, and as defined in 1 TAC §390.1(5) (relating to Definitions).

(13) Crisis stabilization services--Short-term treatment designed to reduce acute symptoms of a mental illness or serious emotional disturbance of an individual and prevent admission of the individual to an inpatient mental health facility.

(14) CSU--Crisis stabilization unit. A short-term treatment unit designed to reduce an individual's acute symptoms of mental illness or serious emotional disturbance instead of admission to an inpatient mental health facility, licensed in accordance with Chapter 510 of this title (relating to Private Psychiatric Hospitals and Crisis Stabilization Units) and Texas Health and Safety Code Chapter 577.

(15) Day--Calendar day, unless otherwise specified.

(16) DD--Developmental disability. As listed in Texas Health and Safety Code §531.002(15), a severe, chronic disability attributable to mental or physical impairment or a combination of mental and physical impairments that:

(A) manifest before the individual reaches 22 years of age;

(B) are likely to continue indefinitely;

(C) reflect the individual's need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of a lifelong or extended duration and are individually planned and coordinated; and

(D) result in substantial functional limitations in three or more of the following categories of major life activity:

(i) self-care;

(ii) receptive and expressive language;

(iii) learning;

(iv) mobility;

(v) self-direction;

(vi) capacity for independent living; and

(vii) economic self-sufficiency.

(17) Discharge--The formal release of an individual from the custody and care of an inpatient mental health facility in accordance with Texas Health and Safety Code §572.004.

(18) Emergency medical condition--In accordance with the Emergency Medical Treatment & Labor Act (42 U.S.C. §1395dd) (Relating to examination and treatment for emergency medical conditions and women in labor), a medical condition manifested by acute symptoms of sufficient severity that the absence of immediate medical attention could reasonably be expected to result in:

(A) placing the health of the individual (or with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy;

(B) serious impairment to bodily functions;

(C) serious dysfunction of any bodily organ or part; or

(D) in the case of a pregnant woman having contractions;

(i) inadequate time to arrange a safe transfer to a hospital before delivery; or

(ii) a transfer posing a threat to the health or safety of the woman or the unborn child.

(19) General hospital--A hospital operated primarily to diagnose, care for, and treat individuals who are physically ill and licensed in accordance with Texas Health and Safety Code Chapter 241.

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



(21) ID--Intellectual disability. Consistent with Texas Health and Safety Code §591.003, significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and originates during the developmental period.

(22) IDT--Interdisciplinary team. A group of licensed, credentialed, and unlicensed staff members who possess the knowledge, skills, and expertise to develop and implement an individual's treatment or recovery plan and also includes:

(A) the individual's treating physician;

(B) the individual, and the individual's LAR or adult caregiver, if applicable;

(C) the staff members identified in the treatment or recovery plan as responsible for providing or ensuring the provision of each treatment in accordance with 25 TAC §411.471(c)(1)(E)(iii) (relating to Inpatient Mental Health Treatment and Treatment Planning);

(D) any person identified by the individual, and the individual's LAR or adult caregiver if applicable, unless clinically contraindicated; and

(E) other staff members as clinically appropriate.

(23) Individual--A person seeking or receiving services under this subchapter.

(24) Inpatient mental health facility--A mental health facility that can provide 24-hour residential and psychiatric services and that is:

(A) a facility operated by HHSC;

(B) a private mental hospital licensed by HHSC;

(C) a community center, facility operated by or under contract with a community center or other entity HHSC designates to provide mental health services;

(D) an identifiable part of a general hospital in which diagnosis, treatment, and care for individuals with mental illness is provided and that is licensed by HHSC; or

(E) a hospital operated by a federal agency.

(25) Intake--The administrative process for gathering information about an individual and giving an individual information about an inpatient mental health facility and the facility's treatment and services, in accordance with Texas Health and Safety Code §572.0025(h)(3).

(26) Involuntarily-admitted individual--An individual receiving inpatient mental health facility services based on an admission made in accordance with:

(A) Texas Health and Safety Code Chapter 573 and described in §306.57(a) of this subchapter; or

(B) Texas Health and Safety Code §574.021 and described in §306.57(f) of this subchapter.

(27) LAR--Legally authorized representative. A person authorized by law to act on behalf of an individual regarding a matter described in this subchapter, and may include a parent, guardian, or managing conservator of a minor, or the guardian of an adult.

(28) LBHA--Local behavioral health authority. An entity designated as the local behavioral health authority by HHSC in accordance with Texas Health and Safety Code §533.0356.

(29) Legal holiday--A holiday listed in the Texas Government Code §662.021 and an officially designated county holiday appli-

cable to a court in which proceedings under the Texas Mental Health Code are held.

(30) LIDDA--Local intellectual and developmental disability authority. An entity designated as the local intellectual and developmental disability authority by HHSC in accordance with Texas Health and Safety Code §533A.035.

(31) LMHA--Local mental health authority. An entity designated as the local mental health authority by HHSC in accordance with Texas Health and Safety Code §533.035(a).

(32) LPHA--Licensed practitioner of the healing arts. A person who possesses any of the following state licenses is considered an LPHA and is automatically certified as a qualified mental health professional-community services (QMHP-CS):

(A) a physician;

(B) a physician assistant;

(C) an APRN;

(D) a licensed psychologist;

(E) a licensed professional counselor;

(F) a licensed clinical social worker; or

(G) a licensed marriage and family therapist.

(33) LVN--Licensed vocational nurse. A person licensed as a vocational nurse by the Texas Board of Nursing in accordance with Texas Occupations Code Chapter 301.

(34) Medical director--A physician who is board eligible or certified in psychiatry by the American Board of Psychiatry and Neurology or by the American Osteopathic Board of Neurology and Psychiatry and who provides clinical and policy oversight for the CSU.

(35) Medical record--A compilation of systematic and organized information relevant to the services provided to an individual.

(36) Medical services--Acts or services provided by a physician acting as described in Texas Occupations Code Chapter 151, or as delegated by a physician, in accordance with Texas Occupations Code Chapter 157.

(37) Mental illness--An illness, disease, or condition, other than a sole diagnosis of epilepsy, dementia, substance use disorder, ID or DD that:

(A) substantially impairs an individual's thought, perception of reality, emotional process, or judgment; or

(B) grossly impairs behavior as demonstrated by recent disturbed behavior.

(38) Monitoring--One or more staff members observing an individual in person continuously at pre-determined intervals; as ordered by a physician or physician-delegated physician's assistant (PA) or APRN; or by established protocol; and intervening when necessary to protect the individual from harming self or others.

(39) Nursing facility--A Medicaid-certified facility that is licensed in accordance with the Texas Health and Safety Code Chapter 242.

(40) Nursing services--Acts or services provided by a registered nurse (RN) acting within the RN's scope of practice and assigned to an LVN, or delegated to an unlicensed person, in accordance with Texas Occupations Code Chapter 301.

(41) Nursing staff--A person required to be licensed in accordance with Texas Occupations Code Chapter 301 to engage in pro-

professional or vocational nursing or the person delegated to perform common nursing functions under the authority of an RN.

(42) Ombudsman--The Ombudsman for Behavioral Health Access to Care established by Texas Government Code §531.02251, which serves as a neutral party to help individuals, including individuals who are uninsured or have public or private health benefit coverage and behavioral health care providers navigate and resolve issues related to the individual's access to behavioral health care, including care for mental health conditions and substance use disorders.

(43) PA--Physician's assistant. A person licensed as a physician assistant by the Texas State Board of Physician Assistant Examiners in accordance with Texas Occupations Code Chapter 204.

(44) PASRR--Preadmission screening and resident review. A federally mandated program that is applied to all individuals seeking admission to a Medicaid-certified nursing facility, regardless of funding source.

(45) PASRR Level I screening--The process of screening an individual seeking admission to a nursing facility to identify whether the individual is suspected of having a mental illness, ID, or DD.

(46) PASRR Level II evaluation--A face-to-face evaluation:

(A) of an individual seeking admission to a nursing facility who is suspected of having a mental illness, ID, or DD; and

(B) performed by a LIDDA, LHMA, or LBHA to determine if the individual has a mental illness, ID, or DD and, if so, to:

(i) assess the individual's need for care in a nursing facility;

(ii) assess the individual's need for specialized services; and

(iii) identify alternate placement options.

(47) Peer specialist--A person who uses lived experience, in addition to skills learned in formal training, to deliver strengths-based, person-centered services to promote an individual's recovery and resiliency, in accordance with 1 TAC Chapter 354, Subchapter N (relating to Peer Specialist Services).

(48) Physician--A staff member:

(A) licensed as a physician by the Texas Medical Board in accordance with Texas Occupations Code Chapter 155; or

(B) authorized to perform medical acts under an institutional permit at a Texas postgraduate training program approved by the Accreditation Council on Graduate Medical Education, the American Osteopathic Association, or the Texas Medical Board.

(49) Pre-admission screening--The clinical process used by a QMHP-CS or LPHA to gather information from an individual, including a medical history, any history of substance use, trauma, and the problem for which the individual is seeking treatment to determine if a physician should conduct an admission examination.

(50) Preliminary examination--The psychiatric examination and assessment for medical stability performed and documented by a physician in accordance with Texas Health and Safety Code §573.022 to determine if emergency detention in an inpatient mental health facility is clinically justified for an individual for whom:

(A) an application for emergency detention is filed in accordance with Texas Health and Safety Code §573.011;

(B) a peace officer or emergency medical services personnel of an emergency medical services provider transporting the person in accordance with a memorandum of understanding executed in accordance with Texas Health and Safety Code §573.005 files a notification of detention completed by the peace officer in accordance with Texas Health and Safety Code §573.002(a); or

(C) the LAR transporting their adult ward, without the assistance of a peace officer, in accordance with Texas Health and Safety Code §573.003, files an application for detention in accordance with Texas Health and Safety Code §573.004.

(51) Psychosocial rehabilitative services--Services that assist an individual in regaining and maintaining daily living skills required to function effectively in the community.

(52) QMHP-CS--Qualified mental health professional-community services. A staff member who is credentialed as a QMHP-CS who has demonstrated and documented competency in the work to be performed and:

(A) has a bachelor's degree from an accredited college or university with a minimum number of hours that is equivalent to a major in psychology, social work, medicine, nursing, rehabilitation, counseling, sociology, human growth and development, gerontology, special education, educational psychology, early childhood education, or early childhood intervention;

(B) is an RN; or

(C) completes an alternative credentialing process as determined by an LMHA or LBHA in accordance with HHSC requirements.

(53) Recovery--A process of change through which individuals improve their health and wellness, live a self-directed life, and strive to reach their full potential.

(54) Recovery or treatment plan--A written plan:

(A) is developed in collaboration with the individual, and the individual's LAR or adult caregiver if applicable, and a QMHP-CS or LPHA;

(B) is amended at any time based on an individual's needs or requests;

(C) guides the recovery process and fostering resiliency;

(D) is completed in conjunction with the assessment tool adopted by HHSC;

(E) identifies the individual's changing strengths, capacities, goals, preferences, needs, and desired outcomes; and

(F) includes recommended services and supports or reasons for the exclusion of services and supports.

(55) Restraint--The use of any personal restraint or mechanical restraint that immobilizes or reduces the ability of the individual to move his or her arms, legs, body, or head freely, and includes chemical restraint, which is the use of any chemical, including pharmaceuticals, through topical application, oral administration, injection, or other means, for purposes of restraining an individual and that is not a standard treatment for the individual's medical or psychiatric condition.

(56) RN--Registered nurse. A staff member licensed as a registered nurse by the Texas Board of Nursing in accordance with Texas Occupations Code Chapter 301.

(57) Screening--Activities performed by a QMHP-CS to:

(A) collect triage information through face-to-face or telephone interviews with an individual or collateral contact;

(B) determine if the individual's need is emergent, urgent, or routine, and conducted before the face-to-face assessment to determine the need for emergency services; and

(C) determine the need for immediate assessment and mental health treatment recommendations.

(58) Seclusion--The involuntary separation of an individual from other individuals for any period of time or the placement of the individual alone in an area from which the individual is prevented from leaving.

(59) SED--Serious Emotional Disturbance. A diagnosed mental health disorder that substantially disrupts a child's or adolescent's ability to function socially, academically, and emotionally.

(60) Sentinel event--Any of the following unexpected occurrences:

(A) the death of an individual;

(B) permanent harm of an individual; or

(C) severe temporary harm and intervention required to sustain life.

(61) Serious physical injury--An injury determined by a physician, or physician-delegated PA or APRN, to require treatment by an appropriately licensed medical professional or licensed health-care professional, or in an emergency department or licensed hospital.

(62) Stabilize--With respect to an emergency medical condition, to provide such medical treatment of the condition necessary to assure, within reasonable medical probability, that no material deterioration of the condition is likely to result from or occur during the individual's transfer from a facility or, if the emergency medical condition for a woman is that she is in labor, that the woman has delivered the child and the placenta.

(63) Staff member--Personnel including a full-time and part-time employee, contractor, or intern, but excluding a volunteer.

(64) Staffing plan--A written plan that:

(A) demonstrates the number, qualifications, and responsibilities of staff members, including the administrator or designee, are appropriate for the size and scope of the services provided and that workloads are reasonable to meet the needs of individuals receiving services; and

(B) identifies staffing patterns, hours of coverage, and plans for providing back-up staff in emergencies.

(65) Substance use disorder--The use of one or more drugs, including alcohol, which significantly and negatively impacts one or more major areas of life functioning and which meets the criteria described in the current edition of the *Diagnostic Statistical Manual of Mental Disorders* for substance use disorders.

(66) TAC--Texas Administrative Code.

(67) Telehealth service--A health-care service, other than telemedicine medical services, delivered by a health professional licensed, certified or otherwise entitled to practice in Texas and acting within the scope of the health professional's license, certification or entitlement to an individual at a different physical location other than the health professional using telecommunications or information technology, in accordance with Texas Occupation Code §111.001(3).

(68) Telemedicine medical service--A health-care service delivered to an individual at a different physical location using telecommunications or information technology by:

(A) a physician licensed in Texas; or

(B) a health professional who acts under the delegation and supervision of a physician licensed in Texas and within the scope of the health professional's license in Texas.

(69) Transfer--The movement (including the discharge) of an individual outside a facility at the facility's direction, but it does not include such a movement of an individual who has been declared dead or leaves the facility without the facility's permission.

(70) Treating physician--A physician who coordinates and oversees an individual's treatment.

(71) Unit--A discrete and identifiable area of an inpatient mental health facility that includes individuals' rooms or other living areas and is separated from another similar area:

(A) by a locked door;

(B) by a floor; or

(C) because the other similar area is in a different building.

(72) UP--Unlicensed person. A person, not licensed as a health care provider, who provides certain health related tasks and functions in a complementary or assistive role to the RN in providing direct care of an individual or carrying out common nursing functions as described in 22 TAC Chapter 224 (relating to Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel for Clients with Acute Conditions or in Acute Care Environments) and care in conformity with this chapter:

(A) who is monetarily compensated, including nurse aides, assistants, attendants, technicians, and other individuals providing care or assistance of health-related services; or

(B) who is a professional nursing student, not licensed as an RN or LVN, providing care for monetary compensation and not as part of their formal education.

(73) Voluntarily admitted individual--An individual receiving facility services based on an admission in accordance with:

(A) §306.55 of this subchapter (relating to Voluntary Admission Criteria and Intake Process); or

(B) §306.59 of this subchapter (relating to Voluntary Treatment Following Involuntary Admission).

#### §306.47. General Provisions.

(a) The CSU must be open and provide services to individuals 24-hours a day, seven days a week, including admissions, based on the CSU's capability and capacity.

(b) The CSU must develop, and the medical director must approve, the CSU's written policies and procedures that ensure the CSU's compliance with this subchapter.

(c) All staff members must comply with this subchapter and the policies and procedures of the CSU.

(d) A CSU administrator, or administrator's designee must take appropriate measures to ensure a staff member's compliance with this subchapter and the policies and procedures of the CSU.

(e) A CSU nursing supervisor must ensure all orders issued by a physician, or physician-delegated PA or APRN, for an individual are

appropriately implemented pursuant to state nursing licensure requirements.

(f) Except as provided by §306.51 of this subchapter (relating to Admission Criteria) or applicable state law, a physician may delegate any of the medical services described in this subchapter in accordance with Texas Occupations Code Chapter 157, Subchapter A.

(g) A CSU must comply with the following HHSC rules:

(1) Chapter 510 of this title (relating to Private Psychiatric Hospitals and Crisis Stabilization Units);

(2) 25 TAC Chapter 404, Subchapter E (relating to Rights of Persons Receiving Mental Health Services);

(3) 25 TAC Chapter 415, Subchapter F (relating to Interventions in Mental Health Services);

(4) 25 TAC Chapter 414, Subchapter I (relating to Consent to Treatment with Psychoactive Medication--Mental Health Services); and

(5) 25 TAC Chapter 417, Subchapter K (relating to Abuse, Neglect and Exploitation in TDMHMR Facilities).

(h) A CSU physician is prohibited from administering:

(1) electroconvulsive therapy, a treatment in which controlled, medically applied electrical current results in a therapeutic seizure, usually attenuated by anesthesia and muscle relaxants; and

(2) a chemical or gaseous agent used to induce a seizure for therapeutic purposes, instead of, or as a substitute for, electroconvulsive therapy.

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 December 2, 2020.

TRD-202005193

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: January 17, 2021

For further information, please call: (512) 838-4346



## DIVISION 2. ADMISSION

### 26 TAC §§306.51, 306.53, 306.55, 306.57, 306.59

#### STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies. In addition, Texas Health and Safety Code §577.010 provides that the Executive Commissioner shall adopt rules and standards necessary and appropriate to ensure the proper care and treatment of patients in mental health facilities required to obtain a license under Chapter 577 of the Texas Health and Safety Code.

The new sections implement Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 577.

§306.51. Admission Criteria.

A CSU must develop and implement written admission criteria that:

(1) the CSU medical director approves;

(2) uniformly applies to all individuals;

(3) permits the admission of an individual only if the following criteria is met:

(A) the individual has a mental illness or SED;

(B) the services provided in the CSU may reduce the individual's acute symptoms; and

(C) the CSU provides clinically appropriate environmental restrictions and levels of monitoring, described in §306.87 of this subchapter (relating to Protection of an Individual Receiving Crisis Stabilization Unit Services), that:

(i) ensures the safety of the individual; and

(ii) prevent the individual from causing serious harm to self or others;

(4) prevents admission of an individual who:

(A) is younger than three years of age;

(B) is the subject of an order for temporary inpatient mental health services issued in accordance with Texas Health and Safety Code §574.034;

(C) is the subject of an order for extended inpatient mental health services issued in accordance with Texas Health and Safety Code §574.035;

(D) requires specialized care not available at the CSU;  
or

(E) has a physical medical condition that is unstable and could reasonably be expected to require inpatient treatment for the condition;

(5) allows temporary acceptance of an individual for whom an emergency detention application is filed, or for whom a peace officer has detained, or for an individual unable to consent to voluntary admission by:

(A) temporarily accepting an individual for preliminary examination for whom an application of detention has been filed initiating an emergency detention proceeding in accordance with Texas Health and Safety Code Chapter 573; or

(B) filing an application for court-ordered Inpatient Mental Health Services in accordance with Texas Health and Safety Code Chapter 574, Subchapter B;

(6) includes a process for attempts to gain consent for administration of psychoactive medications from an individual, and an individual's LAR or adult caregiver, as required by applicable law and rule.

§306.53. Pre-admission Screening and Assessment.

(a) Pre-admission screening and assessment.

(1) Before admission to a CSU, an individual must meet clinical criteria for admission, as determined by pre-admission screening and assessment.

(2) Pre-admission screening and assessment of an individual must:

(A) occur either in the CSU or in the community at any location where mental health crisis services are provided; and

(B) be provided by:

(i) a QMHP-CS or LPHA trained in accordance with HHSC screening and assessment requirements policy and displaying competency in all domains of crisis screening and assessment in accordance with §301.331(b) of this title (relating to Competency and Credentialing); or

(ii) any other mental health professional trained in mental health screening and assessment and providing services:

(I) within the professional's scope of practice;  
and

(II) in compliance with standards established by the professional's respective licensing or certifying board.

(b) CSU screening and assessment policy. CSU screening and assessment policy must include a process for:

(1) accessing an individual's community-based screening and assessment; and

(2) conducting CSU screenings that address the criteria for immediate:

(A) assessment of risk of deterioration and danger to self and others;

(B) medical screening and assessment; and

(C) psychiatric examination.

(c) Screening. Pre-admission screening identifies the acuity of the individual's crisis episode and determines the need for further assessments, including assessments to determine risk of deterioration and immediate danger to self and others, in accordance with Texas Health and Safety Code §572.0025(f) and §573.021. The initial screening of an individual must lead to:

(1) immediate and appropriate referrals; and

(2) documentation that incorporates the following domains:

(A) suicide risk screening;

(B) homicide risk screening; and

(C) risk of deterioration.

(d) Assessment. If a pre-admission screening indicates an individual requires immediate assessment to determine risk of deterioration and immediate danger to self and others, the assessment must be conducted face to face with the individual, either in person or through telehealth services in accordance with 22 TAC §174.9(2) (relating to Provision of Mental Health Services), and must include:

(1) a suicide assessment that documents current and past suicide risks regarding suicidal ideation, plans, and past suicide attempts;

(2) a psychosocial assessment that includes historical and current information including identification of social, psychological, environmental, and cultural factors that may be contributing to the emergency; and

(3) a mental health assessment, documenting symptomology, functionality, historical and current diagnosis, and treatment for mental illnesses or serious emotional disturbances and, when available:

(A) a review of records of past treatment;

(B) a review of history from collateral sources as permitted by Health Insurance Portability and Accountability Act;

(C) a consult with current healthcare providers;

(D) a review of history of previous treatment and the response to that treatment, including a record of dose, response, side effects and adherence to past psychiatric medications; and

(E) an up-to-date record of all medications currently prescribed, and the name of the physician or provider with prescriptive authority.

(e) Physician examination. If a pre-admission assessment indicates an individual requires immediate physician examination to determine clinical need for CSU admission, the examination may not be delegated to a non-physician, in accordance with Texas Health and Safety Code §572.0025(f), and:

(1) must be conducted face to face with the individual, either in person or through telemedicine medical services, in accordance with Texas Health and Safety Code §572.0025(f) and §573.021; and

(2) must include:

(A) a physical examination consisting of an assessment for medical stability; and

(B) a psychiatric examination.

§306.55. Voluntary Admission Criteria and Intake Process.

(a) CSU staff members, trained in accordance with §306.83(h) - (i) of this subchapter (relating to Staff Training), must conduct the intake and admission process in accordance with Texas Health and Safety Code §572.0025(e) and §572.0025(h)(3).

(b) Voluntary admission into a CSU may be requested by:

(1) an individual 16 years of age or older, in accordance with Texas Health and Safety Code §572.001 or Texas Family Code Chapter 32; or

(2) the parent, adult caregiver, or LAR of an individual, when the individual is younger than 18 years of age, in accordance with Texas Health and Safety Code §572.001 or Texas Family Code Chapter 35A.

(c) A request for admission must be made in accordance with Texas Health and Safety Code §572.001 and must:

(1) be in writing and signed by the individual, and the individual's parent, adult caregiver, or LAR; and

(2) include a statement that the individual:

(A) has capacity to consent to the administration of psychoactive medication, administered in accordance with Texas Health and Safety Code §576.025;

(B) agrees to voluntarily remain in the CSU until discharge; and

(C) consents to diagnosis, observation, care and treatment until the earlier of one of the following occurrences:

(i) the discharge of the individual; or

(ii) the individual leaves the CSU after a request for discharge is made, in accordance with Texas Health and Safety Code §572.004.

(d) Voluntary admission occurs only if:

(1) a request for admission is made in accordance with subsection (c) of this section;

(2) the individual receives pre-admission screening and assessment, in accordance with the CSU's written policies and procedures, to determine if a physician admission examination is required:

(A) if the pre-admission screening and assessment is conducted by a physician, the physician may conduct the pre-admission screening and assessment as part of the physician admission examination referenced in §306.53(d) of this division (relating to Pre-admission Screening and Assessment); and

(B) if the QMHP-CS or LPHA conducting pre-admission screening and assessment determines:

(i) the individual does not need a physician admission examination, then the CSU may not admit the individual and must refer the individual to alternative services, as appropriate and available; or

(ii) the individual does need a physician admission examination, a physician must conduct an admission examination of the individual before CSU admission;

(3) a physician in accordance with Texas Health and Safety Code §572.0025 (f):

(A) conducts either in person or through telemedicine medical services, or consults with a physician who conducted, a physical assessment and psychiatric admission examination within 72 hours before or 24 hours after admission, as described in §306.53 of this division (relating to Pre-Admission Screening and Assessment), and may not delegate the examination to a non-physician;

(B) provides an admission order;

(i) in writing and signed by the issuing physician; or

(ii) if the order is provided orally or, if the electronic order is unsigned, an original signed order must be provided to the facility within 24 hours; and

(C) in accordance with Texas Health and Safety Code §572.0025(f-1), an individual who is admitted to a CSU before the physical assessment and psychiatric admission examination is conducted must be discharged by the physician immediately if the physician conducting the physical assessment and psychiatric examination of the individual determines the individual does not meet the clinical standards to receive inpatient mental health services;

(4) the administrator or administrator's designee has signed a written statement agreeing to admit the individual, in accordance with Texas Health and Safety Code §572.0025; and

(5) a CSU staff member, trained in accordance with §306.83(i) of this subchapter, completes intake procedures in accordance with Texas Health and Safety Code §572.0025(e) and §572.0025(h)(3), that includes:

(A) obtaining relevant information about the individual, including information about finances, insurance benefits, and advance directives;

(B) explaining, orally and in writing, the individual's rights in a language and format easily understandable to the individual, or the individual's LAR or adult caregiver, as applicable;

(C) explaining, orally and in writing, the CSU's services and treatment as they relate to the individual;

(D) informing the individual, orally and in writing, of the existence, telephone number, and address of the protection and advocacy system established in Texas;

(E) informing the individual of the availability of information and assistance from the Ombudsman by contacting the Ombudsman at 1-800-252-8154 or online at [hhs.texas.gov/ombudsman](http://hhs.texas.gov/ombudsman),

and the Health Facility Licensing complaints line at 1-888-973-0022; and

(F) determining whether the individual comprehends the information provided in accordance with subparagraphs (B) - (E) of this paragraph.

§306.57. Involuntary Admission Criteria and Intake Process.

(a) Criteria for involuntary admission under order of emergency detention. In accordance with Texas Health and Safety Code §573.021, a CSU administrator may accept an individual for a preliminary examination who is:

(1) apprehended, regardless of the age of the individual, and transported to the CSU by a peace officer, in accordance with Texas Health and Safety Code §573.001(a) and §573.005; or

(2) an adult who is transported to the CSU by the individual's family member or LAR in accordance with Texas Health and Safety Code §573.003.

(b) Preliminary examination under order of emergency detention. A physician must conduct an individual's preliminary examination in accordance with Texas Health and Safety Code §573.021 and as described in §306.53(d) of this division (relating to Pre-admission Screening and Assessment). The individual's preliminary examination must:

(1) occur as soon as possible, but no later than 12 hours after:

(A) the individual is apprehended by the peace officer;

or

(B) the individual's family member or LAR transports the individual to the CSU for emergency detention; and

(2) include:

(A) an assessment for medical stability; and

(B) a psychiatric examination to determine if the individual meets the criteria described in the emergency detention requirements listed in subsection (c) of this section.

(c) Requirements for emergency detention. When clinically indicated, a CSU physician may initiate an emergency detention proceeding in accordance with Texas Health and Safety Code Chapter 572.004(d). A CSU physician may admit an individual of any age for emergency detention in accordance with Texas Health and Safety Code §573.022(a)(2), only if:

(1) a physician determines from the preliminary examination that:

(A) the individual has a mental illness;

(B) the individual evidences a substantial risk of serious harm to self or others;

(C) the described risk of harm is imminent unless the individual is immediately detained; and

(D) emergency detention is the least restrictive means by which the necessary detention may be accomplished;

(2) a physician makes a written statement, in accordance with Texas Health and Safety Code §573.022 that:

(A) documents the determination described in paragraph (1) of this subsection; and

(B) describes:

(i) the nature of the individual's mental illness or SED;

(ii) the specific risk of harm to self or others the individual evidences, demonstrated either by behavior or evidence of severe emotional distress;

(iii) the deterioration of mental condition to the extent that the individual cannot remain at liberty; and

(iv) the detailed information on which the physician based the determination described in paragraph (1) of this subsection;

(3) the physician writes an order admitting the individual for emergency detention based on the determination described in paragraph (1) of this subsection; and

(4) the individual meets the CSU's admission criteria, as required by §306.51 of this division (relating to Admission Criteria).

(d) Release of an individual from emergency detention.

(1) A CSU administrator, or administrator's designee, must release an individual accepted for a preliminary examination if:

(A) a preliminary examination of the individual has not been conducted within 12 hours, in accordance with Texas Health and Safety Code §573.021; or

(B) the individual is not admitted to the CSU under order of emergency detention on completion of the preliminary examination in accordance with Texas Health and Safety Code §573.023(a).

(2) A CSU administrator, or administrator's designee, must release an individual determined ineligible for admission under emergency detention in accordance with the requirements in Texas Health and Safety Code §576.007. Before releasing an adult, the CSU must:

(A) make a reasonable effort to notify the individual's family or LAR of the release, if the individual grants permission for the notification;

(B) document the individual's refusal of notification in the individual's medical record, if applicable; and

(C) arrange transportation after release in accordance with Texas Health and Safety Code §573.024 to:

(i) the location of the individual's apprehension;

(ii) the individual's residence in this state; or

(iii) another suitable location.

(e) Intake under Emergency Detention. A CSU staff member, trained in accordance with §306.83(h) - (i) of this subchapter (relating to Staff Training), must:

(1) conduct the intake of an individual as soon as possible, but no later than 24 hours after the time an individual is apprehended for emergency detention, as described in §306.55 of this division (relating to Voluntary Admission Criteria and Intake Process); and

(2) advise the individuals of their rights and determine whether the individual comprehends the rights for individuals apprehended, detained, or transported for emergency detention provided in accordance with Texas Health and Safety Code §573.025 and consent rights and information described in §306.51 and §306.55 of this division, and if the staff member determines that the individual:

(A) comprehends the information, the CSU must document in the individual's medical record the reasons for such determination; or

(B) does not comprehend the information, the staff member must:

(i) repeat the explanation to the individual daily within 24-hour intervals until the individual demonstrates comprehension of the information or is discharged, whichever occurs first; and

(ii) document in the individual's medical record the individual's response to each explanation and whether the individual demonstrated comprehension of the information.

(f) Criteria for involuntary admission under an order of protective custody.

(1) When clinically indicated, a CSU physician may initiate an application to request an order of protective custody of an individual in accordance with Texas Health and Safety Code §574.021.

(2) A CSU physician may admit an individual under an order of protective custody only if a court has issued a protective custody order in accordance with Texas Health and Safety Code §574.022.

(g) Intake under order of protective custody.

(1) A CSU staff member trained in accordance with §306.83(h) - (i) of this subchapter:

(A) must conduct an intake of an individual, as described in §306.55 of this division, as soon as possible, but no later than 24 hours after the time an individual is accepted for protective custody; and

(B) advise the individual of their rights in accordance with Texas Health and Safety Code §573.0025 and determine whether the individual comprehends the rights and consent information described in §306.51 of this division and §306.55 of this division.

(2) If the CSU staff member determines that the individual:

(A) comprehends the information, the staff member must document in the individual's medical record the reasons for such determination; or

(B) does not comprehend the information, the staff member must:

(i) repeat the explanation to the individual daily until the individual demonstrates comprehension of the information or is discharged, whichever occurs first; and

(ii) document in the individual's medical record the individual's response to each explanation and whether the individual demonstrated comprehension of the information.

(3) A CSU staff member is not required to conduct another intake if the intake was conducted when the individual was admitted, or within 24 hours before the issuance of the order of protective custody.

#### §306.59. Voluntary Treatment Following Involuntary Admission.

A CSU may provide crisis stabilization services to an individual who was involuntarily admitted in accordance with §306.57(a) and (f) of this division (relating to Involuntary Admission Criteria and Intake Process) if:

(1) the individual no longer meets the involuntary treatment criteria described in §306.79 of this subchapter (relating to Discharge of an Involuntarily-Admitted Individual);

(2) the individual submits a written request to the CSU treating physician for voluntary crisis stabilization services, as described in §306.55 of this division (relating to Voluntary Admission Criteria and Intake Process); and

(3) the individual's treating physician examines the individual and, based on that examination, writes an order for voluntary crisis stabilization services that meets the requirements of §306.51 of this division (relating to Admission Criteria).

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

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Karen Ray

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Health and Human Services Commission

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For further information, please call: (512) 838-4346



## DIVISION 3. SERVICE REQUIREMENTS

### 26 TAC §§306.61, 306.63, 306.65, 306.67

#### STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies. In addition, Texas Health and Safety Code §577.010 provides that the Executive Commissioner shall adopt rules and standards necessary and appropriate to ensure the proper care and treatment of patients in mental health facilities required to obtain a license under Chapter 577 of the Texas Health and Safety Code.

The new sections implement Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 577.

#### §306.61. Crisis Stabilization Unit Medical Services.

(a) A CSU physician, or physician-delegated PA or APRN, must provide an individual with the medical services documented in the individual's recovery or treatment plan developed in accordance with §306.65 of this division (relating to Crisis Stabilization Services and Recovery or Treatment Planning).

(b) A CSU must have a medical director who directs, monitors, and evaluates the psychiatric services provided.

(c) A CSU administrator, or administrator's designee, must assign a treating physician to each individual and document the assignment in the individual's medical record at the time the CSU administrator, or administrator's designee, admits the individual.

(d) A physician, PA, APRN, or RN must perform an individual's initial physical health assessment within 24 hours after the individual's presentation, as ordered. The physical assessment includes:

(1) an evaluation and documentation of the presence or absence of cognitive signs suggesting delirium and the need for emergency intervention;

(2) a general medical history that addresses conditions that may affect the individual's current condition, including a review of symptoms focused on conditions (such as a history of trauma) that may present with psychiatric symptoms or cause cognitive impairment;

(3) a review of medical conditions that may cause similar psychiatric symptoms or complicate the individual's condition; and

(4) access to phlebotomy and laboratory results.

(e) A physician, or physician-delegated PA or APRN must conduct an initial psychiatric evaluation of an individual, including:

(1) a description of the individual's medical history;

(2) a determination of the individual's mental status;

(3) a description of the presenting problems, the onset, and the duration and severity of mental health or substance use disorder symptoms leading to CSU admission;

(4) an estimation of the individual's intellectual functioning, memory functioning and orientation;

(5) a description of the individual's strengths and needs;  
and

(6) the diagnoses of the individual's mental illness, SED, and if applicable, any substance use disorders, ID, or DD.

(f) A physician, or physician-delegated PA or APRN, must re-evaluate the individual once every 96 hours or more often as clinically indicated after the initial examination described in subsection (e) of this section. This re-evaluation information may be included in the physician's, APRN's, or PA's discharge summary if the individual is discharged within the initial 96-hour period, as described in §306.71(b) of this subchapter (relating to Discharge Planning).

(g) A CSU medical director must ensure, as appropriate under the circumstances:

(1) the provision of medical services to an individual in response to an emergency medical condition in accordance with the plan required by §306.89 of this subchapter (relating to Crisis Stabilization Unit Response to an Emergency Medical Condition);

(2) the provision of other medical services, as needed by the individual;

(3) the referral of the individual to an appropriate health care provider; or

(4) the transfer of the individual to a health care entity that can provide the medical services.

(h) At least one physician, or physician-delegated PA or APRN, must be available 24 hours a day, 365 days a year, either in person or by telecommunication, to provide medical consultation to staff members in accordance with §306.85 of this subchapter (relating to Minimum Staffing Requirements).

#### §306.63. Crisis Stabilization Unit Nursing Services.

(a) Nursing services in treatment plan. CSU nursing staff must provide nursing services to an individual in accordance with the individual's recovery or treatment plan developed in accordance with §306.65 of this division (relating to Crisis Stabilization Services and Recovery or Treatment Planning).

(b) Nursing supervisor. A CSU must have a nursing supervisor who is an RN and who directs, monitors, and evaluates the nursing services provided.

(c) Assessment. An RN must conduct and complete an individual's initial comprehensive nursing assessment within eight hours before or after the individual's admission.

(d) Evaluation or reassessment.

(1) An individual must receive a documented nursing evaluation or reassessment based on the individual's needs:



(A) at least 12 hours following the initial comprehensive nursing assessment required in subsection (c) of this section; and

(B) at recurring 12-hour intervals until the individual's discharge.

(2) If an LVN conducts the individual's evaluation at a 12-hour interval, an RN must reassess the individual at least every 24 hours after the initial comprehensive nursing assessment is conducted.

(e) Verification of licensure. A CSU nursing supervisor must verify that a member of the nursing staff, for whom a license is required, has a valid license at the time the staff member assumes responsibilities at the CSU and maintains the license throughout the staff member's employment with the CSU.

§306.65. Crisis Stabilization Services and Recovery or Treatment Planning.

(a) A CSU staff member must provide an individual crisis stabilization services under the direction of a physician and in accordance with the individual's recovery or treatment plan and the service requirements. Such treatment includes medical services and nursing services described in §306.61 of this division (relating to Crisis Stabilization Unit Medical Services) and §306.63 of this division (relating to Crisis Stabilization Unit Nursing Services).

(b) Nursing staff must develop and implement an initial or preliminary nursing care plan within the first 24 hours after admission. This plan must be based on the findings of the initial comprehensive nursing assessment and any pre-admission assessment information that is available at the time of admission.

(c) The IDT must collaborate in developing the individual's recovery or treatment plan based on the findings of:

(1) the individual's physical examination identified in §306.63 of this division;

(2) the individual's psychiatric evaluation identified in §306.61 of this division;

(3) the individual's initial comprehensive nursing assessment identified in §306.63 of this division;

(4) an assessment of the individual's risk of harm to self or others, identified in §306.53 of this subchapter (relating to Pre-Admission Screening and Assessment); and

(5) the psychosocial assessment identified in §306.53 of this subchapter.

(d) The recovery or treatment plan must contain:

(1) a list of all the individual's diagnoses with notation as to which diagnoses will be treated at the CSU, including:

(A) at least one mental illness or SED diagnosis according to the current edition of the Diagnostic and Statistical Manual of Mental Disorders;

(B) any substance use disorder diagnosis according to the current edition of the Diagnostic and Statistical Manual of Mental Disorders; and

(C) any non-psychiatric conditions;

(2) a description of all treatment interventions intended to address the individual's condition, including:

(A) all medications prescribed and the symptoms each medication is intended to address;

(B) psychosocial rehabilitative services;

(C) counseling or psychotherapies; and

(D) peer specialist services, as available, and in accordance with 1 TAC §354.3013 (relating to Services Provided);

(3) a documented level of monitoring assigned to the individual by the physician, or physician-delegated PA or APRN;

(4) an identification of additional assessments and evaluations to be conducted, including:

(A) risk of harm to self or others;

(B) history of trauma; and

(C) emerging health issues;

(5) a description of any potential barriers to the individual's discharge; and

(6) a description of any medical or nursing services.

(e) A member of the IDT reviews the recovery or treatment plan and evaluates its effectiveness:

(1) at least 72 hours after being implemented; or

(2) any time there is a change in the individual's condition based on:

(A) a medical re-evaluation described in §306.61 of this division;

(B) a nursing reassessment described in §306.63 of this division;

(C) a request by the individual, or the individual's LAR or adult caregiver, as applicable; or

(D) receiving information regarding recommended services and supports needed by the individual after discharge.

(f) A member of the IDT discusses all revisions with the individual, and the individual's adult caregiver or LAR, as necessary, to obtain feedback and agreement from the individual, and the individual's LAR or adult caregiver, as applicable, before implementing the individual's revised recovery or treatment plan.

§306.67. Additional Standards of Care for Children and Adolescents.

(a) In addition to the service requirements in this division, a child or adolescent must receive additional assessments, including a developmental assessment and history of trauma assessment, performed by an LPHA with appropriate training and experience in the assessment and treatment of children in a crisis setting. The assessments must:

(1) be administered face to face or through telehealth services; and

(2) include the individual's parents, LAR, or adult caregiver, as applicable and as clinically appropriate according to the child's or adolescent's age, functioning, and current living situation.

(b) Services delivered to a child or an adolescent must be:

(1) age-appropriate;

(2) developmentally appropriate;

(3) trauma-informed; and

(4) consistent with the child's or adolescent's academic development.

(c) Children must be separated from adolescents, based on age and developmental needs, unless there is clinical or developmental justification in the child or adolescent's medical record. Both children and adolescents must be separated from adults, required in §306.87(d) of

this subchapter (relating to Protection of an Individual Receiving Crisis Stabilization Unit Services).

(d) Education services must be available as required by the Texas Education Agency.

(e) When a child or adolescent surpasses the maximum age for their current unit or CSU, the unit or CSU administrator, or administrator's designee, must transition the child or adolescent to a different age-appropriate unit or CSU.

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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Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 838-4346



## DIVISION 4. DISCHARGE

### 26 TAC §§306.71, 306.73, 306.75, 306.77, 306.79

#### STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies. In addition, Texas Health and Safety Code §577.010 provides that the Executive Commissioner shall adopt rules and standards necessary and appropriate to ensure the proper care and treatment of patients in mental health facilities required to obtain a license under Chapter 577 of the Texas Health and Safety Code.

The new sections implement Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 577.

#### §306.71. Discharge Planning.

(a) A QMHP-CS or LPHA must begin discharge planning for an individual at the time of the individual's admission.

(1) Discharge planning must involve the individual, the IDT, the individual's LAR or adult caregiver, as applicable, and any other person authorized by the individual and the individual's adult caregiver or LAR if applicable, unless clinically contraindicated.

(2) Discharge planning must be provided in accordance with §510.41(m)(3) of this title (relating to Facility Functions and Services) and include:

(A) the IDT recommendations for services and supports, including placement needs, that should be provided after discharge;

(B) the IDT arrangements for the recommended services and supports;

(C) a PASRR screening, as required by paragraph (3) of this subsection; and

(D) the IDT post-discharge care information provided in a language and format easily understandable to the individual, and the individual's LAR or adult caregiver, if applicable.

(3) An individual considered for discharge from the CSU to a Medicaid-certified nursing facility must have a PASRR Level I screening completed, in accordance with the Code of Federal Regulations, Title 42, Part 483, Subpart B (relating to Requirements for Long-Term Care Facilities) before discharge; and

(4) if the screening indicates that the individual has a mental illness, ID, or DD, the CSU staff member coordinating the individual's transfer must contact and arrange for the designated LMHA, LBHA, or LIDDA to conduct a PASRR Level II evaluation of the individual before CSU discharge, in accordance with Chapter 303 of this title (relating to Preadmission Screening and Resident Review (PASRR)).

(b) The individual's treating physician, or physician-delegated PA, or APRN must prepare a written discharge summary that includes:

(1) a description of the individual's treatment at the CSU and the response to that treatment;

(2) a description of the individual's condition at discharge;

(3) a description of the individual's placement after discharge;

(4) a description of the services and supports the individual will receive after discharge;

(5) a final diagnosis based on the current edition of the *Diagnostic and Statistical Manual of Mental Disorders*;

(6) a description, including dosage instructions, of the prescribed medications the individual will need until the individual is evaluated by a physician, or provider with prescriptive authority; and

(7) the name of the person or entity responsible for providing and paying for the medication referenced in paragraph (6) of this subsection, which is not required to be the CSU.

(c) The CSU staff member coordinating the individual's discharge must provide a copy of the discharge summary as authorized by state and federal law, to LMHA, LBHA, LIDDA, or other community providers and consult with them to ensure continuity of care for the individual upon discharge from the CSU.

(d) The CSU staff member coordinating the individual's discharge must contact and coordinate with the individual's existing service providers and in accordance with the Health Insurance Portability and Accountability Act or other law prior to the individual's discharge.

(e) If the individual, or the individual's LAR, adult caregiver, or others authorized by the individual, refuse to participate in the discharge planning, the CSU staff member coordinating the individual's discharge must document the circumstances of the refusal in the individual's medical record.

(f) If extremely hazardous weather conditions exist or a disaster occurs, the physician may request the presiding judge or magistrate of a court that has jurisdiction over proceedings brought in accordance with Texas Health and Safety Code Chapter 574 to extend the period during which the individual may be detained in accordance with Texas Health and Safety Code §572.004(e).

#### §306.73. Discharge Notices.

(a) The CSU staff member coordinating the individual's discharge must notify the parent, LAR, or adult caregiver of the pending discharge of a child or adolescent, unless clinically contraindicated, in accordance with 25 TAC §411.483(b) (relating to Discharge Notices

and Release of Minors). If the treatment team believes notifying the individual's parent, LAR, or adult caregiver is clinically contraindicated, CSU staff must notify Texas Department of Family Protective Services.

(b) In accordance with Texas Health and Safety Code §576.007, before discharging any adult, the CSU staff member coordinating the individual's discharge must make a reasonable effort to notify the individual's LAR, adult caregiver, and others authorized by the individual and LAR or adult caregiver, of the discharge if the individual, LAR, or adult caregiver grants permission for the notification.

(c) Upon discharge, the CSU staff member coordinating the individual's discharge must provide the individual with written notification of the existence, purpose, telephone number, and address of the protection and advocacy system established in Texas, in accordance with 25 TAC Chapter 404, Subchapter E (relating to Rights of Persons Receiving Mental Health Services) and required by Texas Health and Safety Code §576.008.

§306.75. Discharge of a Voluntarily-Admitted Individual.

(a) In accordance with 25 TAC Chapter 404, Subchapter E, all individuals voluntarily admitted to a CSU for treatment of mental illness or SED have the right to be discharged within four hours of a request for release unless the individual's treating physician, (or another physician, if the treating physician, is not available) determines that there is cause to believe the individual might meet the criteria for emergency detention.

(b) When a CSU staff member is informed that a voluntarily-admitted individual wants to leave the CSU, or the individual's LAR or adult caregiver requests the individual be discharged, the CSU staff member must, in accordance with Texas Health and Safety Code §572.004 and 25 TAC Chapter 404, Subchapter E:

(1) inform the individual, and the individual's LAR or adult caregiver, if applicable, that the request must be in writing and signed, timed, and dated by the requestor; if the request for discharge is verbal, then the four hours begins at the time of a verbal request and must be documented in the medical record. Inform the individual or the individual's LAR of the potential four-hour delay from the time of the verbal request;

(2) assist the individual as soon as possible, with documenting the verbal request for discharge or creating a written request for discharge and presenting the request to the individual for the individual's signature; and

(3) inform the LAR or adult caregiver to submit written approval to the CSU administrator, or administrator's designee, for the CSU treating physician to discharge an individual younger than 18 years of age if the LAR or adult caregiver signed for the individual's admission to the CSU.

(c) If a voluntarily-admitted individual, or the individual's LAR or adult caregiver, if applicable, submits a verbal or written request for discharge from a CSU, the CSU staff member must:

(1) immediately notify the treating physician, or another CSU physician if the treating physician is not available, of the request after the request becomes known to the CSU; and

(2) file the request in the individual's medical record.

(d) If the physician, notified in subsection (b) of this section, and in accordance with Texas Health and Safety Code §572.004, does not have reasonable cause to believe that the individual may meet the criteria for court-ordered inpatient mental health services or emergency detention, the treating physician must discharge the individual within the four-hour time frame described in subsection (b) of this section.

(e) If the physician, notified in subsection (b) of this section, and in accordance with Texas Health and Safety Code §572.004, has reasonable cause to believe that the individual may meet criteria for court-ordered inpatient mental health services or emergency detention, the physician must examine the individual as soon as possible, but no later than 24 hours after the individual requests discharge from the CSU.

(1) If the physician conducting the examination described in this subsection determines that the individual does not meet criteria for court-ordered inpatient mental health services or emergency detention, the treating physician must discharge the individual upon completion of the examination.

(2) If a physician does not examine an individual for involuntary treatment criteria within 24 hours after the individual requests CSU discharge, the treating physician must discharge the individual even if the physician believes the individual may meet criteria for court-ordered inpatient mental health services or emergency services.

(f) If the physician conducting the examination described in subsection (e) of this section determines that the voluntarily-admitted individual meets the criteria for court-ordered inpatient mental health services or emergency detention, a CSU physician must, by 4:00 p.m. on the next business day, in accordance with Texas Health and Safety Code §572.004:

(1) file an application for court-ordered inpatient mental health services or emergency detention within 24 hours after the individual requests discharge from the CSU, and obtain a court order for further detention of the individual; or

(2) discharge the individual.

(g) If the CSU treating physician intends to detain a voluntarily-admitted individual and file an application to obtain a court order for further detention of the individual, a physician, or physician-delegated PA or APRN, must in accordance with Texas Health and Safety Code §572.004:

(1) notify the individual of such intention; and

(2) document the reasons for the decision to detain the individual in the individual's medical record.

(h) A CSU treating physician is not required, in accordance with Texas Health and Safety Code §572.004, to complete the discharge process described in this section if the voluntarily-admitted individual makes a written statement to withdraw the request for discharge.

§306.77. Maximum Length of Stay for a Voluntarily-Admitted Individual.

Except as allowed by paragraph (3) of this section, a CSU physician must discharge a voluntarily-admitted individual on the 14th day after the individual's admission, unless:

(1) the individual's treating physician orders the individual's discharge before the 14th day;

(2) the individual's treating physician orders the individual's transfer to other treatment or services, in accordance with §306.91 of this subchapter (relating to Transfers); or

(3) a physician, or physician-delegated PA or APRN, documents in the individual's medical record the medical necessity and clinical rationale for extending the length of stay beyond 14 days.

§306.79. Discharge of an Involuntarily-Admitted Individual.

(a) Discharge from emergency detention.

(1) Except as provided by §306.59 of this subchapter (relating to Voluntary Treatment Following Involuntary Admission) and in accordance with Texas Health and Safety Code §573.021 and §573.023, an involuntarily-admitted individual under emergency detention must be immediately discharged from a CSU if:

(A) the administrator or the administrator's designee determines, based on a physician's, or physician-delegated PA's or APRN's, determination, that the individual no longer meets the criteria described in subsection (b)(1) of this section; or

(B) except as provided in subsection (b) of this section, 48 hours lapse from the time the individual was presented to the CSU and the CSU medical director has not obtained a court order for the individual's further detention.

(2) In accordance with Texas Health and Safety Code §573.021(b), if the 48-hour period described in paragraph (1)(B) of this subsection ends on a Saturday, Sunday, or legal holiday, or before 4:00 p.m. on the next business day after the patient was presented to the CSU, the involuntarily-admitted individual may be detained until 4:00 p.m. on such business day.

(3) In accordance with Texas Health and Safety Code §573.021(b), the 48-hour custody period described in paragraph (1)(B) of this subsection includes any time during which the individual in custody spends waiting in the CSU for medical care before receiving a preliminary examination.

(b) Discharge under protective custody order. Unless an involuntarily-admitted individual consents to voluntary treatment, a CSU physician must immediately discharge the individual under an order of protective custody if:

(1) the CSU administrator or designee determines that, based on a physician's determination, the individual no longer meets the criteria for protective custody described in Texas Health and Safety Code §574.022;

(2) the CSU administrator or designee does not receive notice that the individual's continued detention is authorized after a probable cause hearing held within the time frame prescribed by Texas Health and Safety Code §574.025;

(3) a final order for court-ordered inpatient mental health services has not been entered within the time frame prescribed by Texas Health and Safety Code §574.005; or

(4) an order to release the individual is issued in accordance with Texas Health and Safety Code §574.028.

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 December 2, 2020.

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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 838-4346



## DIVISION 5. OPERATIONAL REQUIREMENTS

### 26 TAC §§306.81, 306.83, 306.85, 306.87, 306.89, 306.91, 306.93, 306.95

#### STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies. In addition, Texas Health and Safety Code §577.010 provides that the Executive Commissioner shall adopt rules and standards necessary and appropriate to ensure the proper care and treatment of patients in mental health facilities required to obtain a license under Chapter 577 of the Texas Health and Safety Code.

The new sections implement Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 577.

#### §306.81. Medical Record.

(a) A medical record must be maintained for each individual, in accordance with §510.41(g) of this title (relating to Facility Functions and Services). The medical record must include:

(1) a signed voluntary commitment, signed order of protective custody or police officer's warrant, or a notice of detention;

(2) a signed informed consent to treatment, including medication, or documentation of the individual's refusal;

(3) documentation of the reasons the individual, LAR, family members, or other adult caregivers state the individual was admitted to the CSU;

(4) justification for each mental illness or serious emotional disturbance diagnosis and any substance use disorder diagnosis;

(5) the level of monitoring assigned and implemented for the individual, including any changes to the level of monitoring;

(6) the individual's written recovery or treatment plan;

(7) the name of the individual's treating physician;

(8) written findings of the physical examination;

(9) written findings of the psychiatric evaluation, the nursing assessment, and any other assessment of the individual conducted by a staff member, including any re-evaluation or re-assessment;

(10) a summary of any revisions made to the written recovery or treatment plan;

(11) the progress notes for the individual as described in subsection (b) of this section;

(12) documentation of the individual's monitoring by unlicensed persons (UPs), LVNs, and any assigned staff members responsible for such monitoring, including observations of the individual at pre-determined intervals;

(13) documentation of the discharge planning activities;

(14) the discharge summary; and

(15) documentation of the individual's medical, mental health, and substance use history.

(b) Progress notes are required for each individual. A physician, a physician-delegated PA or APRN, or RN and any assigned staff members providing services to an individual must document the individual's progress and response to treatment provided in the individual's recovery or treatment plan.

#### §306.83. Staff Training.

(a) In accordance with §301.331 of this title (relating to Competency and Credentialing), a CSU administrator, or administrator's designee, must:

(1) ensure that services are provided by staff members who are operating within their scope of their license, credentialing, job description, or contract specification;

(2) define competency-based expectations for each CSU staff position and ensure each staff member receives initial training before the staff member assumes responsibilities required by the CSU and annually throughout the staff member's employment with the CSU; and

(3) require all staff members to demonstrate required competencies delineated in §301.331(a)(3)(A) of this title, including:

(A) identifying, preventing, and reporting abuse, exploitation, and neglect of individuals and unprofessional or unethical conduct, in accordance with 25 TAC §417.515 (relating to Staff Training in Identifying, Reporting, and Preventing Abuse, Neglect, and Exploitation);

(B) an individual's dignity and rights, in accordance with 25 TAC Chapter 404, Subchapter E (relating to Rights of Persons Receiving Mental Health Services); and

(C) protection of an individual's confidential information, in accordance with relevant state and federal laws, including 42 Code of Federal Regulations, Part 2.

(b) All UPs and any direct care staff members providing services to an individual must receive training and instruction in the following topics and demonstrate critical competencies delineated in §301.331(a)(3)(B) of this title, before the staff member assumes responsibilities required by the CSU and annually throughout the staff member's employment with the CSU:

(1) the implementation of the interdisciplinary treatment program for each individual before performing direct care duties without direct supervision; and

(2) the specialized needs of child, adolescent, and geriatric individuals, and individuals diagnosed with an ID or DD.

(c) An RN, LVN, and UP must receive training in:

(1) monitoring for individual safety; and

(2) infection control.

(d) A CSU nursing supervisor or designee must provide orientation training to a nursing staff member when the CSU nursing supervisor initially assigns the staff member to a unit on either a temporary or long-term basis.

(1) The orientation must include a review of:

(A) the location of equipment and supplies on the unit;

(B) the staff member's responsibilities on the unit;

(C) relevant information about individuals on the unit;

(D) relevant schedules of staff members and individuals; and

(E) procedures for contacting the staff member's supervisor.

(2) A CSU administrator, or administrator's designee, must document the provision of orientation to nursing staff.

(e) A staff member routinely providing treatment to, working with, or providing consultation about a geriatric individual must re-

ceive training in the social, psychological, and physiological changes associated with aging.

(f) A QMHP-CS or LPHA whose responsibilities include specialized services and tasks, including screening and assessment, must receive training in, and display specialty competencies for, tasks delineated in §301.331(a)(3)(C) of this title, before providing services for individuals and annually throughout the QMHP-CS's employment or association with the CSU.

(g) QMHP-CS and LPHA training must include instruction, including:

(1) age and developmentally appropriate clinical assessment, intervention, and engagement techniques;

(2) use of telemedicine equipment;

(3) developing and implementing an individualized treatment or recovery plan;

(4) developing and implementing an individualized discharge plan and referring an individual to local community resources;

(5) appropriate actions to take in a crisis; and

(6) clinical specialties directly related to the services to be performed.

(h) In accordance with Texas Health and Safety Code §572.0025(e), any staff member whose responsibilities include conducting an individual's intake must receive at least eight hours of intake training:

(1) before conducting an intake; and

(2) annually throughout the staff member's employment or association with the CSU.

(i) For any staff member whose responsibilities include conducting an individual's intake, intake training must include instruction regarding:

(1) obtaining relevant information about the individual, including information about finances, insurance benefits, and advance directives;

(2) explaining, orally and in writing, the individual's rights;

(3) explaining, orally and in writing, the CSU's services and treatment as they relate to the individual;

(4) informing the individual in writing, of the existence, telephone number, and address of the protection and advocacy system established in Texas;

(5) informing the individual about the availability of information and assistance from the Ombudsman by contacting the Ombudsman at 1-800-252-8154 or online at [hhs.texas.gov/ombudsman](http://hhs.texas.gov/ombudsman), and the Health Facility Licensing complaints line at 1-888-973-0022; and

(6) determining whether the individual comprehends the information provided in accordance with paragraphs (2) - (5) of this subsection.

(j) A staff member who may initiate a restraint or seclusion must receive training in, and demonstrate competency in, performing such interventions in accordance with applicable law and rule, including use of de-escalation techniques and reporting requirements.

(k) A staff member providing direct care must earn and maintain certification in Basic Life Support provided by the American Heart Association or the American Red Cross:

(1) before assuming responsibilities at the CSU; or

(2) no later than 30 days after the staff member is hired by the CSU if another staff member who has such certification is physically present and on duty on the same unit on which the uncertified staff member is on duty.

(l) A CSU administrator, or administrator's designee must:

(1) document when a staff member has successfully completed a training required by this section, including:

(A) the date of the training;

(B) the length of the training session; and

(C) the name of the instructor.

(2) Maintain certification or other evidence issued by the American Heart Association or the American Red Cross that a staff member has successfully completed the training in Basic Life Support.

(m) A staff member must perform in accordance with required training and the staff member's credentials.

§306.85. Minimum Staffing Requirements.

(a) A CSU nursing supervisor, or designee, must adhere to nurse staffing requirements delineated in §510.41(c)(8) and (j) of this title (relating to Facility Functioning and Services) and the following parameters when determining minimum staffing plans required by subsections (b) through (d) of this section.

(1) Staff included in the minimum staffing plan must:

(A) always be physically available while on duty; and

(B) have job duties that do not prevent ongoing and consistent supervision of individuals receiving crisis stabilization services.

(2) The minimum staffing plan must increase or decrease based on CSU census and acuity, individual level of monitoring and precautions, and developmental level, gender, age, and other individual needs and characteristics of individuals receiving crisis stabilization services.

(3) A staff member on one-to-one supervision of an individual cannot be included in the CSU's minimum staffing plan.

(b) The minimum staffing plan includes:

(1) one physician, preferably a psychiatrist, or physician-delegated PA or APRN, onsite or at minimum immediately available through telecommunication or telephone 24 hours a day, seven days a week;

(2) one LVN or one RN physically present and on duty 24 hours a day, seven days a week, when an individual is present in the CSU;

(3) one RN available onsite within 10 minutes after being contacted by a staff member, if an RN is not physically present and on duty when an individual is in the CSU;

(4) one QMHP-CS onsite from 8:00 a.m. to 5:00 p.m., Monday through Friday; and

(5) two UPs onsite 24 hours a day, seven days a week.

(c) A nursing supervisor or an RN charge nurse receiving clinical and administrative consultation from the facility administrator and medical director or on-call physician, APRN, or PA must be available, in person or by telephone, 24 hours a day, seven days a week, to provide clinical oversight to CSU RNs, LVNs, QMHP-CSs, and UPs.

(d) The nursing supervisor or designee must develop and implement a written staffing plan describing the number of RNs, LVNs, and UPs on each unit for each shift, in accordance with subsections (a) and (b) of this section, that meet the following requirements:

(1) The staffing plan must be based on the census, needs, and characteristics of individuals, and acuity of the CSU.

(2) The nursing supervisor or designee must document the nursing supervisor's or designee's determinations regarding the factors described in paragraph (1) of this subsection:

(A) at the time the staffing plan is developed; and

(B) when the nursing supervisor or designee makes any revisions to the staffing plan based on a change in such factors.

(3) A CSU nursing supervisor must retain the staffing plan and the documentation required by paragraph (2) of this subsection for two years.

(4) The nursing supervisor or designee must revise the staffing plan, as necessary.

§306.87. Protection of an Individual Receiving Crisis Stabilization Unit Services.

(a) At the time an individual is admitted, a CSU nursing supervisor or designee must implement the level of monitoring ordered by the physician, or physician-delegated PA or APRN, based on the individual's needs and in accordance with this section.

(b) All CSU staff must contribute to the protection of individuals by:

(1) modifying the CSU environment based on the individual's needs, including:

(A) providing furnishings that do not present safety hazards to the individual;

(B) securing or removing objects that are hazardous to the individual;

(C) installing any necessary safety devices; and

(D) making roommate assignments and other decisions affecting the interaction of the individual with other individuals, based on individual needs and vulnerabilities;

(2) monitoring the individual in accordance with the physician's, or physician-delegated PA's or APRN's, order and CSU written policies and procedures; and

(3) documenting the individual's level of monitoring ordered by the physician, or physician-delegated PA or APRN, in the individual's medical record.

(c) A CSU medical director must ensure:

(1) each level of monitoring is defined in the CSU's policies and procedures, including a description of the responsibilities of staff members for each level of monitoring identified; and

(2) implementation of the level of monitoring ordered by the physician, or physician-delegated PA or APRN, based on the individual's needs.

(d) In accordance with Texas Health and Safety Code §321.002, a CSU administrator or administrator's designee, must keep children and adolescents separate from adults.

(e) All CSU staff must maintain an individual's confidential information in accordance with the Health Insurance Portability and Accountability Act rules and 1 TAC Chapter 390, Subchapter A (relating

to Standards Relating to the Electronic Exchange of Health Information). CSU staff must:

(1) be knowledgeable of and obey all current state and federal laws and regulations relating to confidential information regarding the provision of services; and

(2) not disclose confidential information without the express written consent of the individual, and individual's LAR or adult caregiver, if applicable, except as permitted by the Health Insurance Portability and Accountability Act or other law.

(f) Qualified CSU staff must adhere to transportation requirements provided in accordance with 25 TAC §404.156 (relating to Additional Rights of Persons Receiving Residential Mental Health Services at Department Facilities) and Texas Health and Safety Code §574.045 and §574.0455 if the CSU provides transportation.

§306.89. Crisis Stabilization Unit Response to an Emergency Medical Condition.

(a) A CSU administrator, or administrator's designee, must:

(1) identify common emergency medical conditions of individuals the CSU staff will likely encounter; and

(2) develop a written plan describing the specific and appropriate action the CSU staff members will take to stabilize each identified common emergency medical condition, approved in writing by the medical director, as required by §306.61 of this subchapter (relating to Crisis Stabilization Unit Medical Services), which includes:

(A) the administration of first aid and Basic Life Support when clinically indicated;

(B) the use of the supplies and equipment described in subsection (f) of this section; and

(C) if the action is facilitating transfer of the individual, a description of the method of transportation, and the name and location of the hospital to which an individual will be transferred.

(b) At least one physician, or physician-delegated PA or APRN, must, at all times:

(1) be physically present at a CSU to respond to an individual's emergency medical condition; or

(2) be available to staff members by telephone, radio, or audiovisual telecommunication device to provide medical consultation as soon as possible, but not longer than 30 minutes.

(c) If a CSU physician, or physician-delegated PA or APRN, determines an individual has an emergency medical condition:

(1) the CSU physician, or physician-delegated PA or APRN, must act to stabilize the emergency medical condition within the capability of the CSU staff's abilities and in accordance with the plan required by subsection (a)(2) of this section, and summon emergency medical services (EMS) for transfer to a general hospital; and

(2) EMS transfers the individual to a general hospital from the CSU, an RN must, as soon as possible:

(A) inform the general hospital to which the transfer is made, by telephone, of:

(i) the general condition and medical diagnoses of the individual;

(ii) the medications administered, and treatments provided, to the individual by the CSU; and

(iii) the prognosis of the individual; and

(B) provide a copy of the individual's medical records to the general hospital to which the transfer is made.

(d) A CSU administrator, or administrator's designee, must have a written agreement with a general hospital that the hospital will accept, for medical treatment and care, an individual transferred from the CSU in accordance with subsection (c) of this section.

(e) The CSU must have at least one staff member on each shift certified in Basic Life Support and available to respond to emergency medical conditions in accordance with the plan required by subsection (a)(2) of this section.

(f) The CSU must have an adequate amount of appropriate emergency supplies and equipment immediately available and fully operational at the CSU to respond to emergency medical conditions in accordance with the plan required by subsection (a)(2) of this section, including, at a minimum:

(1) oxygen;

(2) manual breathing bags and masks;

(3) an automated external defibrillator; and

(4) a first aid kit.

(g) A CSU administrator, or administrator's designee, must have a written natural disaster response policy and an active shooter policy.

§306.91. Transfers.

(a) Transfers due to dangerous behavior, restraint, seclusion, or commitment orders. A CSU administrator, or administrator's designee, must facilitate an individual's transfer to an inpatient mental health facility, which may include contacting law enforcement or obtaining permission from the court that issued the protective custody to transfer the individual, as appropriate, if:

(1) a physician, or physician-delegated PA or APRN, determines the individual is at serious risk of harm to self or others in the CSU;

(2) during a 24-hour period, the individual is placed in:

(A) seclusion more than twice or for more than a total of four hours; or

(B) a restraint for more than 60 consecutive minutes; or

(3) the individual becomes the subject of:

(A) an order for temporary inpatient mental health services issued in accordance with Texas Health and Safety Code §574.034; or

(B) an order for extended inpatient mental health services issued in accordance with Texas Health and Safety Code §574.035.

(b) A CSU administrator, or administrator's designee, must immediately facilitate an individual's transfer to a general hospital or another health care entity, as appropriate, if the individual:

(1) requires specialized care not available at the CSU; or

(2) has a physical medical condition that is unstable and could reasonably be expected to require inpatient treatment for the condition.

(c) An administrator of a CSU solely serving children and adolescents must immediately facilitate an individual's transfer to an inpatient mental health facility serving adults when the individual:

(1) turns 18 years of age; and

(2) does not meet criteria for discharge from CSU treatment services.

§306.93. Reporting and Investigating Sentinel Events.

The CSU administrator or administrator's designee must develop and implement written procedures to identify, report and investigate sentinel events. The procedures must include:

(1) a description of the process by which a staff member reports a sentinel event, including a requirement that a sentinel event be reported by a staff member as soon as possible to the Health Facility Licensing complaints line, 1-888-973-0022, no later than one hour after a staff member becomes aware of the incident;

(2) a requirement that, within 24 hours after a known sentinel event being reported, the administrator, or administrator's designee, designates a committee to investigate the sentinel event that includes:

(A) a physician, or physician-delegated PA or APRN;

(B) an RN; and

(C) any other staff members determined appropriate by the administrator; and

(3) a requirement that, within 45 days of the sentinel event being reported, the committee will determine and document:

(A) the cause of the sentinel event;

(B) whether the cause is random or a pattern of error in the CSU's processes or systems;

(C) any improvements to the CSU's processes or systems that may reduce the occurrence of similar incidents in the future;

(D) how such improvements will be implemented including a timeline for implementation;

(E) the staff members responsible for such implementation; and

(F) a method to determine whether the improvements identified were effective in reducing the occurrence of similar incidents.

§306.95. Response to External Reviews.

A CSU administrator, or administrator's designee, must develop and implement a written plan to evaluate the effectiveness of any plan of correction the CSU administrator, or administrator's designee, submits to an external review entity.

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 December 2, 2020.

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Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: January 17, 2021

For further information, please call: (512) 838-4346



## CHAPTER 360. OFFICE OF DEAF AND HARD OF HEARING SERVICES

## SUBCHAPTER C. SPECIALIZED TELECOMMUNICATIONS ASSISTANCE PROGRAM

**26 TAC §§360.501, 360.503, 360.505, 360.507, 360.509, 360.511, 360.513, 360.515, 360.517, 360.519, 360.521, 360.523, 360.525, 360.527, 360.529, 360.531, 360.533, 360.535**

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes new Chapter 360, Subchapter C, concerning Specialized Telecommunications Assistance Program, consisting of §§360.501, 360.503, 360.505, 360.507, 360.509, 360.511, 360.513, 360.515, 360.517, 360.519, 360.521, 360.523, 360.525, 360.527, 360.529, 360.531, 360.533, and 360.535.

### BACKGROUND AND PURPOSE

The purpose of the proposal is to update and relocate the Specialized Telecommunications Assistance Program (STAP) rules from 40 TAC Chapter 109, Subchapter C to 26 TAC Chapter 360, Subchapter C. The relocation of the rules is necessary to implement Senate Bill 200, 84th Legislature, Regular Session, 2015, which transferred the functions of the legacy Department of Assistive and Rehabilitative Services (DARS) to HHSC. These proposed rules intend to replace repealed rules in 40 TAC Chapter 109, Subchapter C. The rule repeals are proposed simultaneously elsewhere in this issue of the *Texas Register*.

The text of the rules is largely carried over from 40 TAC Chapter 109, Subchapter C with some changes. One such change is to reflect the modernization of STAP. More specifically, HHSC developed a new online STAP database allowing registered vendors to claim vouchers issued through the system. Therefore, the proposed rules require registered vendors to claim vouchers online to be eligible for reimbursement.

Another change is made to the eligibility requirements which establishes an age requirement of 5 years old to be eligible for vouchers toward equipment for telephone network access. This mitigates the likelihood of applicants and their families applying for STAP for communication access purposes rather than telephone access.

Other changes include expanding the categories of professionals authorized to certify program applicants for vouchers, clarifying certifier and vendor responsibilities, and changing references from the legacy DARS to HHSC.

### SECTION-BY-SECTION SUMMARY

Proposed new §360.501, concerning Purpose, describes the purpose of STAP.

Proposed new §360.503, concerning Legal Authority, provides the legal authority for STAP.

Proposed new §360.505, concerning Definitions, provides the key terms and phrases used in the rules.

Proposed new §360.507, concerning Determination of Basic Specialized Telecommunications Equipment or Service, describes the criteria used for determining basic specialized telecommunications equipment or service available through voucher exchange.



Proposed new §360.509, concerning Preliminary and Comprehensive Assessment, describes the role of program staff in evaluating and reviewing applications.

Proposed new §360.511, concerning Voucher Recipient Eligibility, describes the eligibility requirements to obtain a voucher under the program.

Proposed new §360.513, concerning Persons Authorized to Certify Disability, lists the types of professionals authorized to certify an applicant for a voucher.

Proposed new §360.515, concerning Vouchers, describes the specifications of vouchers issued to approved applicants.

Proposed new §360.517, concerning Determination of Voucher Category Value and Eligibility Criteria for a Voucher, specifies the procedures taken in determining voucher category values and applicant eligibility criteria.

Proposed new §360.519, concerning Consumer Confidentiality, outlines how application information will be used by the program.

Proposed new §360.521, concerning Determination of Approved Equipment or Services, outlines the procedures taken in approving equipment and services provided through a voucher.

Proposed new §360.523, concerning Equipment Values for Approved Equipment or Services, specifies the procedures taken in determining the equipment values for reimbursement.

Proposed new §360.525, concerning STAP Vendor Eligibility Requirements, provides eligibility requirements to perform as a vendor under the program.

Proposed new §360.527, concerning STAP Vendor Duties and Responsibilities, which describes the vendor's duties and responsibilities in providing equipment and requesting reimbursement.

Proposed new §360.529, concerning Voucher Reimbursement, describes the process for reimbursement.

Proposed new §360.531, concerning Suspension or Loss of STAP Vendor Eligibility, outlines causes for vendor suspension or termination.

Proposed new §360.533, concerning Reinstatement of STAP Vendors, outlines the steps for reinstatement of a vendor after suspension or termination.

Proposed new §360.535, concerning Vendor Required Approved Equipment or Service Inventory, describes the responsibilities of both program and vendor in relation to inventory of equipment and services.

#### FISCAL NOTE

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

#### GOVERNMENT GROWTH IMPACT STATEMENT

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

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

(3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;

(4) the proposed rules will not affect fees paid to HHSC;

(5) the proposed rules will create new rules in 26 TAC which will replace rules being repealed contemporaneously from 40 TAC;

(6) the proposed rules will repeal existing rules;

(7) the proposed rules will not change the number of individuals subject to the rules; and

(8) the proposed rules will not affect the state's economy.

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

Trey Wood, Chief Financial Officer, has also determined there is no adverse small business, micro-business, or rural community impact related to the repeal of the proposed rules. The new proposed rule does not impose any additional costs on small business, micro-businesses, or rural communities that are required to comply with the rules.

#### LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

#### COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules do not impose a cost on regulated persons.

#### PUBLIC BENEFIT AND COSTS

Dee Budgewater, Deputy Executive Commissioner for Health, Developmental, and Independence Services, has determined that for each year of the first five years the rules are in effect, the public benefit will be more choice in equipment selection and in professionals who can certify an application, as well as better services from program providers.

Trey Wood, Chief Financial Officer, has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules. There is no requirement for performing providers to alter their business practices.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Written comments on the proposal may be submitted to Bryant Robinson, STAP Manager, P.O. Box 12904, Austin, TX 78711; or by email to [DHHS.STAP@hhsc.state.tx.us](mailto:DHHS.STAP@hhsc.state.tx.us).

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 18R061" in the subject line.

## STATUTORY AUTHORITY

The proposed new rules are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies. The proposed new rules are also authorized by Texas Utilities Code §56.151, which provides that the Executive Commissioner of HHSC by rule shall establish a specialized telecommunications assistance program to provide financial assistance to individuals with disabilities that impair the individuals' ability to effectively access the telephone network.

The proposed new rules implement Texas Government Code §531.0055 and Texas Utilities Code §56.151.

### §360.501. Purpose.

The purpose of this subchapter is to set out the administration and general procedures governing the Texas Health and Human Services Commission Office of Deaf and Hard of Hearing Services (ODHHS), Specialized Telecommunications Assistance Program (STAP).

### §360.503. Legal Authority.

STAP is created under the authority of the Texas Utilities Code Chapter 56, Subchapter E.

### §360.505. Definitions.

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

(1) Application--The form ODHHS uses to gather and document information about a person to determine eligibility when applying for assistance under STAP.

(2) Approved Equipment or Service--The equipment or service approved by ODHHS for reimbursement under STAP.

(3) Basic Specialized Telecommunications Equipment--A basic device, or basic devices that work together as one device, determined by ODHHS to be necessary to provide effective access to the telephone network for a person whose disabilities impair the person's ability to access the telephone network.

(4) Basic Specialized Telecommunications Service--A service, or services that work together as one service, determined by ODHHS to be necessary to provide effective access to the telephone network for a person whose disabilities impair the person's ability to access the telephone network.

(5) Claimed Voucher--To claim a voucher, vendors are to provide voucher exchange information in the ODHHS STAP online claiming system. A vendor must be registered with STAP to receive access to the claiming system.

(6) Entity--Any individual owner, partner, company, or other business organization.

(7) Equipment Value--A monetary value established by ODHHS for allowable specialized telecommunications equipment or service, identified by make and model or service.

(8) Financial Assistance--A type of assistance provided based on the monetary value established by a voucher for basic, specialized telecommunications equipment or service, where the value may not cover the full price of the equipment or service.

(9) Financial Independence--An instance in which two or more otherwise eligible persons reside in the same household but are not dependent upon one another for financial support.

(10) Functionally Equivalent Network Access--Access to the telephone network that provides communication access for a per-

son with a disability, which is comparable to that of persons without a disability.

(11) HHSC--Texas Health and Human Services Commission.

(12) Legal Guardian--A person appointed by a court of competent jurisdiction to exercise the legal powers of another person.

(13) ODHHS--The HHSC Office of Deaf and Hard of Hearing Services.

(14) PUC--The Public Utility Commission of Texas.

(15) Resident--A person who resides in Texas as evidenced by one of the following unexpired documents:

(A) Texas driver's license;

(B) ID card issued by a governmental entity with address;

(C) utility bill with address;

(D) voter registration card;

(E) vehicle registration receipt;

(F) official letter from a residential facility signed by the director or supervisor; or

(G) other document approved by ODHHS.

(16) Signature Authority--A person who represents a vendor and is authorized to sign and exchange vouchers on behalf of the vendor.

(17) STAP--The Specialized Telecommunications Assistance Program.

(18) STAP Vendor--An entity that sells basic specialized telecommunications equipment or services, as defined under STAP, and is registered with and approved by ODHHS. A STAP vendor includes any individual owners, partners, companies, or other entities with an ownership interest in the STAP vendor.

(19) TUSF--The Texas Universal Service Fund.

(20) Voucher--A financial assistance document issued by ODHHS to eligible applicants that is used to purchase a specified type of basic specialized telecommunications equipment or service from a STAP vendor.

(21) Voucher Category--A specific class of basic specialized telecommunications equipment or services that provides the same or similar type of telephone network access.

(22) Voucher Category Value--For a specific voucher category, ODHHS will determine a reasonable price, which is the maximum reimbursement amount for any basic specialized telecommunications equipment or service within that voucher category.

### §360.507. Determination of Basic Specialized Telecommunications Equipment or Service.

(a) In determining basic specialized telecommunications equipment or service available for voucher exchange, ODHHS applies the following criteria.

(1) The equipment or service must be for the purpose of accessing the telephone network.

(2) The primary function of the equipment or service must apply to telephone network access and not to daily living access, unless:

(A) the equipment or service for daily living access enables a person to access the telephone network and is less expensive

than equipment or service that functions primarily for telephone access; or

(B) there is no other equipment or service available that enables telephone access.

(3) A service must be less expensive than the basic specialized telecommunications equipment approved for a voucher under STAP and must be able to meet the same need.

(b) ODHHS maintains a list of eligible specialized telecommunications equipment and services.

§360.509. Preliminary and Comprehensive Assessment.

(a) Preliminary assessment. To determine whether a person is eligible for a voucher, ODHHS conducts a preliminary assessment based on the certification section of the application. A person is eligible if ODHHS determines that the person:

(1) has a disability that impairs the person's ability to effectively access the telephone network; and

(2) can gain access to the telephone network and communicate effectively with basic specialized telecommunications equipment or a service authorized by the specific voucher applied without the assistance of another person.

(b) Comprehensive assessment. An in-depth assessment that contains information necessary to identify the basic needs that enable the person to access telephone networks. If, after the preliminary assessment is completed, and additional information is needed to determine the appropriate basic voucher for an eligible person, ODHHS may conduct a comprehensive assessment of the person's disabilities, abilities, and needs, which may include medical information.

(c) Final determination. ODHHS determines eligibility for a voucher, and the determination is final.

§360.511. Voucher Recipient Eligibility.

(a) To be eligible for assistance from STAP, a person must:

(1) be a resident of Texas;

(2) be a person with a disability that impairs the person's ability to effectively access the telephone network;

(3) be at least 5 years of age;

(4) be in a situation where no other person in the household with the same type of disability needing comparable equipment has received a voucher for equipment unless persons in the household are financially independent of each other;

(5) not have received a voucher from ODHHS for any specialized telecommunications equipment or services before the fifth anniversary of the date the person exchanged the previously issued voucher under STAP, unless before that anniversary, the person demonstrates that the person is no longer able to use the previous equipment or service received and has developed a need for a different type of specialized telecommunications equipment or service under STAP because of a change in the person's disability status;

(6) be able to benefit from the specialized telecommunications equipment or service provided by the voucher in accessing the telephone network without assistance of another person; and

(7) be certified as a person with a disability that impairs the person's ability to effectively access the telephone network, by an individual who meets the requirements of §360.513 of this subchapter (relating to Persons Authorized to Certify Disability).

(b) A voucher recipient who has not exchanged an issued voucher in compliance with this subchapter, within the last five years,

may be eligible for another voucher, as long as all other eligibility requirements are satisfied.

(c) A voucher recipient who has returned the equipment or has stopped a service received through the exchange of a voucher, in compliance with this subchapter, may be eligible for another voucher if the equipment is returned or the service is stopped in compliance with §360.527 of this subchapter (relating to STAP Vendor Duties and Responsibilities).

(d) A voucher recipient of an exchanged voucher in which the registered vendor was not reimbursed for the voucher exchanged in compliance with this subchapter, may be eligible for another voucher, as long as all other eligibility requirements are satisfied.

§360.513. Persons Authorized to Certify Disability.

(a) An applicant must be certified as a person with a disability that impairs the person's ability to effectively access the telephone network. The following may serve as certifiers:

(1) licensed hearing aid specialists;

(2) licensed audiologists;

(3) licensed optometrists;

(4) licensed physicians;

(5) licensed advanced practice registered nurses;

(6) Texas Workforce Commission vocational rehabilitation counselors;

(7) state-certified teachers of persons who are deaf or hard of hearing;

(8) licensed speech pathologists;

(9) state-certified teachers of persons who are visually impaired;

(10) state-certified teachers of persons who are speech-impaired;

(11) state-certified special education teachers;

(12) STAP specialists authorized to work under an ODHHS STAP Outreach and Training contract;

(13) licensed social workers;

(14) Independent Living Services specialists, such as rehabilitation counselors, authorized to work under an HHSC Independent Living Services contract;

(15) ODHHS-approved specialists working in a disability-related field; or

(16) any other professional approved by ODHHS.

(b) An application must be properly certified before ODHHS can process and approve the application and issue the voucher.

(c) Certifiers who have misrepresented an applicant's disability, certified an applicant without a disability, violated or who are under pending review of investigation for alleged violations of any HHSC, PUC, or other rules, policies, or laws relating to STAP may no longer be authorized to certify applications. Persons committing or suspected of committing such violations may be referred to PUC, to the certifier's licensing agency, or to both, as appropriate.

§360.515. Vouchers.

(a) Eligible applicants are issued an individually numbered voucher with a specified dollar value to be used toward the purchase

of the specialized telecommunications equipment or service that must be listed on the voucher.

(b) A voucher guarantees payment up to the amount specified on the voucher to a STAP vendor if all applicable rules, policies, procedures, and laws are satisfied.

(c) A voucher may not cover the full price of applicable equipment or service available under STAP.

(d) An eligible applicant exchanging a voucher for the purchase of a specialized telecommunications equipment or service is responsible for payment of the difference between the voucher's value and the price of the equipment or service.

(e) A voucher is nontransferable and has no cash value.

(f) A voucher expires on the date stated on the voucher and is no longer valid after the expired date.

(g) A voucher cannot be exchanged before the voucher date stated on the voucher.

§360.517. Determination of Voucher Category Value and Eligibility Criteria for a Voucher.

(a) ODHHS determines the reasonable price for basic specialized telecommunications equipment or services for a voucher. The price becomes the voucher category value for a specific voucher.

(b) The voucher category value as determined by ODHHS may not cover the entire cost of the basic specialized telecommunications equipment or service.

(c) ODHHS reviews voucher category values at least annually. The voucher category value determination is based on factors that include reasonable and customary industry standards for each specific equipment or service.

(d) ODHHS reviews eligibility criteria for a voucher category at least biennially. ODHHS solicits input from persons ODHHS considers knowledgeable in technology and in the telephone access needs of persons with disabilities.

(e) Proposed voucher category values and eligibility criteria are posted to the ODHHS STAP webpage for comments 45 calendar days before final determinations are made for a voucher category. Comments obtained from the advance posting are considered in determining voucher category values and eligibility criteria for a voucher category.

(f) ODHHS determines voucher category values and eligibility criteria for a voucher category, and the determination is final.

§360.519. Consumer Confidentiality.

(a) All information ODHHS receives in the application process for STAP, including names and addresses, may be used only to administer STAP.

(b) ODHHS may not advertise, distribute, or publish the name, address, or other related information about a person who applies for assistance under STAP. Information concerning STAP is exempted from disclosure under the Public Information Act.

(c) All STAP applicant information is the sole property of ODHHS.

§360.521. Determination of Approved Equipment or Services.

(a) ODHHS determines approved makes and models of equipment and specific services for voucher exchange for reimbursement to STAP vendors.

(b) ODHHS reviews approved equipment and services at least annually. The approval of equipment and services are governed by

§360.507 of this subchapter (relating to Determination of Basic Specialized Telecommunications Equipment or Service).

(c) ODHHS determines approved makes and models of equipment and specific services, and the determination is final.

§360.523. Equipment Values for Approved Equipment or Services.

(a) ODHHS determines a reasonable equipment value for approved makes and models of specialized telecommunications equipment and services to be paid to STAP vendors for exchanged vouchers.

(b) ODHHS reviews equipment values at least annually. Equipment value determinations are based on factors that include reasonable and customary industry standards for approved equipment and specific services.

(c) Proposed equipment values for approved equipment or services are posted to the ODHHS STAP web page for comments 45 calendar days before final determinations are made. Comments obtained from the advance posting are considered in determining equipment values for approved equipment and specific services.

(d) ODHHS determines equipment values for reimbursement to a STAP vendor, and the determination is final.

§360.525. STAP Vendor Eligibility Requirements.

(a) To be eligible to serve as a STAP vendor and receive reimbursements for STAP vouchers appropriately exchanged, an entity shall meet the following eligibility requirements:

(1) complete the registration process;

(2) maintain contact information to include current:

(A) owners, principal partners, officers, company legal names, and Doing Business As (DBA) names;

(B) telephone number;

(C) email address;

(D) physical address;

(E) mailing address;

(F) current Federal Employer Identification Number (FEIN);

(G) bank information for STAP vendor reimbursement payments by direct deposit; and

(H) names of individuals who are authorized to sign and exchange a voucher.

(3) not be barred, debarred, suspended, proposed for debarment, declared ineligible, or excluded from participation in STAP by HHSC or any federal or Texas state agency; and

(4) not owe any delinquent debts or outstanding obligations to TUSF or any Texas state agency.

(b) In order to maintain eligibility, STAP vendors shall comply with the following requirements:

(1) register annually; and

(2) exchange or receive reimbursement for at least one STAP voucher every six months.

(c) STAP vendors that have lost STAP eligibility because of failure to exchange or receive reimbursement for a voucher during a six-month period may request reinstatement by ODHHS in accordance with §360.533 of this subchapter (relating to Reinstatement of STAP Vendors).

§360.527. STAP Vendor Duties and Responsibilities.

(a) STAP vendors shall comply with all applicable rules, policies, procedures, and laws governing STAP to remain eligible to participate in and receive reimbursement under STAP.

(b) Any STAP vendor failing to comply with subsection (a) of this section may be denied reimbursement.

(c) STAP vendors shall supply only new equipment that was purchased by the STAP vendor directly from a supplier.

(d) STAP vendors cannot receive STAP reimbursement for:

(1) used equipment;

(2) equipment paid for directly by a customer;

(3) vouchers on which the vendor or one of the vendor's employees are also the named certifier before written approval by ODHHS;

(4) vouchers that are not properly completed or redeemed in accordance with the voucher terms, conditions, and instructions;

(5) returned equipment and requests to terminate services;

(6) vouchers that are not claimed in the ODHHS STAP claiming system by the vendor in accordance with this subchapter, STAP policies, and STAP procedures; or

(7) vouchers on which the certifier is working for or on behalf of the vendor and the certifier has violated or is under pending review or investigation for alleged violations of HHSC, PUC or other rules, policies, or laws regulating STAP.

(e) STAP vendors shall allow voucher recipients to return equipment that was not damaged when the voucher recipient originally took possession, or stop a service without penalty, if the voucher recipient attempts to return the equipment or requests that the service be terminated within 30 calendar days after receipt of the equipment or service.

(1) STAP vendors that can show they have made reasonable but unsuccessful attempts to retrieve or accept the return of the equipment from the voucher recipient, are not required to accept the return beyond the 30 calendar day requirement.

(2) STAP vendors shall document any attempts to accept or retrieve equipment returned by the recipient.

(f) STAP vendors shall provide a voucher recipient with a receipt if equipment is returned or service is terminated.

(g) STAP vendors must contact ODHHS within 10 calendar days after equipment is returned or service is requested to be stopped in the event that equipment is returned, service is unused, or service is requested to be terminated by the STAP voucher recipient within 30 calendar days from voucher exchange date.

(h) STAP vendors must reimburse TUSF within 30 calendar days after equipment is returned or service is requested to be stopped, if equipment is returned, service is unused, or service is requested to be terminated by the STAP voucher recipient within 30 calendar days from voucher exchange date.

(i) STAP vendors shall not submit a voucher for reimbursement before 10 calendar days from the date of the voucher exchange and before the equipment or services is delivered.

(j) STAP vendors shall provide efficient delivery of equipment or access to services no later than 10 calendar days after the voucher claim or communication with the STAP voucher recipient when the equipment or service will be delivered.

(k) STAP vendors shall provide STAP voucher recipients information on, instructions to, or demonstration of the use and setup of the equipment as appropriate to help recipients understand how to use and set up the equipment before completing the sale and submitting the voucher for reimbursement.

(l) STAP vendors shall ensure that when they work with or act as STAP certifiers, appropriate equipment is selected for the STAP applicant.

(m) STAP vendors shall not assess a STAP voucher recipient an additional fee, cost, or penalty, in addition to the STAP vendor price, except a reasonable shipping cost for mail orders, when a STAP voucher recipient purchases equipment or services with a STAP voucher.

(n) STAP vendors shall notify ODHHS in writing at least 60 calendar days before the intended effective date of any change in legal entity status, such as ownership or control, name change, federal or state legal status, bank routing information, or contact information.

(o) STAP vendors shall retain records related to STAP, including purchase of the equipment or service exchanged, and the distribution or delivery of equipment or service to the voucher recipient for a minimum of six years from the date of the voucher exchange.

(p) STAP vendors shall allow ODHHS to conduct an audit, investigation, and STAP oversight of their business.

(1) During the six-year retention period, STAP vendors shall permit ODHHS, the State Auditor's Office, PUC, or their successor agencies, to conduct an audit or investigation of the STAP vendor in connection with funds received for reimbursement of a STAP voucher. STAP vendors will provide any books, documents, papers, and records that are pertinent to the exchange of a STAP voucher, for the purpose of conducting audits, examinations, or investigations, or for the production of excerpts and transcriptions.

(2) STAP vendors shall cooperate fully in an audit, examination, investigation, funds validation, or in the production of excerpts and transcriptions.

(3) STAP vendors shall provide documentation from third parties reflecting equipment or services purchased and the purchase price and records showing sales to non-STAP consumers.

(4) STAP vendors shall permit ODHHS staff during any on-site monitoring visits to review all records and management control systems relevant to the exchange of a STAP voucher.

(5) STAP vendors shall remedy, within 30 calendar days of notice, any weaknesses, deficiencies, or STAP noncompliance found as a result of a review, audit, or investigation as well as performance or fiscal exceptions found by ODHHS, the State Auditor's Office, PUC, any successor agencies, or any duly authorized representatives of said agencies.

(6) STAP vendors shall refund disallowed costs or billed amounts or pay any other appropriate sanctions or penalties imposed by ODHHS directly to TUSF.

(q) STAP vendors shall provide to the STAP voucher recipient, all equipment or services as authorized on the voucher.

(r) STAP vendors shall ensure that individuals authorized to sign a STAP voucher receive training provided by ODHHS before signing or exchanging a STAP voucher.

(s) STAP vendors shall not stamp, label, or affix any company information on any STAP-related promotional materials or applications as a form of marketing.

(t) STAP vendors must exchange or receive reimbursement for at least one STAP voucher during the most recent six-month period. Failure to do so may result in automatic removal from the list of eligible STAP vendors.

(u) STAP vendors shall ensure that the vendor's advertised purchase price for equipment or services is not arbitrarily inflated.

(v) STAP vendors shall be accessible by telephone and in-person to provide assistance under STAP, including inquiries and complaints during standard business hours. Service representatives shall respond within 72 hours or 3 business days after the request for assistance is made, whichever occurs first. If a representative is not available to answer the telephone, an automated answering message system must provide callers with the vendor's company name and hours of operation and allow callers to leave a message.

(w) STAP vendors shall maintain a website displaying current equipment and services available by the vendor for purchase with a STAP voucher, in an easy-to-understand format. Website information shall include:

(1) the make, model, and cost to the STAP voucher recipient, or the cost above the established STAP equipment value for each equipment sold by the vendor under a STAP voucher;

(2) specific named services and cost to the STAP voucher recipient, or the cost above the established STAP equipment value for each named service;

(3) a description of equipment or service sufficient to cover functionality of the equipment needed for persons with disabilities in accessing the telephone networks; and

(4) contact information, including physical business location, hours of service, and email address.

(x) STAP vendors shall maintain a required inventory for demonstration purposes as established by ODHHS and ensure equipment or service from that inventory is made available to STAP voucher recipients for each voucher that the vendor intends to exchange for a STAP voucher. Vendors shall comply with the inventory requirements of newly added inventory within 30 calendar days after notice by ODHHS. STAP vendors shall update their websites within 10 calendar days after the date their inventory has been updated.

#### §360.529. Voucher Reimbursement.

(a) Not later than the 45th calendar day after the date ODHHS receives the voucher and all required supporting documentation from the STAP vendor, or the date the vendor has claimed the voucher in the ODHHS STAP claiming system, whichever date occurs later, the ODHHS will pay the STAP vendor from TUSF the lesser of the:

(1) ODHHS established equipment value;

(2) STAP vendor's advertised purchase price; or

(3) voucher value established by ODHHS for the voucher category of the equipment or service exchanged.

(b) Vouchers will not be reimbursed for partial exchanges. All equipment must be exchanged as authorized on the voucher.

(c) STAP vendors will not be reimbursed for voucher exchanges that are made during any time the STAP vendor is barred, debarred, suspended, proposed for debarment, declared ineligible, or excluded from participation in STAP by HHSC or any federal or Texas state agency.

(d) STAP vendors seeking reimbursement for the sale of STAP equipment from an additional source (such as Medicare, Medicaid, or

private insurance) in conjunction with a voucher exchange may not receive more than the total price of the equipment from all sources.

(e) A STAP vendor that exchanges a STAP voucher in person for the purchase of approved equipment or services in accordance with STAP requirements may request reimbursement from ODHHS. ODHHS will reimburse the STAP vendor from TUSF for a voucher exchanged in accordance with this subchapter and STAP policy when the STAP vendor claims the voucher in the ODHHS STAP claiming system, exchanges the voucher for equipment with the customer, and provides ODHHS with the following documentation:

(1) a voucher documenting equipment or service exchanged and signed by both the voucher recipient, and vendor's registered signature authority on file with ODHHS certifying that the equipment or service was new, unused, and not reconditioned or obsolete and has been delivered to the voucher recipient; and

(2) a receipt or invoice that contains:

(A) a description of the equipment or service exchanged for the STAP voucher;

(B) manufacturer and model number;

(C) serial number; and

(D) the total price charged to the voucher recipient, including the amount to be reimbursed by ODHHS for the equipment or service exchanged.

(f) A STAP vendor that exchanges a STAP voucher by mail for the purchase of approved equipment or services in accordance with STAP policies and this subchapter may request reimbursement from ODHHS. ODHHS will reimburse a voucher (exchanged in accordance with this subchapter and STAP policies) upon receipt from the STAP vendor of:

(1) proof of delivery of the equipment or service to the voucher recipient; and

(2) a receipt or invoice that contains:

(A) a description of the equipment or service exchanged by mail for the STAP voucher:

(B) manufacturer and model number;

(C) serial number; and

(D) the total price charged to the voucher recipient, including the amount to be reimbursed by ODHHS for the equipment or service exchanged.

(g) STAP vendors shall claim a voucher in the ODHHS STAP claiming system and submit voucher reimbursement requests, along with supporting documentation, to ODHHS within 120 calendar days after the date of the voucher exchange or the date shown on the proof of delivery.

(h) Vouchers exchanged in violation of STAP requirements that are not corrected, and vouchers or supporting documentation submitted or claimed after 120 calendar days from the date of the voucher exchange will not be reimbursed.

(i) Vouchers submitted that do not have supporting documentation, as required by this subchapter will not be reimbursed.

(j) ODHHS may investigate whether the presentation of a voucher for payment represents a valid transaction for equipment or service under STAP.

(k) If there is a dispute regarding the amount or propriety of the payment or whether the equipment or service is appropriate or adequate to meet the needs of the voucher recipient, ODHHS may:

(1) delay or deny payment of a voucher to a STAP vendor until the dispute is resolved; or

(2) provide payment of a voucher, conditional upon the return of the payment if the equipment is returned to the STAP vendor or if the service is not used by the voucher recipient.

(l) Reimbursements may also be subject to other limitations or conditions determined by ODHHS to be just and reasonable, including investigation of whether the presentation of a STAP voucher represents a valid transaction for equipment or services under STAP.

(m) If a dispute arises as to whether the submitted documentation is sufficient to create a presumption of a valid STAP sales transaction, ODHHS will make the final determination on the sufficiency of the documentation.

§360.531. Suspension or Loss of STAP Vendor Eligibility.

(a) A STAP vendor may be suspended from or lose eligibility to participate in STAP for any of the following:

(1) failure to comply with the requirements of STAP;

(2) seeking or receiving reimbursement for equipment or services that are not new, were not provided, or were provided only after seeking or receiving reimbursement;

(3) seeking or receiving reimbursement for equipment or services on a voucher that is not a valid STAP voucher;

(4) violating or suspicion of violating any ODHHS or other applicable rules, policies, or laws relating to STAP;

(5) working with or serving as a certifier and failing to ensure appropriate equipment selection;

(6) failure to repay TUSF for equipment or services for which the STAP vendor received reimbursement, but for which the STAP vendor did not provide the equipment or service, or was not otherwise entitled to reimbursement; or

(7) being barred, debarred, suspended, proposed for debarment, declared ineligible, or excluded from doing business with, or receiving payments from, the federal or state government.

(b) ODHHS will notify a STAP vendor in writing if ODHHS determines that the STAP vendor or service provider is suspended from STAP or is otherwise ineligible to participate in STAP.

§360.533. Reinstatement of STAP Vendors.

(a) A STAP vendor that has been suspended or otherwise determined to be ineligible to participate as a STAP vendor, may request reinstatement into STAP by:

(1) submitting a written request to ODHHS for reinstatement; and

(2) submitting written documentation showing that:

(A) all STAP eligibility requirements have been satisfied; and

(B) any violations or deficiencies that resulted in the suspension or ineligibility determination have been remedied.

(b) ODHHS decision on a reinstatement request is final.

§360.535. Vendor Required Approved Equipment or Service Inventory.

(a) ODHHS determines makes and models of approved equipment and specific services for a voucher that a STAP vendor is required to make available to a STAP voucher recipient.

(b) ODHHS reviews the required inventory at least annually. The required inventory is determined by approved equipment and services that conform to §360.507 of this subchapter (relating to Determination of Basic Specialized Telecommunications Equipment or Service) and offers a STAP voucher recipient a reasonable selection.

(c) Vendors are not required to have both the equipment inventory and the service inventory established for a voucher to be able to sell equipment or service under that voucher.

(d) If a vendor does not exchange a specific voucher, an inventory for that voucher is not required.

(e) The required inventory does not preclude vendors from selling additional allowable equipment or services.

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 December 3, 2020.

TRD-202005222

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: January 17, 2021

For further information, please call: (512) 961-3125



## CHAPTER 506. SPECIAL CARE FACILITIES

### SUBCHAPTER C. OPERATIONAL REQUIREMENTS

#### 26 TAC §506.37

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes new §506.37, concerning Balance Billing.

#### BACKGROUND AND PURPOSE

The proposal is necessary to comply with Senate Bill (S.B.) 1264, 86th Legislature, Regular Session, 2019, which requires HHSC to adopt rules relating to consumer protections against certain medical and health care billing by out-of-network licensed health care facilities, including abortion facilities, ambulatory surgical centers, birthing centers, chemical dependency treatment facilities, crisis stabilization units, end stage renal disease facilities, freestanding emergency medical care facilities, general and special hospitals, narcotic treatment programs, private psychiatric hospitals, and special care facilities.

#### SECTION-BY-SECTION SUMMARY

The proposed new §506.37 prohibits a special care facility from violating a law that prohibits balance billing and requires a special care Facility to comply with S.B. 1264 and related Texas Department of Insurance rules. This change is consistent with the provision in S.B. 1264 requiring HHSC to adopt rules relating to consumer protections against certain medical and health care billing by out-of-network licensed health care facilities.

## FISCAL NOTE

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

## GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because there is no requirement to alter current business practices.

## LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

## COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule is necessary to protect the health, safety, and welfare of the residents of Texas; does not impose a cost on regulated persons; and is necessary to implement legislation.

## PUBLIC BENEFIT AND COSTS

David Kostroun, HHSC Deputy Executive Commissioner of Regulatory Services, has determined that for each year of the first five years the rule is in effect, the public will benefit from increased consumer protections against certain medical and health care billing by out-of-network licensed health care facilities, including abortion facilities, ambulatory surgical centers, birthing centers, chemical dependency treatment facilities, crisis stabilization units, end stage renal disease facilities, free-standing emergency medical care facilities, general and special hospitals, narcotic treatment programs, private psychiatric hospitals, and special care facilities.

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

## TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist

in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

## PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4900 North Lamar Boulevard, Austin, Texas 78751; or emailed to HCR\_PRT@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If 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 20R045" in the subject line.

## STATUTORY AUTHORITY

The new rule is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by the health and human services system; Texas Health and Safety Code §248.006, which requires HHSC to adopt rules establishing minimum standards for special care facilities; and Texas Insurance Code §752.0003, which authorizes regulatory agencies to take action against facilities and providers that violate a balance billing prohibition.

The new rule implements Texas Government Code §531.0055, Texas Health and Safety Code Chapter 248, and Texas Insurance Code Chapter 752.

### §506.37. Balance Billing.

(a) A facility may not violate a law that prohibits the facility from billing a patient who is an insured, participant, or enrollee in a managed care plan an amount greater than an applicable copayment, coinsurance, and deductible under the insured's, participant's, or enrollee's managed care plan or that imposes a requirement related to that prohibition.

(b) A facility shall comply with Senate Bill 1264, 86th Legislature, Regular Session, 2019, and with related Texas Department of Insurance rules at 28 TAC Chapter 21, Subchapter OO, §§21.4901 - 21.4904 (relating to Disclosures by Out-of-Network Providers) to the extent this subchapter applies to the facility.

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 December 2, 2020.

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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 834-4591





# CHAPTER 507. END STAGE RENAL DISEASE FACILITIES

## SUBCHAPTER D. OPERATIONAL REQUIREMENTS FOR PATIENT CARE AND TREATMENT

### 26 TAC §507.50

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes new §507.50, concerning Balance Billing.

#### BACKGROUND AND PURPOSE

The proposal is necessary to comply with Senate Bill (S.B.) 1264, 86th Legislature, Regular Session, 2019, which requires HHSC to adopt rules relating to consumer protections against certain medical and health care billing by out-of-network licensed health care facilities, including abortion facilities, ambulatory surgical centers, birthing centers, chemical dependency treatment facilities, crisis stabilization units, end stage renal disease facilities, freestanding emergency medical care facilities, general and special hospitals, narcotic treatment programs, private psychiatric hospitals, and special care facilities.

#### SECTION-BY-SECTION SUMMARY

The proposed new §507.50 adds language prohibiting an end stage renal disease facility from violating a law that prohibits balance billing and requires an end stage renal disease facility to comply with S.B. 1264 and related Texas Department of Insurance rules. This change is consistent with the provision in S.B. 1264 requiring HHSC to adopt rules relating to consumer protections against certain medical and health care billing by out-of-network licensed health care facilities.

#### FISCAL NOTE

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

#### GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because there is no requirement to alter current business practices.

#### LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

#### COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule is necessary to protect the health, safety, and welfare of the residents of Texas; does not impose a cost on regulated persons; and is necessary to implement legislation.

#### PUBLIC BENEFIT AND COSTS

David Kostroun, HHSC Deputy Executive Commissioner of Regulatory Services, has determined that for each year of the first five years the rule is in effect, the public will benefit from increased consumer protections against certain medical and health care billing by out-of-network licensed health care facilities, including abortion facilities, ambulatory surgical centers, birthing centers, chemical dependency treatment facilities, crisis stabilization units, end stage renal disease facilities, freestanding emergency medical care facilities, general and special hospitals, narcotic treatment programs, private psychiatric hospitals, and special care facilities.

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

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4900 North Lamar Boulevard, Austin, Texas 78751; or emailed to [HCR\\_PRT@hhsc.state.tx.us](mailto:HCR_PRT@hhsc.state.tx.us).

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If 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 20R045" in the subject line.

#### STATUTORY AUTHORITY

The new rule is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by the health and human services system; Texas Health and Safety Code §251.003, which requires HHSC to adopt rules for the issuance, renewal, denial, suspension, and revocation of a license to operate an end stage renal disease facility; Texas Health and Safety Code §251.014, which requires

these rules to include minimum standards to protect the health and safety of a patient of an end stage renal disease facility; and Texas Insurance Code §752.0003, which authorizes regulatory agencies to take action against facilities and providers that violate a balance billing prohibition.

The new rule implements Texas Government Code §531.0055, Texas Health and Safety Code Chapter 251, and Texas Insurance Code Chapter 752.

§507.50. Balance Billing.

(a) A facility may not violate a law that prohibits the facility from billing a patient who is an insured, participant, or enrollee in a managed care plan an amount greater than an applicable copayment, coinsurance, and deductible under the insured's, participant's, or enrollee's managed care plan or that imposes a requirement related to that prohibition.

(b) A facility shall comply with Senate Bill 1264, 86th Legislature, Regular Session, 2019, and with related Texas Department of Insurance rules at 28 TAC Chapter 21, Subchapter OO, §§21.4901 - 21.4904 (relating to Disclosures by Out-of-Network Providers) to the extent this subchapter applies to the facility.

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 834-4591



## CHAPTER 509. FREESTANDING EMERGENCY MEDICAL CARE FACILITIES SUBCHAPTER C. OPERATIONAL REQUIREMENTS

### 26 TAC §509.67

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes new §509.67, concerning Balance Billing.

#### BACKGROUND AND PURPOSE

The proposal is also necessary to comply with Senate Bill (S.B.) 1264, 86th Legislature, Regular Session, 2019, which requires HHSC to adopt rules relating to consumer protections against certain medical and health care billing by out-of-network licensed health care facilities, including abortion facilities, ambulatory surgical centers, birthing centers, chemical dependency treatment facilities, crisis stabilization units, end stage renal disease facilities, freestanding emergency medical care facilities, general and special hospitals, narcotic treatment programs, private psychiatric hospitals, and special care facilities.

#### SECTION-BY-SECTION SUMMARY

The proposed new §509.67, Balance Billing, prohibits a freestanding emergency medical care facility from violating a law

that prohibits balance billing and requires a freestanding emergency care facility to comply with S.B. 1264 and related Texas Department of Insurance rules. This change is consistent with the provision in S.B. 1264 requiring HHSC to adopt rules relating to consumer protections against certain medical and health care billing by out-of-network licensed health care facilities.

#### FISCAL NOTE

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

#### GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because there is no requirement to alter current business practices.

#### LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

#### COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule is necessary to protect the health, safety, and welfare of the residents of Texas; does not impose a cost on regulated persons; and is necessary to implement legislation.

#### PUBLIC BENEFIT AND COSTS

David Kostroun, HHSC Deputy Executive Commissioner of Regulatory Services, has determined that for each year of the first five years the rule is in effect, the public will benefit from increased consumer protections against certain medical and health care billing by out-of-network licensed health care facilities, including abortion facilities, ambulatory surgical centers, birthing centers, chemical dependency treatment facilities, crisis stabilization units, end stage renal disease facilities, freestanding emergency medical care facilities, general and special hospitals, narcotic treatment programs, private psychiatric hospitals, and special care facilities.

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

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4900 North Lamar Boulevard, Austin, Texas 78751; or emailed to HCR\_PRT@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If 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 20R045" in the subject line.

#### STATUTORY AUTHORITY

The new rule is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by the health and human services system; Texas Health and Safety Code §254.101, which authorizes HHSC to adopt rules regarding freestanding emergency medical care facilities; and Texas Insurance Code §752.0003, which authorizes regulatory agencies to take action against facilities and providers that violate a balance billing prohibition.

The new rule implements Texas Government Code §531.0055, Texas Health and Safety Code Chapter 254, and Texas Insurance Code Chapter 752.

#### §509.67. Balance Billing.

(a) A facility may not violate a law that prohibits the facility from billing a patient who is an insured, participant, or enrollee in a managed care plan an amount greater than an applicable copayment, coinsurance, and deductible under the insured's, participant's, or enrollee's managed care plan or that imposes a requirement related to that prohibition.

(b) A facility shall comply with Senate Bill 1264, 86th Legislature, Regular Session, 2019, and with related Texas Department of Insurance rules at 28 TAC Chapter 21, Subchapter OO §§21.4901 - 21.4904 (relating to Disclosures by Out-of-Network Providers) to the extent this subchapter applies to the facility.

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 December 2, 2020.

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Karen Ray  
Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 834-4591



## CHAPTER 510. PRIVATE PSYCHIATRIC HOSPITALS AND CRISIS STABILIZATION UNITS

### SUBCHAPTER C. OPERATIONAL REQUIREMENTS

#### 26 TAC §510.45

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §510.45, concerning Facility Billing.

#### BACKGROUND AND PURPOSE

The proposal is necessary to comply with Senate Bill (S.B.) 1264, 86th Legislature, Regular Session, 2019, which requires HHSC to adopt rules relating to consumer protections against certain medical and health care billing by out-of-network licensed health care facilities, including abortion facilities, ambulatory surgical centers, birthing centers, chemical dependency treatment facilities, crisis stabilization units, end stage renal disease facilities, freestanding emergency medical care facilities, general and special hospitals, narcotic treatment programs, private psychiatric hospitals, and special care facilities.

#### SECTION-BY-SECTION SUMMARY

The proposed amendment to §510.45 adds language prohibiting a private psychiatric hospital and a crisis stabilization unit from violating a law that prohibits balance billing and requires a private psychiatric hospital and a crisis stabilization unit to comply with S.B. 1264 and related Texas Department of Insurance rules. This change is consistent with the provision in S.B. 1264 requiring HHSC to adopt rules relating to consumer protections against certain medical and health care billing by out-of-network licensed health care facilities.

The proposed amendment to subsection (c) updates the complaint investigation procedures to the agency responsible for the procedures.

#### FISCAL NOTE

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

#### GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because there is no requirement to alter current business practices.

#### LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

#### COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule is necessary to protect the health, safety, and welfare of the residents of Texas; does not impose a cost on regulated persons; and is necessary to implement legislation.

#### PUBLIC BENEFIT AND COSTS

David Kostroun, HHSC Deputy Executive Commissioner of Regulatory Services, has determined that for each year of the first five years the rule is in effect, the public will benefit from increased consumer protections against certain medical and health care billing by out-of-network licensed health care facilities, including abortion facilities, ambulatory surgical centers, birthing centers, chemical dependency treatment facilities, crisis stabilization units, end stage renal disease facilities, free-standing emergency medical care facilities, general and special hospitals, narcotic treatment programs, private psychiatric hospitals, and special care facilities.

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

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4900 North Lamar Boulevard, Austin, Texas 78751; or emailed to HCR\_PRT@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be post-

marked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 20R045" in the subject line.

#### STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by the health and human services system; Texas Health and Safety Code §577.010, which requires HHSC to adopt rules and standards necessary and appropriate to ensure the proper care and treatment of patients in a private mental hospital or mental health facility; and Texas Insurance Code §752.0003, which authorizes regulatory agencies to take action against facilities and providers that violate a balance billing prohibition.

The amendment implements Texas Government Code §531.0055, Texas Health and Safety Code Chapter 577, and Texas Insurance Code Chapter 752.

#### *§510.45. Facility Billing.*

(a) Itemized statements. A facility shall adopt, implement, and enforce a policy to ensure that the facility complies with the Health and Safety Code (HSC), §311.002 (relating to Itemized Statement of Billed Services).

(b) Audits of billing. A facility shall adopt, implement, and enforce a policy to ensure that the facility complies with HSC, §311.0025(a) (relating to Audits of Billing).

(c) Complaint investigation procedures.

(1) A complaint submitted to HHSC's Complaint and Incident Intake [the department] relating to billing must specify the patient for whom the bill was submitted.

(2) Upon receiving a complaint warranting an investigation, HHSC [the department] shall send the complaint to the facility requesting the facility to conduct an internal investigation. Within 30 days of the facility's receipt of the complaint, the facility shall submit to HHSC [the department]:

(A) a report outlining the facility's investigative process;

(B) the resolution or conclusions reached by the facility with the patient, third party payor or complainant; and

(C) corrections, if any, in the policies or protocols which were made as a result of its investigative findings.

(3) In addition to the facility's internal investigation, HHSC [the department] may also conduct an investigation to audit any billing and patient records of the facility.

(4) HHSC [The department] may inform in writing a complainant who identifies themselves by name and address in writing of the receipt and disposition of the complaint.

(5) HHSC [The department] shall refer investigative reports of billing by health care professionals who have provided improper, unreasonable, or medically or clinically unnecessary treatments or billed for treatments which were not provided to the appropriate licensing agency.

(d) Balance Billing.

(1) A facility may not violate a law that prohibits the facility from billing a patient who is an insured, participant, or enrollee

in a managed care plan an amount greater than an applicable copayment, coinsurance, and deductible under the insured's, participant's, or enrollee's managed care plan or that imposes a requirement related to that prohibition.

(2) A facility shall comply with Senate Bill 1264, 86th Legislature, Regular Session, 2019, and with related Texas Department of Insurance rules at 28 TAC Chapter 21, Subchapter OO, §§21.4901 - 21.4904 (relating to Disclosures by Out-of-Network Providers) to the extent this subchapter applies to the facility.

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 December 2, 2020.

TRD-202005206

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: January 17, 2021

For further information, please call: (512) 834-4591



## CHAPTER 558. LICENSING STANDARDS FOR HOME AND COMMUNITY SUPPORT SERVICES AGENCIES

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §§558.1 - 558.3, 558.11, 558.13, 558.15, 558.17, 558.19, 558.21, 558.23, 558.25, 558.27, 558.29 - 558.31, 558.202, 558.208, 558.213, 558.214 - 558.220, 558.222, 558.241 - 558.250, 558.252, 558.255 - 558.257, 558.259, 558.260, 558.281 - 558.287, 558.289, 558.290, 558.291, 558.292, 558.295 - 558.299, 558.301 - 558.303, 558.321, 558.322, 558.401, 558.402, 558.404 - 558.407, 558.501, 558.503, 558.505, 558.507, 558.521, 558.523, 558.525, 558.527, 558.601 - 558.604, 558.701, 558.801, 558.810, 558.811, 558.820, 558.821, 558.823, 558.830, 558.832, 558.834, 558.842 - 558.845, 558.852 - 558.857, 558.859, 558.860, 558.870, §558.871, and 558.880; the repeal of §558.861; and new §§558.12, 558.861, 558.862, and 558.863 in Title 26, Part 1, Chapter 558, concerning Licensing Standards for Home and Community Support Services Agencies.

### BACKGROUND AND PURPOSE

The proposal implements changes made to the Texas Health and Safety Code Chapter 142, and the Texas Occupations Code Chapters 56 and 57, made by Senate Bills 916 and 37, and House Bills 2594 and 3193, all enacted during the 86th Legislature, Regular Session, 2019.

House Bill (HB) 3193 increases the licensing period from two years to three years and increases the maximum amount that HHSC may charge for licensure fee.

Senate Bill (SB) 916 removes "palliative care for terminally ill clients" from services described as being included in the statutory definition of "hospice services." It also establishes a definition for "supportive palliative care services."

SB 37 amends the subparagraph that prohibits certain disciplinary action against a person based on the person's default on a student loan default based on the amendments to the Texas Occupations Code.

HB 3079 gives HHSC the authority to investigate abuse, neglect, and exploitation of a home and community support services agency (HCSSA) client receiving inpatient hospice services.

HB 2594 allows a health care professional employee of a hospice provider who meets certain requirements to dispose of a patient's controlled substance prescriptions.

This proposal also amends the licensure process to reflect the transition from paper applications to the use of the online licensure portal called Texas Unified Licensure Information Portal (TULIP) and clarifying other processes relating to licensure.

Additionally, the proposal updates rule references throughout the chapter as a result of the administrative transfer of the chapter from 40 TAC Chapter 97 to 26 TAC Chapter 558 in May 2019. The proposal also updates the agency name throughout the chapter from "DADS" to "HHSC."

### SECTION-BY-SECTION SUMMARY

The amendments to the sections listed in this paragraph are non-substantial and contain updates to citations, agency name, position titles, and terminology; correct minor grammatical and punctuation errors; and revise sentence structure:

§558.21, Denial of an Application or a License;

§558.202, Habilitation;

§558.216, Change in Agency Certification Status;

§558.217, Agency Closure Procedures and Voluntary Suspension of Operations;

§558.222, Compliance;

§558.241, Management;

§558.242, Organizational Structure and Lines of Authority;

§558.243, Administrative and Supervisory Responsibilities;

§558.244, Administrator Qualifications and Conditions and Supervising Nurse

Qualifications;

§558.245, Staffing Policies;

§558.246, Personnel Records;

§558.247, Verification of Employability and Use of Unlicensed Persons;

§558.248, Volunteers;

§558.252, Financial Solvency and Business Records;

§558.255, Prohibition of Solicitation of Patients;

§558.256, Emergency Preparedness Planning and Implementation;

§558.257, Medicare Certification Optional;

§558.259, Initial Educational Training in Administration of Agencies;

§558.260, Continuing Education in Administration of Agencies;

§558.282, Client Conduct and Responsibility and Client Rights;

§558.283, Advance Directives;  
 §558.285, Infection Control;  
 §558.286, Disposal of Special or Medical Waste;  
 §558.287, Quality Assessment and Performance Improvement;  
 §558.289, Independent Contractors and Arranged Services;  
 §558.290, Backup Services and After-Hours Care;  
 §558.291, Agency Dissolution;  
 §558.292, Agency and Client Agreement and Disclosure;  
 §558.295, Client Transfer or Discharge Notification Requirements;  
 §558.296, Physician Delegation and Performance of Physician-Delegated Tasks;  
 §558.297, Receipt of Physician Orders;  
 §558.298, Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel and Tasks Not Requiring Delegation;  
 §558.299, Nursing Education, Licensure and Practice;  
 §558.302, Pronouncement of Death;  
 §558.303, Standards for Possession of Sterile Water or Saline, Certain Vaccines  
 or Tuberculin, and Certain Dangerous Drugs;  
 §558.321, Standards for Branch Offices;  
 §558.322, Standards for Alternate Delivery Sites;  
 §558.401, Standards Specific to Licensed Home Health Services;  
 §558.404, Standards Specific to Agencies Licensed to Provide Personal Assistance Services;  
 §558.405, Standards Specific to Agencies Licensed to Provide Home Dialysis Services;  
 §558.406, Standards for Agencies Providing Psychoactive Services;  
 §558.407, Standards for Agencies Providing Home Intravenous Therapy;  
 §558.501, Survey and Investigation Frequency;  
 §558.505, Notice of a Survey;  
 §558.507, Agency Cooperation with a Survey;  
 §558.521, Requirements for an Initial Survey;  
 §558.523, Personnel Requirements for a Survey;  
 §558.525, Survey Procedures;  
 §558.527, Post-Survey Procedures;  
 §558.601, Enforcement Actions;  
 §558.602, Administrative Penalties;  
 §558.603, Court Action;  
 §558.604, Surrender or Expiration of a License;

§558.701, Home Health Aides;  
 §558.810, Hospice Initial Assessment;  
 §558.811, Hospice Comprehensive Assessment;  
 §558.820, Hospice Interdisciplinary Team;  
 §558.821, Hospice Plan of Care;  
 §558.823, Coordination of Services by the Hospice;  
 §558.830, Provision of Hospice Core Services;  
 §558.832, Hospice Nursing Services;  
 §558.834, Hospice Counseling Services;  
 §558.842, Hospice Aide Services;  
 §558.843, Hospice Aide Qualifications  
 §558.844, Hospice Homemaker Services;  
 §558.845, Hospice Homemaker Qualifications;  
 §558.852, Hospice Governing Body and Administrator;  
 §558.853, Hospice Infection Control Program;  
 §558.854, Hospice Professional Management Responsibility;  
 §558.855, Criminal Background Checks  
 §558.856, Hospice Alternate Delivery Sites  
 §558.859, Hospice Discharge or Transfer of Care; and  
 §558.870, Staffing in a Hospice Inpatient Unit.

New sections and sections that contain substantial amendments are described below in this section-by-section description. All of the sections with proposed amendments update citations, agency name, position titles, or terminology; correct minor grammatical or punctuation errors; or revise sentence structure in addition to the description of proposed changes below.

The proposed amendment to §558.1, Purpose and Scope, updates references and agency name and clarifies that the rules of this chapter are adopted to protect clients of HCSSAs by establishing minimum standards relating to quality of care and quality of life.

The proposed amendment to §558.2, Definitions, adds definitions for the terms "accreditation organization," "controlled substance," "HCSSA," "online portal," "palliative," "supportive palliative care," and "TAC." The proposed amendment revises the definitions for the terms "HHSC," "hospice services," and "pharmacy" and changes the term "presurvey conference" to "presurvey training." Also, the proposed amendment replaces the term and definition of "home and community support services agency" with "HCSSA" and replaces the term and definition of "licensed vocational nurse" with "LVN." The proposed amendment deletes the definitions for "CHAP," "DADS," "JCAHO," and "palliative care."

The proposed amendment to §558.3, License Fees, increases the fee for an initial license from \$1750 to \$2625 to accommodate the additional year of the licensure period provided for in proposed §558.15(b). The proposed amendment also adds a three-year licensure period for license renewal and increases the fee comparatively to accommodate the additional year of licensure. The same change and addition are made to an initial branch license, branch license renewal, and an alternate delivery site license renewal. To renew a branch office or ADS license, the proposed amendment requires a licensee to submit

the renewal application and payment of all applicable licensing fees in full for each branch office and ADS sought to be renewed at the same time as the parent agency's submission for license renewal. The proposed amendment also refers to the online portal as the source for identifying fee payment options.

The proposed amendment to §558.11, Criteria and Eligibility for Licensing, specifies that HHSC considers the background and qualifications of the administrator and alternate administrator in accordance with §558.244.

Proposed new §558.12, General Application, describes the requirements for submitting an application for licensure, including requiring submission of all applications and related documents through the online portal. The proposed new section describes HHSC's actions when a complete application is submitted with fees and when an incomplete application is submitted, which is similar to language proposed for deletion in §558.13.

The proposed amendment to §558.13, Obtaining an Initial License, which includes a revision to the name of the section and describes the process for obtaining an initial license. Language related to HHSC furnishing a person with an application for a license is proposed for deletion. In addition, several subsections are proposed for deletion because the information is proposed in new §558.12.

The proposed amendment to §558.15, Issuance of an Initial License, describes the parameters for HHSC to issue an initial license. The proposed amendment also states that an initial license is valid for three years, rather than two years, provides various clarifying language, and requires an applicant's compliance with §558.11 and §558.13.

The proposed amendment to §558.17, Application Procedures for a Renewal License, describes the application procedures and requirements for a renewal license. The proposed language clarifies that, if an agency submits a renewal application before the expiration date of the license in accordance with the section, then the license does not expire until after HHSC has made a final determination, even if it occurs after the expiration date. Further, the proposal states that a license expires if the license holder fails to submit a renewal application in accordance with the section before the expiration date.

The proposed amendment to §558.19, Issuance of a Renewal License, describes the parameters for HHSC to renew an initial license. The proposed amendment states that a license is valid for three years except as provided in subsection (e)(1) or (f)(1), which provides for a two-year license for agencies whose license number ends in certain digits and whose license expires during a certain time frame. The purpose of the provisions in subsections (e) and (f) is to stagger time period for HHSC to process license renewals over a three-year period.

The proposed amendment to §558.23, Change of Ownership, clarifies that if there is a change of ownership, the license holder's license becomes invalid on the date when the initial license is granted by HHSC to the new owner for a change of ownership. Additionally, HHSC requires the license holder to remain an active and valid license until HHSC grants an initial license to the new owner.

The proposed amendment to §558.25, Requirements for Change of Ownership, which includes a revision to the name of the section, requires a prospective new owner to apply for an initial license in accordance with the requirements in the section. In addition, several subsections are proposed for

deletion because the information is proposed in §558.12 and §558.23. The proposed amendment also states that an initial license for a change of ownership is valid for three years, rather than two years.

The proposed amendment to §558.27, Application and Issuance of an Initial Branch Office License, which includes a revision to the name of the section, requires a currently licensed agency to have met its initial survey requirements before being qualified to apply for a branch office license. In addition, several provisions are proposed for deletion because the information is proposed in §558.12. Also, the proposed amendment states that unless an agency is exempt from a survey, as specified in §558.503, HHSC does not renew a branch office license if HHSC has not conducted a health survey of a branch office after issuance of the license.

The proposed amendment to §558.29, Application and Issuance of an Alternate Delivery Site License, describes the process of obtaining an alternate delivery site license including for a hospice inpatient unit. In addition, several provisions are proposed for deletion because the information is proposed in §558.12.

The proposed amendment to §558.30, Operation of an Inpatient Unit at a Parent Agency, which includes a minor revision to the name of the section, describes the process for a licensed agency or license applicant to obtain HHSC's approval to operate a hospice inpatient unit at a parent agency.

The proposed amendment to §558.31, Time Frames for Processing and Issuing a License, describes how HHSC determines time frames for processing and issuing a license, describes the situation for which an applicant has the right to be reimbursed for fees, and describes the process for requesting an appeal if HHSC denies an applicant's request for reimbursement of fees. In addition, several provisions are proposed for deletion because the information is proposed in §558.12.

The proposed amendment to §558.208, Reporting Changes in Application Information and Fees, requires agencies to report changes via the online portal and states that HHSC does not consider a change of information as officially submitted until the online portal reflects a status of payment received, if a fee is applicable.

The proposed amendment to §558.213, Agency Relocation, requires an agency to report a change in the agency's physical location via the online portal in accordance with §558.208.

The proposed amendment to §558.214, Notification Procedures for a Change in Agency Contact Information and Operating Hours, requires an agency to report a change in the agency's telephone number, mailing address, or operating hours via the online portal in accordance with §558.208.

The proposed amendment to §558.215, Notification Procedures for an Agency Name Change, requires an agency to report a change in the agency's physical location via the online portal in accordance with §558.208.

The proposed amendment to §558.218, Agency Organizational Changes, requires an agency to report a change in the agency's management personnel via the online portal in accordance with §558.208.

The proposed amendment to §558.219, Procedures for Adding or Deleting a Category to the License, requires an agency to submit the appropriate application to HHSC via the online portal in accordance with the section.

The proposed amendment to §558.220, Service Areas, requires an agency to submit an application via the online portal in accordance with §558.208 instead of providing written notice.

The proposed amendment to §558.249, Self-Reported Incidents of Abuse, Neglect, and Exploitation, gives HHSC the authority to investigate abuse, neglect, and exploitation of a client of a HCSSA receiving inpatient hospice services. The proposed amendment includes sections §558.249 and §558.250 to clarify rules for in-patient hospice and changes the source of definitions for "abuse," "neglect," and "exploitation" from the Texas Human Resources Code to 26 TAC Chapter 711, Subchapter A, and 40 TAC Chapter 705, Subchapter A, and applies the definitions to §558.250 as well as §558.249. The proposed amendment also adds the definitions for "adult," "child," and "agent." The definition of "employee" is modified and relocated below "child" to list the term in alphabetical order.

The proposed amendment to §558.250, Agency Investigations, adds "the age of the alleged victim at the time of the incident" to the list of information that an agency must include in the Provider Investigation Report Form.

The proposed amendment to §558.281, Client Care Policies, changes "the dying patient/client" to "a client who has a terminal illness or a terminal prognosis" as an element to be included in the written policy if covered under the scope of services provided by the agency.

The proposed amendment to §558.284, Laboratory Services, clarifies that an agency that provides laboratory services must adopt and enforce a written policy to ensure the agency meets applicable requirements of 42 USC §263a concerning certification and certificates of waiver of a clinical laboratory.

The proposed amendment to §558.301, Client Records, adds an element to be included in a client's record in subsection (a)(9)(G).

The proposed amendment to §558.402, Standards Specific to Licensed and Certified Home Health Services, requires an agency providing licensed and certified home health services to comply with applicable requirements of 42 USC, Chapter 7, Subchapter XVII and the regulations in 42 CFR Part 484. In addition, language is deleted that adopts by reference the cited USC and CFR and language that states that copies of the cited USC and CFR are indexed and filed at the Texas Department of Human Services.

The proposed amendment to §558.503, Exemption From a Survey, requires an accredited agency to maintain accreditation status for the services for which the agency seeks exemption and that is applicable to the agency's category of license. Further, the accreditation organization must have current HHSC approval. In addition, the proposed amendment states that, as of the effective date of this rule, accreditation organizations with current HHSC approval on its HCSSA licensure website are the Joint Commission, Community Health Accreditation Partner, and Accreditation Commission for Health Care, Inc.

The proposed amendment to §558.602, Administrative Penalties, updates the figures in subsections (h)(2)(D) and (h)(3)(E) with proper citations and to include new provisions in §558.862 and §558.880.

The proposed amendment to §558.801, Subchapter H Applicability, adds that a client or client's legal representative, as applicable, must be given understanding of the potential availability of supportive palliative care options outside a hospice setting as required by statute.

The proposed amendment to §558.857, Hospice Staff Training, requires that the staffing policy of a hospice must provide orientation about supportive palliative care along with the hospice philosophy to all employees and contracted staff.

The proposed amendment to §558.860, Provision of Medical Supplies and Durable Medical Equipment by a Hospice, which includes a revision to the name of the section, limits the provisions of the section to strictly medical supplies and durable medical equipment. In addition, several subsections are proposed for deletion because the information is proposed in new §558.861 and §558.862.

The proposed repeal of §558.861, Hospice Short-term Inpatient Care, deletes the section and incorporates the language into new §558.863.

Proposed new §558.861, Management of Drugs and Biologicals and Disposal of Controlled Substance Prescription Drugs in a Client's Home or Community Setting, incorporates language from the proposed repeal of §558.860 relating to management of drugs and biologicals. Additionally, the proposed section clarifies the prerequisites, circumstances, and conditions under which certain properly licensed and qualified hospice employees may dispose of a hospice patient's controlled substances in a client's home or community setting as permitted by state statute.

Proposed new §558.862, Management of Drugs and Biologicals and Disposal of Controlled Substance Prescription Drugs in an Inpatient Hospice Unit, incorporates language from §558.860 relating to management of drugs and biologicals that is proposed for deletion. Additionally, the proposed section clarifies the prerequisites, circumstances, and conditions under which certain properly licensed and qualified hospice employees may dispose of a hospice patient's controlled substances in an inpatient hospice unit as permitted by state statute.

Proposed new §558.863, Hospice Short-term Inpatient Care, incorporates language from §558.860 relating to hospice short-term inpatient care that is proposed for deletion.

The proposed amendment to §558.871, Physical Environment in a Hospice Inpatient Unit, deletes the requirement to use an obsolete web-based program. It also deletes the statement that the hospice may register its facility with 2-1-1 Texas.

The proposed amendment to §558.880, Providing Hospice Care to a Resident of a Skilled Nursing Facility (SNF), Nursing Facility (NF), or Intermediate Care Facility for Individuals with an Intellectual Disability or Related Conditions (ICF/IID), adds a provision regarding the management and disposal of drugs, including controlled substance prescription drugs and biologicals in compliance with state statute. It also prohibits a hospice's policies and procedures relating to management disposal of drugs and biologicals from impeding a SNF's, NF's, or ICF/IID's ability to adhere to state, federal, and local law.

#### FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, 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 \$131,367 General Revenue (GR) (\$86,807 Federal Funds (FF),



\$218,174 All Funds (AF)) for Fiscal Year (FY) 2021 and \$0 GR (\$0 FF, \$0 AF) each year for FY 2022 through FY 2025.

#### GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The rules do not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rules. No alternative methods were considered because the requirement to move to three-year licensure period is mandated by state statute (Texas Health and Safety Code §142.006).

#### 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

David Kostroun, Deputy Executive Commissioner, Regulatory Services Division, has determined that for each year of the first five years the rules are in effect, the public benefit will be the clear and efficient process for applying for a HCSSA license, the clarification of regulations related to hospice care, the allowance of qualified hospice employees to dispose of a hospice patient's controlled substances, and the use of updated citations.

Trey Wood has also determined that for the first five years the rules are in effect, there could be a cost to comply with this proposed rule. The rule changes the payment schedule cycle from two years to three years; therefore, licensure renewal applicants will pay for one additional year at the time of application. The per-year fee amount of \$875 remains unchanged therefore the adverse economic effect would be limited to the first renewal period.

#### TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist

in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

#### PUBLIC COMMENT

Written comments on the proposal may be submitted to Joyce Stamatis, HCSSA Rule Writer, P.O. Box 149030, Austin, Texas 78714-9030; Mail Code E-370 or by email to PolicyRulesTraining@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If 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 19R069" in the subject line.

### SUBCHAPTER A. GENERAL PROVISIONS

#### 26 TAC §§558.1 - 558.3

##### STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; and Texas Health and Safety Code §§142.012, 142.010, and 142.006(b), which respectively authorize the Executive Commission of HHSC to adopt rules in accordance with those sections that are necessary to implement Chapter 142 and set minimum standards for home and community support services agencies licensed under that Chapter, set reasonable license fees for such agencies, and establish a system for staggered three-year license expiration dates.

The amendments implement Texas Government Code §531.0055 and Texas Health and Safety Code §§142.012, 142.010(a), 142.006(b) and 142.0095, and Texas Health and Safety Code Chapter 142, Subchapter C.

##### *§558.1. Purpose and Scope.*

###### (a) Purpose.

(1) The purpose of this chapter is to implement Texas [the] Health and Safety Code, Chapter 142, which requires [provides] the Texas Health and Human Services Commission (HHSC) [Department of Aging and Disability Services (DADS) with the authority] to adopt minimum standards that a person must meet in order to be licensed as a home and community support services agency (HCSSA) and also to qualify to provide certified home health services. The requirements serve as a basis for licensure and survey activities.

(2) Except as provided by Texas [the] Health and Safety Code[;] §142.003 (relating to Exemptions from Licensing Requirement), a person, including a health care facility licensed under the Texas Health and Safety Code, may not engage in the business of providing home health, hospice, or personal assistance services (PAS), or represent to the public that the person is a provider of home health, hospice, or PAS for pay without a HCSSA license authorizing the person to perform those services issued by HHSC [DADS] for each place of business from which home health, hospice, or PAS is directed. A certified HCSSA must have a license to provide certified home health services.

(b) Scope. This chapter establishes the minimum standards for acceptable quality of care. A ~~[; and a]~~ violation of a minimum standard established by Texas Health and Safety Code Chapter 142, or by a rule adopted under that chapter, is a violation of law. The rules in this chapter [These minimum standards] are adopted to protect clients of HCSSAs by establishing minimum standards relating to [ensuring that the clients receive] quality of care and [; enhancing their] quality of life.

(c) Limitations. Requirements established by private or public funding sources such as health maintenance organizations or other private third-party insurance, Medicaid (42 United States Code (USC) Chapter 7, Subchapter [Title] XIX [of the Social Security Act]), Medicare (42 USC Chapter 7, Subchapter [Title] XVIII [of the Social Security Act]), or state-sponsored funding programs are separate and apart from the requirements in this chapter for agencies. No matter what funding sources or requirements apply to an agency, the agency must still comply with the applicable provisions in the Statute [statute] and this chapter. The agency is responsible for researching availability of any funding source to cover a service provided by [the service(s)] the agency [provides].

#### §558.2. Definitions.

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

(1) Accessible and flexible services--Services that are delivered in the least intrusive manner possible and are provided in all settings where individuals live, work, and recreate.

(2) Accreditation organization--The Joint Commission, Community Health Accreditation Partner, Accreditation Commission for Health Care, Inc., or another accrediting entity approved by HHSC that demonstrates it meets or exceeds applicable rule requirements of this chapter. The entity reviews HCSSAs for compliance with standards for accreditation by the organization that apply to a HCSSA's licensed category of service.

(3) [(2)] Administration of medication--The direct application of any medication by injection, inhalation, ingestion, or any other means to the body of a client. The preparation of medication is part of the administration of medication and is the act or process of making ready a medication for administration, including the calculation of a client's medication dosage; altering the form of the medication by crushing, dissolving, or any other method; reconstitution of an injectable medication; drawing an injectable medication into a syringe; preparing an intravenous admixture; or any other act required to render the medication ready for administration.

(4) [(3)] Administrative support site--A facility or site where an agency performs administrative and other support functions but does not provide direct home health, hospice, or personal assistance services. This site does not require an agency license.

(5) [(4)] Administrator--The person who is responsible for implementing and supervising the administrative policies and operations of a home and community support services agency and for administratively supervising the provision of all services to agency clients on a day-to-day basis.

(6) [(5)] ADS--Alternate delivery site. A facility or site, including a residential unit or an inpatient unit:

- (A) that is owned or operated by an agency providing hospice services;
- (B) that is not the hospice's parent agency;
- (C) that is located in the geographical area served by the hospice; and

(D) from which the hospice provides hospice services.

(7) [(6)] Advanced practice nurse--An advanced practice registered nurse.

(8) [(7)] Advanced practice registered nurse--A person licensed by the Texas Board of Nursing as an advanced practice registered nurse. The term is synonymous with "advanced practice nurse."

(9) [(8)] Advisory committee--A committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup, established for the purpose of obtaining advice or recommendations on issues or policies that are within the scope of a person's responsibility.

(10) [(9)] Affiliate--With respect to an applicant or license holder that is:

(A) a corporation--means each officer, director, and stockholder with direct ownership of at least 5.0 percent, subsidiary, and parent company;

(B) a limited liability company--means each officer, member, and parent company;

(C) an individual--means:

(i) the individual's spouse;

(ii) each partnership and each partner thereof of which the individual or any affiliate of the individual is a partner; and

(iii) each corporation in which the individual is an officer, director, or stockholder with a direct ownership or disclosable interest of at least 5.0 percent.

(D) a partnership--means each partner and any parent company; and

(E) a group of co-owners under any other business arrangement--means each officer, director, or the equivalent under the specific business arrangement and each parent company.

(11) [(10)] Agency--A HCSSA [A home and community support services agency].

(12) [(11)] Applicant--The owner of an agency that is applying for a license under the Statute [statute]. This is the person in whose name the license will be issued.

(13) [(12)] Assistance with self-administration of medication--Any needed ancillary aid provided to a client in the client's self-administered medication or treatment regimen, such as reminding a client to take a medication at the prescribed time, opening and closing a medication container, pouring a predetermined quantity of liquid to be ingested, returning a medication to the proper storage area, and assisting in reordering medications from a pharmacy. Such ancillary aid includes administration of any medication when the client has the cognitive ability to direct the administration of their medication and would self-administer if not for a functional limitation.

(14) [(13)] Association--A partnership, limited liability company, or other business entity that is not a corporation.

(15) [(14)] Audiologist--A person who is currently licensed under the Texas Occupations Code, Chapter 401, as an audiologist.

(16) [(15)] Bereavement--The process by which a survivor of a deceased person mourns and experiences grief.

(17) [(16)] Bereavement services--Support services offered to a family during bereavement. Services may be provided to persons other than family members, including residents of a skilled

nursing facility, nursing facility, or intermediate care facility for individuals with an intellectual disability or related conditions, when appropriate and identified in a bereavement plan of care.

(18) [(47)] Biologicals--A medicinal preparation made from living organisms and their products, including serums, vaccines, antigens, and antitoxins.

(19) [(48)] Boarding home facility--An establishment defined in Texas Health and Safety Code §260.001(2).

(20) [(49)] Branch office--A facility or site in the service area of a parent agency from which home health or personal assistance services are delivered or where active client records are maintained. This does not include inactive records that are stored at an unlicensed site.

(21) [(20)] Care plan--

(A) a written plan prepared by the appropriate health care professional for a client of the home and community support services agency; or

(B) for home dialysis designation, a written plan developed by the physician, registered nurse, dietitian, and qualified social worker to personalize the care for the client and enable long- and short-term goals to be met.

(22) [(21)] Case conference--A conference among personnel furnishing services to the client to ensure that their efforts are coordinated effectively and support the objectives outlined in the plan of care or care plan.

(23) [(22)] Certified agency--A home and community support services agency, or portion of the agency, that:

(A) provides a home health service; and

(B) is certified by an official of the U.S. Department of Health and Human Services as in compliance with Medicare conditions of participation in 42 USC Chapter 7, Subchapter XVIII [Social Security Act, Title XVIII (42 United States Code (USC) §1395 et seq.)].

(24) [(23)] Certified home health services--Home health services that are provided by a certified agency.

(25) [(24)] CFR--Code of Federal Regulations. The regulations and rules promulgated by agencies of the Federal government that address a broad range of subjects, including hospice care and home health services.

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

[(26)] CHAP--Community Health Accreditation Program, Inc. An independent, nonprofit accrediting body that publicly certifies that an organization has voluntarily met certain standards for home and community-based health care.]

(27) Chief financial officer--An individual who is responsible for supervising and managing all financial activities for a home and community support services agency.

(28) Client--An individual receiving home health, hospice, or personal assistance services from a licensed home and community support services agency. This term includes each member of the primary client's family if the member is receiving ongoing services. This term does not include the spouse, significant other, or other family member living with the client who receives a one-time service (for

example, vaccination) if the spouse, significant other, or other family member receives the service in connection with the care of a client.

(29) Clinical note--A dated and signed written notation by agency personnel of a contact with a client containing a description of signs and symptoms; treatment and medication given; the client's reaction; other health services provided; and any changes in physical and emotional condition.

(30) CMS--Centers for Medicare & Medicaid Services. The federal agency that administers the Medicare program and works in partnership with the states to administer Medicaid.

(31) Complaint--An allegation against an agency regulated by HHSC or against an employee of an agency regulated by HHSC that involves a violation of this chapter or the Statute [statute].

(32) Community disaster resources--A local, statewide, or nationwide emergency system that provides information and resources during a disaster, including weather information, transportation, evacuation, and shelter information, disaster assistance and recovery efforts, evacuee and disaster victim resources, and resources for locating evacuated friends and relatives.

(33) Controlled substance--Has the meaning assigned in Texas Health and Safety Code Chapter 481, Subchapter A.

(34) [(33)] Controlling person--A person with the ability, acting alone or with others, to directly or indirectly influence, direct, or cause the direction of the management, expenditure of money, or policies of an agency or other person.

(A) A controlling person includes:

(i) a management company or other business entity that operates or contracts with others for the operation of an agency;

(ii) a person who is a controlling person of a management company or other business entity that operates an agency or that contracts with another person for the operation of an agency; and

(iii) any other individual who, because of a personal, familial, or other relationship with the owner, manager, or provider of an agency, is in a position of actual control or authority with respect to the agency, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the agency.

(B) A controlling person, as described by subparagraph (A)(iii) of this paragraph, does not include an employee, lender, secured creditor, or other person who does not exercise formal or actual influence or control over the operation of an agency.

(35) [(34)] Conviction--An adjudication of guilt based on a finding of guilt, a plea of guilty, or a plea of nolo contendere.

(36) [(35)] Counselor--An individual qualified under Medicare standards to provide counseling services, including bereavement, dietary, spiritual, and other counseling services to both the client and the family.

[(36)] DADS--HHSC.]

(37) Day--Any reference to a day means a calendar day, unless otherwise specified in the text. A calendar day includes weekends and holidays.

(38) Deficiency--A finding of noncompliance with federal requirements resulting from a survey.

(39) Designated survey office--An HHSC HCSSA [Home and Community Support Services Agencies] Program office located in an agency's geographic region.

(40) Dialysis treatment record--For home dialysis designation, a dated and signed written notation by the person providing dialysis treatment, which contains a description of signs and symptoms, machine parameters and pressure settings, type of dialyzer and dialysate, actual pre- and post-treatment weight, medications administered as part of the treatment, and the client's response to treatment.

(41) Dietitian--A person who is currently licensed under the laws of the State of Texas to use the title of licensed dietitian or provisional licensed dietitian, or who is a registered dietitian.

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

(43) Disaster--The occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from a natural or man-made cause, such as fire, flood, earthquake, wind, storm, wave action, oil spill or other water contamination, epidemic, air contamination, infestation, explosion, riot, hostile military or paramilitary action, or energy emergency. In a hospice inpatient unit, a disaster also includes failure of the heating or cooling system, power outage, explosion, and bomb threat.

(44) Disclosable interest--Five percent or more direct or indirect ownership interest in an applicant or license holder.

(45) ESRD--End stage renal disease. For home dialysis designation, the stage of renal impairment that appears irreversible and permanent and requires a regular course of dialysis or kidney transplantation to maintain life.

(46) Functional need--Needs of the individual that require services without regard to diagnosis or label.

(47) Habilitation--Habilitation services, as defined by Texas Government Code §534.001, provided by an agency licensed under this chapter.

(48) HCSSA--Home and community support services agency. A person who provides home health, hospice, or personal assistance services for pay or other consideration in a client's residence, an independent living environment, or another appropriate location.

(49) [(48)] Health assessment--A determination of a client's physical and mental status through inventory of systems.

(50) [(49)] HHSC--Texas Health and Human Services Commission [or its designee].

[(50)] Home and community support services agency--A person who provides home health, hospice, or personal assistance services for pay or other consideration in a client's residence, an independent living environment, or another appropriate location.]

(51) Home health aide--An individual working for an agency who meets at least one of the requirements for home health aides as described [defined] in §558.701 [§97.701] of this chapter (relating to Home Health Aides).

(52) Home health medication aide--An unlicensed person issued a permit by HHSC to administer medication to a client under [the] Texas Health and Safety Code[.] Chapter 142, Subchapter B.

(53) Home health service--The provision of one or more of the following health services required by an individual in a residence or independent living environment:

(A) nursing, including blood pressure monitoring and diabetes treatment;

(B) physical, occupational, speech, or respiratory therapy;

(C) medical social service;

(D) intravenous therapy;

(E) dialysis;

(F) service provided by unlicensed personnel under the delegation or supervision of a licensed health professional;

(G) the furnishing of medical equipment and supplies, excluding drugs and medicines; or

(H) nutritional counseling.

(54) Hospice--A person licensed under this chapter to provide hospice services, including a person who owns or operates a residential unit or an inpatient unit.

(55) Hospice aide--A person working for an agency licensed to provide hospice services who meets the qualifications for a hospice aide as described in §558.843 [§97.843] of this chapter (relating to Hospice Aide Qualifications).

(56) Hospice homemaker--A person working for an agency licensed to provide hospice services who meets the qualifications described in §558.845 [§97.845] of this chapter (relating to Hospice Homemaker Qualifications).

(57) Hospice services--Services, including services provided by unlicensed personnel under the delegation of a registered nurse or physical therapist, provided to a client or a client's family as part of a coordinated program consistent with the standards and rules adopted under this chapter. These services include physical care [palliative care for terminally ill clients] and support services to optimize quality of life for terminally ill clients and their families that:

(A) are available 24 hours a day, seven days a week, during the last stages of illness, [during] death, and [during] bereavement;

(B) are provided by a medically directed interdisciplinary team; and

(C) may be provided in a home, nursing facility, residential unit, [or] inpatient unit, or other residence according to need. These services do not include inpatient care normally provided in a licensed hospital to a terminally ill person who has not elected to be a hospice client. [For the purposes of this definition, the word "home" includes a person's "residence" as defined in this section.]

(58) IDR--Informal dispute resolution. An informal process that allows an agency to refute a violation or condition-level deficiency cited during a survey.

(59) Independent living environment--A client's residence, which may include a group home, foster home, or boarding home facility, or other settings where a client participates in activities, including school, work, or church.

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

(61) Individual and family choice and control--Individuals and families who express preferences and make choices about how their support service needs are met.

(62) Individualized service plan--A written plan prepared by the appropriate health care personnel for a client of a home and com-

munity support services agency licensed to provide personal assistance services.

(63) Inpatient unit--A facility, also referred to as a hospice freestanding inpatient facility, that provides a continuum of medical or nursing care and other hospice services to clients admitted into the unit and that is in compliance with:

(A) the Medicare conditions of participation for inpatient units adopted under 42 USC Chapter 7, Subchapter XVIII [Social Security Act, Title XVIII (42 United States Code §1395 et seq.)]; and

(B) standards adopted under this chapter.

~~[(64) JCAHO--The Joint Commission, previously known as the Joint Commission on Accreditation of Healthcare Organizations. An independent, nonprofit organization for standard-setting and accrediting in-home care and other areas of health care.]~~

(64) ~~[(65)]~~ Joint training--Training provided by HHSC at least semi-annually for home and community support services agencies and HHSC surveyors on subjects that address the 10 most commonly cited violations of federal or state law by home and community support services agencies as published in HHSC annual reports.

(65) ~~[(66)]~~ LAR--Legally authorized representative. A person authorized by law to act on behalf of a client regarding [with regard to] a matter described in this chapter, and may include a parent of a minor, guardian of an adult or minor, managing conservator of a minor, agent under a medical power of attorney, or surrogate decision-maker under Texas Health and Safety Code[.] §131.004.

(66) ~~[(67)]~~ License holder--A person that holds a license to operate an agency.

~~[(68) Licensed vocational nurse--A person who is currently licensed under Texas Occupations Code, Chapter 301, as a licensed vocational nurse.]~~

(67) ~~[(69)]~~ Life Safety Code (also referred to as NFPA 101)--The Code for Safety to Life from Fire in Buildings and Structures, Standard 101, of the National Fire Protection Association (NFPA).

(68) ~~[(70)]~~ Local emergency management agencies--The local emergency management coordinator, fire, police, and emergency medical services.

(69) ~~[(71)]~~ Local emergency management coordinator--The person identified as the emergency management coordinator by the mayor or county judge in an agency's service area.

(70) LVN--Licensed vocational nurse. A person who is currently licensed under Texas Occupations Code Chapter 301, as a licensed vocational nurse.

(71) ~~[(72)]~~ Manager--An employee or independent contractor responsible for providing management services to a home and community support services agency for the overall operation of a home and community support services agency including administration, staffing, or delivery of services. Examples of contracts for services that will not be considered contracts for management services include contracts solely for maintenance, laundry, or food services.

(72) ~~[(73)]~~ Medication administration record--A record used to document the administration of a client's medications.

(73) ~~[(74)]~~ Medication list--A list that includes all prescription and over-the-counter medication that a client is currently taking, including the dosage, the frequency, and the method of administration.

(74) ~~[(75)]~~ Mitigation--An action taken to eliminate or reduce the probability of a disaster[.] or reduce a disaster's severity or consequences.

(75) ~~[(76)]~~ Multiple location--A Medicare-approved ADS [alternate delivery site] that meets the definition in 42 CFR §418.3.

(76) ~~[(77)]~~ Notarized copy--A sworn affidavit stating that attached copies are true and correct copies of the original documents.

(77) ~~[(78)]~~ Nursing facility--An institution licensed as a nursing home under [the] Texas Health and Safety Code, Chapter 242.

(78) ~~[(79)]~~ Nutritional counseling--Advising and assisting individuals or families on appropriate nutritional intake by integrating information from the nutrition assessment with information on food and other sources of nutrients and meal preparation consistent with cultural background and socioeconomic status, with the goal being health promotion, disease prevention, and nutrition education. Nutritional counseling may include the following:

(A) dialogue with the client to discuss current eating habits, exercise habits, food budget, and problems with food preparation;

(B) discussion of dietary needs to help the client understand why certain foods should be included or excluded from the client's diet and to help with adjustment to the new or revised or existing diet plan;

(C) a personalized written diet plan as ordered by the client's physician or practitioner, to include instructions for implementation;

(D) providing the client with motivation to help the client understand and appreciate the importance of the diet plan in getting and staying healthy; or

(E) working with the client or the client's family members by recommending ideas for meal planning, food budget planning, and appropriate food gifts.

(79) ~~[(80)]~~ Occupational therapist--A person who is currently licensed under the [Occupational Therapy Practice Act,] Texas Occupations Code[.] Chapter 454, as an occupational therapist.

(80) Online portal--A secure portal provided on the HHSC website for licensure activities, including for a HCSSA applicant to submit licensure applications and information.

(81) Operating hours--The days of the week and the hours of day an agency's place of business is open as identified in an agency's written policy as required by §558.210 [§97.210] of this chapter (relating to Agency Operating Hours).

(82) Original active client record--A record composed first-hand for a client currently receiving services.

(83) Palliative--Ameliorating the symptoms associated with serious illness without the primary goal of curing an underlying condition.

~~[(83) Palliative care-- Intervention services that focus primarily on the reduction or abatement of physical, psychosocial, and spiritual symptoms of a terminal illness. It is client and family-centered care that optimizes quality of life by anticipating, preventing, and treating suffering. Palliative care throughout the continuum of illness involves addressing physical, intellectual, emotional, social, and spiritual needs and facilitating client autonomy, access to information, and choice.]~~

(84) Parent agency--An agency's principal place of business; the location where an agency develops and maintains administrative controls and provides supervision of branch offices and ADSs [alternate delivery sites].

(85) Parent company--A person, other than an individual, who has a direct 100 percent ownership interest in the owner of an agency.

(86) Person--An individual, corporation, or association.

(87) Personal assistance services--Routine ongoing care or services required by an individual in a residence or independent living environment that enable the individual to engage in the activities of daily living or to perform the physical functions required for independent living, including respite services. The term includes:

(A) personal care;

(B) health-related services performed under circumstances that are defined as not constituting the practice of professional nursing by the Texas Board of Nursing; and

(C) health-related tasks provided by unlicensed personnel under the delegation of a registered nurse or that a registered nurse determines do not require delegation.

(88) Personal care--The provision of one or more of the following services required by an individual in a residence or independent living environment:

(A) bathing;

(B) dressing;

(C) grooming;

(D) feeding;

(E) exercising;

(F) toileting;

(G) positioning;

(H) assisting with self-administered medications;

(I) routine hair and skin care; and

(J) transfer or ambulation.

(89) Pharmacist--A person who is licensed to practice pharmacy under [the Texas Pharmacy Act] Texas Occupations Code[;] Chapter 558.

(90) Pharmacy--A facility defined in [the] Texas Occupations Code[;] §551.003(31), at which a prescription drug or medication order is received, processed, or dispensed, and which holds a pharmacy license issued under Texas Occupations Code Title 3, Subtitle J.

(91) Physical therapist--A person who is currently licensed under Texas Occupations Code[;] Chapter 453, as a physical therapist.

(92) Physician--This term includes a person who is:

(A) licensed in Texas to practice medicine or osteopathy in accordance with Texas Occupations Code[;] Chapter 155;

(B) licensed in Arkansas, Louisiana, New Mexico, or Oklahoma to practice medicine, who is the treating physician of a client and orders home health or hospice services for the client, in accordance with [the] Texas Occupations Code[;] §151.056(b)(4); or

(C) a commissioned or contract physician or surgeon who serves in the United States uniformed services or Public Health

Service, if the person is not engaged in private practice, in accordance with the Texas Occupations Code[;] §151.052(a)(8).

(93) Physician assistant--A person who is licensed under [the Physician Assistant Licensing Act] Texas Occupations Code[;] Chapter 204, as a physician assistant.

(94) Physician-delegated task--A task performed in accordance with [the] Texas Occupations Code[;] Chapter 157, including orders signed by a physician that specify the delegated task, [the] individual to whom the task is delegated, and [the] client's name.

(95) Place of business--An office of a home and community support services agency that maintains client records or directs home health, hospice, or personal assistance services. This term includes a parent agency, a branch office, and an ADS [alternate delivery site]. The term does not include an administrative support site.

(96) Plan of care--The written orders of a practitioner for a client who requires skilled services.

(97) Practitioner--A person who is currently licensed in a state in which the person practices as a physician, dentist, podiatrist, or a physician assistant, or a person who is an RN [a registered nurse] registered with the Texas Board of Nursing as an advanced practice nurse.

(98) Preparedness--Actions taken in anticipation of a disaster.

(99) Presurvey training [conference]--A computer-based training provided by [conference held with] HHSC for [staff and] the applicant or the applicant's representatives to review licensure standards and survey documents, and to provide information regarding the survey process.

(100) Progress note--A dated and signed written notation by agency personnel summarizing facts about care and the client's response during a given period of time.

(101) Psychoactive treatment--The provision of a skilled nursing visit to a client with a psychiatric diagnosis under the direction of a physician that includes one or more of the following:

(A) assessment of alterations in mental status or evidence of suicide ideation or tendencies;

(B) teaching coping mechanisms or skills;

(C) counseling activities; or

(D) evaluation of the plan of care.

(102) Recovery--Activities implemented during and after a disaster response designed to return an agency to its normal operations as quickly as possible.

(103) Registered nurse delegation--Delegation by a registered nurse in accordance with:

(A) 22 TAC Chapter 224 (concerning Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel for Clients with Acute Conditions or in Acute Care Environments); and

(B) 22 TAC Chapter 225 (relating to RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegation in Independent Living Environments for Clients with Stable and Predictable Conditions).

(104) Residence--A place where a person resides, including a home, a nursing facility, a convalescent home, or a residential unit.

(105) Residential unit--A facility that provides living quarters and hospice services to clients admitted into the unit and that is in compliance with standards adopted under [the] Texas Health and Safety Code[.] Chapter 142.

(106) Respiratory therapist--A person who is currently licensed under Texas Occupations Code[.] Chapter 604, as a respiratory care practitioner.

(107) Respite services--Support options that are provided temporarily for the purpose of relief for a primary caregiver in providing care to individuals of all ages with disabilities or at risk of abuse or neglect.

(108) Response--Actions taken immediately before an impending disaster or during and after a disaster to address the immediate and short-term effects of the disaster.

(109) Restraint--A restraint is:

(A) a manual method, physical or mechanical device, material, or equipment that immobilizes or reduces the ability of a client in a hospice inpatient unit to move his or her arms, legs, body, or head freely, but does not include a device, such as an orthopedically prescribed device, a surgical dressing or bandage, a protective helmet, or other method that involves the physical holding of the client for the purpose of:

(i) conducting a routine physical examination or test;

(ii) protecting the client from falling out of bed; or

(iii) permitting the client to participate in activities without the risk of physical harm, not including a physical escort; or

(B) a drug or medication when used as a restriction to manage a client's behavior or restrict the client's freedom of movement in a hospice inpatient unit, but not as a standard treatment or medication dosage for the client's condition.

(110) RN--Registered nurse. A person who is currently licensed under the Nursing Practice Act, Texas Occupations Code[.] Chapter 301, as a registered nurse.

(111) Seclusion--The involuntary confinement of a client alone in a room or an area in a hospice inpatient unit from which the client is physically prevented from leaving.

(112) Section--A reference to a specific rule in this chapter.

(113) Service area--A geographic area established by an agency in which all or some of the agency's services are available.

(114) Skilled services--Services in accordance with a plan of care that require the skills of:

(A) an RN [a registered nurse];

(B) an LVN [a licensed vocational nurse];

(C) a physical therapist;

(D) an occupational therapist;

(E) a respiratory therapist;

(F) a speech-language pathologist;

(G) an audiologist;

(H) a social worker; or

(I) a dietitian.

(115) Social worker--A person who is currently licensed as a social worker under Texas Occupations Code[.] Chapter 505.

(116) Speech-language pathologist--A person who is currently licensed as a speech-language pathologist under Texas Occupations Code[.] Chapter 401.

(117) Statute--[The] Texas Health and Safety Code[.] Chapter 142.

(118) Substantial compliance--A finding in which an agency receives no recommendation for enforcement action after a survey.

(119) Supervised practical training--Hospice aide training that is conducted in a laboratory or other setting in which the trainee demonstrates knowledge while performing tasks on an individual. The training is supervised by an RN [a registered nurse] or by an LVN [a licensed vocational nurse] who works under the direction of a registered nurse.

(120) Supervising nurse--The person responsible for supervising skilled services provided by an agency and who has the qualifications described in §558.244(c) [§97.244(e)] of this chapter (relating to Administrator Qualifications and Conditions and Supervising Nurse Qualifications). This person may also be known as the director of nursing or similar title.

(121) Supervision--Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity with initial direction and periodic inspection of the actual act of accomplishing the function or activity.

(122) Supportive palliative care--Physician-directed interdisciplinary patient and family-centered care provided to a patient with a serious illness without regard to the patient's age or terminal prognosis that:

(A) may be provided concurrently with methods of treatment or therapies that seek to cure or minimize the effects of the patient's illness; and

(B) seek to optimize the quality of life for a patient with a life-threatening or life-limiting illness and the patient's family through various methods, including methods that seek to:

(i) anticipate, prevent, and treat the patient's total suffering related to the patient's physical, emotional, social, and spiritual condition;

(ii) address the physical, intellectual, emotional, cultural, social, and spiritual needs of the patient; and

(iii) facilitate for the patient, regarding treatment options, education, informed consent, and expression of desires.

(123) [(+22)] Support services--Social, spiritual, and emotional care provided to a client and a client's family by a hospice.

(124) [(+23)] Survey--An on-site inspection or complaint investigation conducted by an HHSC representative to determine if an agency is in compliance with the Statute [statute] and this chapter or in compliance with applicable federal requirements or both.

(125) TAC--Texas Administrative Code.

(126) [(+24)] Terminal illness--An illness for which there is a limited prognosis if the illness runs its usual course.

(127) [(+25)] Unlicensed person--A person not licensed as a health care provider. The term includes home health aides, hospice aides, hospice homemakers, medication aides permitted by HHSC, and

other unlicensed individuals providing personal care or assistance in health services.

(128) [(426)] Unsatisfied judgments--A failure to fully carry out the terms or meet the obligation of a court's final disposition on the matters before it in a suit regarding the operation of an agency.

(129) [(427)] Violation--A finding of noncompliance with this chapter or the Statute [statute] resulting from a survey.

(130) [(428)] Volunteer--An individual who provides assistance to a home and community support services agency without compensation other than reimbursement for actual expenses.

(131) [(429)] Working day--Any day except Saturday, Sunday, a state holiday, or a federal holiday.

#### §558.3. License Fees.

(a) The schedule of fees for licensure of an agency authorized to provide one or more services is as follows:

(1) initial (includes change of ownership) license fee--\$2,625 [\$1,750];

(2) renewal license fee for a three-year license--\$2,625 [\$1,750];

(3) renewal license fee for a two-year license--\$1,750;

(4) [(3)] initial (includes change of ownership) branch office license fee--\$2,625 [\$1,750];

(5) [(4)] renewal branch office license fee for a three-year license--\$2,625 [\$1,750];

(6) renewal branch office license fee for a two-year license--\$1,750;

(7) [(5)] initial (includes change of ownership) ADS [alternate delivery site] license fee--\$1,000; [and]

(8) [(6)] renewal ADS [alternate delivery site] license fee for a three-year license--\$900; and [\$600.]

(9) renewal ADS license fee for a two-year license--\$600.

(b) Separate fees for branch office and ADS licenses and renewals are required for each physical address. To renew a branch office or ADS license, the licensee must submit the renewal application and payment in full, of all applicable licensing fees, for each branch office and ADS sought to be renewed, at the same time as the parent agency submission for renewal.

(c) [(b)] A [(The)] late fee assessed under Subchapter B [established in §97.17] of this chapter (relating to Criteria and Eligibility, Application Procedures, and Issuance of [for] a [Renewal] License) is one-half the amount of the required renewal license fee established in subsection (a) of this section. If HHSC assesses a late fee described in this subsection, the applicant must pay the applicable renewal application fee in full plus the late [required renewal] fee described in this section. HHSC may assess a separate late fee for each parent agency, branch office, and ADS renewal application.

(d) [(e)] If an applicant for an initial license based on a change of ownership submits a late application for a license to HHSC [DADS], as described in §558.25 [§97.25] of this chapter (relating to [Application Procedures and] Requirements for Change of Ownership), the applicant must pay the required initial license fee, as set out in subsection (a) of this section, plus a late fee of \$250.

(e) [(d)] HHSC [DADS] does not review [consider] an application [as officially submitted] until the applicant submits the applica-

tion and the online portal reflects a status of payment received [pays the required license fee. The fee must accompany the application].

(f) [(e)] A fee paid to HHSC [DADS] is not refundable but may be reimbursed under the circumstances and conditions described in §558.31 [, except as provided by §97.31] of this chapter (relating to Time Frames for Processing and Issuing a License).

(g) [(f)] HHSC accepts payment of required fees made in accordance with options made available through the online portal. [DADS accepts a certified check, money order, company check or personal check made out to the Department of Aging and Disability Services in payment for a required 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.

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Health and Human Services Commission

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



## SUBCHAPTER B. CRITERIA AND ELIGIBILITY, APPLICATION PROCEDURES, AND ISSUANCE OF A LICENSE

**26 TAC §§558.11 - 558.13, 558.15, 558.17, 558.19, 558.21, 558.23, 558.25, 558.27. 558.29 - 558.31**

### STATUTORY AUTHORITY

The amendments and new section are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; and Texas Health and Safety Code §§142.012, 142.010, and 142.006(b), which respectively authorize the Executive Commission of HHSC to adopt rules in accordance with those sections that are necessary to implement Chapter 142 and set minimum standards for home and community support services agencies licensed under that Chapter, set reasonable license fees for such agencies, and establish a system for staggered three-year license expiration dates.

The amendments and new section implement Texas Government Code §531.0055 and Texas Health and Safety Code §§142.012, 142.010(a), 142.006(b) and 142.0095, and Texas Health and Safety Code Chapter 142, Subchapter C.

#### §558.11. Criteria and Eligibility for Licensing.

(a) An applicant for a license must not admit a client or initiate services until the applicant completes the application process and receives an initial license.

(b) A first-time application for a license is an application for an initial license.

(c) An application for a license when there is a change of ownership is an application for an initial license.



(d) A separate license is required for each place of business as defined in §558.2 [§97.2] of this chapter (relating to Definitions).

(e) An agency's place of business must be located in and have an address in Texas. An agency located in another state must receive a license as a parent agency in Texas to operate as an agency in Texas.

(f) An applicant must be at least 18 years of age.

(g) Before issuing a license, HHSC [DADS] considers the background [~~and qualifications~~] of:

- (1) the applicant;
- (2) a controlling person of the applicant;
- (3) a person with a disclosable interest;
- (4) an affiliate of the applicant; and
- ~~[(5) the administrator;]~~
- ~~[(6) the alternate administrator; and]~~
- (5) ~~[(7)]~~ the chief financial officer.

(h) Before issuing a license, HHSC considers the background and qualifications of the administrator and alternate administrator in accordance with §558.244 of this chapter (relating to Administrator Qualifications and Conditions and Supervising Nurse Qualifications).

(i) ~~[(h)]~~ HHSC [DADS] may deny an application for an initial license or for renewal of a license if a ~~[any]~~ person described in subsection (g) or (h) of this section:

(1) on the date of the application:

(A) is subject to denial or refusal as described in Chapter 560 [99] of this title (relating to Denial or Refusal of License) during the time frames described in that chapter;

(B) has an unsatisfied final judgment in any state or other jurisdiction; or

~~[(C) is in default on a guaranteed student loan (Education Code, §57.491); or]~~

(C) ~~[(D)]~~ is delinquent on child support obligations (Texas Family Code~~§~~ Chapter 232);

(2) for two years preceding the date of the application, has a history in any state or other jurisdiction of any of the following:

(A) an unresolved federal or state tax lien;

(B) an eviction involving any property or space used as an inpatient hospice agency; or

(C) an unresolved final Medicare or Medicaid audit exception; or

(3) for 12 [twelve] months preceding the date of the application, has a history in any state or other jurisdiction of any of the following:

(A) denial, suspension, or revocation of an agency license or a license for a health care facility;

(B) surrendering a license before expiration or allowing a license to expire instead of the licensing authority proceeding with enforcement action;

(C) a Medicaid or Medicare sanction or penalty relating to the operation of an agency or a health care facility;

(D) operating an agency that has been decertified in any state under Medicare or Medicaid; or

(E) debarment, exclusion, or involuntary contract cancellation in any state from Medicare or Medicaid.

#### §558.12. General Application.

(a) An applicant must submit an application on the forms prescribed by HHSC through the online portal.

(b) An applicant must complete and furnish all documents and information that HHSC requests in accordance with instructions provided with the application. All uploaded documents an applicant submits must be complete and accurate. If an applicant provides incorrect or false information, or withholds information, on an application, HHSC may:

(1) deny the application; or

(2) assess an administrative penalty, as described in §558.602(e)(5) of this chapter (relating to Administrative Penalties).

(c) When an applicant submits an application through the online portal with full payment of applicable license fees, HHSC reviews the application and supporting documents to determine if it is complete and accurate. A complete and accurate application includes all documents and information that HHSC requests as part of the application process.

(1) HHSC processes the application in accordance with time frames established in §558.31 of this subchapter (relating to Time Frames for Processing and Issuing a License).

(2) If an applicant decides not to continue the application process for a license after submitting the application and license fee, the applicant must submit a written request to HHSC to withdraw the application. HHSC does not refund the license fee.

(d) If an application is not complete and accurate, HHSC provides the applicant with electronic notice through the online portal, that the application is incomplete and specifies the information required to complete the application.

(1) The applicant must submit to HHSC, through the online portal, the additional information requested to complete the application by no later than 30 days after the date of the notice. HHSC sends only one electronic notice through the online portal of the information needed to complete the application.

(2) If an applicant fails to submit the required information to complete the application within 30 days after HHSC provides electronic notice through the online portal, HHSC considers the application incomplete and may deny the application. If HHSC denies the application, HHSC does not refund the license fee.

(3) HHSC, at its discretion, may accept information later than 30 days based on extenuating circumstances. HHSC may assess the late fee authorized in §558.3(c) and set out in §558.3(d) of this chapter (relating to License Fees) for the parent agency and any applicable branch offices or ADSs for failure to comply with paragraph (1) of this subsection.

(e) HHSC may deny issuance of a license for any of the reasons specified in §558.21 of this subchapter (relating to Denial of an Application or a License).

#### §558.13. Obtaining [Application Procedures for] an Initial License.

(a) The following staff must complete the Presurvey Training [~~a presurvey conference training~~] before submitting an application for a license:

(1) the administrator and alternate administrator; and

(2) the supervising nurse and alternate supervising nurse of an agency that provides licensed home health services with or without

home dialysis designation, licensed and certified home health services with or without home dialysis designation, or hospice services.

~~[(b) When applying for a license, an applicant must not provide incorrect or false information on an application or an attachment to an application or withhold information from an application or an attachment to an application. If an applicant provides incorrect or false information on, or withholds information from, an application or an attachment to an application, HHSC may deny the application as described in §97.21 of this subchapter (relating to Denial of an Application or a License).]~~

~~[(c) Upon request, HHSC furnishes a person with an application packet for a license.]~~

~~[(b) [(d)] An applicant may request to be licensed in one or more of the following categories:~~

- ~~(1) licensed and certified home health services;~~
- ~~(2) licensed and certified home health services with home dialysis designation;~~
- ~~(3) licensed home health services;~~
- ~~(4) licensed home health services with home dialysis designation;~~
- ~~(5) hospice services; or~~
- ~~(6) personal assistance services.~~

~~[(c) [(e)] HHSC does not require an agency to be licensed in more than one category if the category for which the agency is licensed includes the services the agency provides.~~

~~[(f) An applicant must complete and furnish all documents and information that HHSC requests in accordance with instructions provided with the application packet. All submitted documents must be notarized copies or originals.]~~

~~[(g) After receiving an application packet and license fee, HHSC reviews the material to determine if it is complete and correct. A complete and correct application packet includes all documents and information that HHSC requests as part of the application process. If HHSC receives no fee or a partial fee, HHSC returns the application packet and the fee to the applicant.]~~

~~[(1) HHSC processes the application packet in accordance with time frames established in §97.31 of this chapter (relating to Time Frames for Processing and Issuing a License).]~~

~~[(2) If an applicant decides not to continue the application process for an initial license after submitting the application packet and license fee, the applicant must submit to HHSC a written request to withdraw the application. HHSC does not refund the license fee.]~~

~~[(3) If an applicant receives a notice from HHSC that some or all of the information required by this section has been omitted, the applicant must submit the required information to HHSC no later than 30 days after the date of the notice. If an applicant fails to submit the required information within 30 days after the notice date, HHSC considers the application packet incomplete and denies the application. If HHSC denies the application, HHSC does not refund the license fee.]~~

~~[(d) [(h)] An applicant who has requested the category of licensed and certified home health services on the initial license application must also apply to CMS for certification as a Medicare-certified agency under the 42 United States Code Chapter 7, Subchapter XVIII [Social Security Act, Title XVIII].~~

~~(1) While the applicant is waiting for CMS to certify it as a Medicare-certified agency:~~

(A) HHSC issues an initial license reflecting the category of licensed home health services if the applicant meets the criteria for the license; and

(B) the applicant must comply with the Medicare conditions of participation for home health agencies in 42 CFR [Code of Federal Regulations,] Part 484, as if the applicant were dually certified.

(2) If CMS certifies an agency to participate in the Medicare program during the initial license period, HHSC sends a notice to the agency that the category of licensed and certified home health services has been added to the license. If the agency wants to remove the licensed home health services category from the agency's license after the category of licensed and certified home health services has been added, the agency must submit to HHSC an application through the online portal ~~[a written request]~~ to remove that category from the agency's license.

(3) If CMS denies certification to an agency or an agency withdraws the application for participation in the Medicare program, the agency may retain the category of licensed home health services on its license.

~~[(e) [(i)] An applicant for an initial license must comply with §558.30 [§97.30] of this subchapter (relating to Operation of an Inpatient Unit at a Parent Agency) to operate an inpatient unit at the applicant's parent agency.~~

*§558.15. Issuance of an Initial License.*

(a) HHSC ~~[DADS]~~ issues an initial license when HHSC ~~[DADS]~~ determines:

(1) the [an] application, including supporting documents, submitted is [and license fee are] complete and accurate [correct]; [and]

(2) HHSC has received funds constituting full payment of all applicable license fees, including late fees; and

(3) [(2)] an applicant meets the criteria for a license as described in §558.11 [§97.11] of this subchapter (relating to Criteria and Eligibility for Licensing) and §558.13 of this subchapter (relating to Obtaining an Initial License).

(b) An initial license is valid for three ~~[two]~~ years from the date of issuance.

(c) HHSC ~~[DADS]~~ may deny an application to renew an initial license, or revoke or suspend an initial license, if an agency fails to:

(1) meet the requirements for an initial survey as specified in Subchapter E of this chapter (relating to Licensure Surveys); or

(2) maintain [substantial] compliance with the Statute ~~[statute]~~ and this chapter for the services authorized under the license.

(d) HHSC ~~[DADS]~~ may deny an application for an initial license for any of the reasons specified in §558.21 [§97.21] of this chapter (relating to Denial of an Application or a License).

(e) A license designates an agency's place of business from which services are to be provided and designates an agency's authorized category or categories of service.

*§558.17. Application Procedures for a Renewal License.*

(a) To renew its license ~~[An agency license is valid for two years. To continue providing services to clients after a license expires], an agency must submit a renewal application through the online portal~~ [renew the license].

(b) An agency must submit its renewal application in accordance with §558.12 of this subchapter (relating to General Application) when submitting a renewal application through the online portal.

[not provide incorrect or false information on a renewal application or an attachment to a renewal application or withhold information from a renewal application or an attachment to a renewal application. If an agency provides incorrect or false information on a renewal application or an attachment to a renewal application or withholds information from a renewal application or an attachment to a renewal application, HHSC may deny the renewal application as described in §97.21 of this subchapter (relating to Denial of an Application or a License) and assess an administrative penalty, as described in §97.602(e)(5) of this chapter (relating to Administrative Penalties).]

(c) For each license period, an agency must provide services to at least one client to be eligible to renew its license.

(d) HHSC does not require an agency to admit a client under each category of service authorized under the license to be eligible to renew its license.

~~[(e) An agency must document the services that the agency provided to a client and keep the documentation readily available for review by an HHSC surveyor.]~~

~~(e) [(f)] With each renewal application, an [accredited] agency accredited by an accreditation organization referenced in §558.503 of this chapter (relating to Exemption from Survey) must submit to HHSC through the online portal a copy of the accreditation documentation that the agency receives from the accreditation organization.~~

~~(f) [(g)] At least 120 days before the expiration date of a license, HHSC makes the renewal application and instructions available through the online portal. HHSC notifies the agency with electronic [HHSC sends written notice of expiration of a license to an agency at least 120 days before the expiration date of the license. The written] notice that the [includes an] application and instructions to renew the license are made available through the online portal [and instructions for completing the application].~~

(1) If the renewal application is not made available by [an agency does not receive notice of expiration from] HHSC in accordance with this subsection, the agency must, at least 90 days before the expiration date of a license, notify HHSC in writing that it has not received notice of expiration and request that HHSC make a renewal application available.

(2) To avoid a late fee, an [An] agency must submit to HHSC a complete and accurate [correct] renewal application, as described in §558.12(c) of this subchapter, with full payment of all [and the] required license fees as [fee] specified in §558.3 [§97.3] of this chapter (relating to License Fees), [postmarked] no later than the 45th day before the expiration date of the license.

(3) If an agency submits a renewal application [that is postmarked] after the 45th day before the expiration date of a license, but before the expiration date of the license, HHSC assesses the late fee set out in §558.3(c) [§97.3(b)] of this chapter for failure to comply with paragraph (2) of this subsection.

~~[(4) An agency must submit documents with the renewal application that are notarized copies or originals.]~~

~~[(h) After receiving a renewal application and the renewal license fee, HHSC reviews the application to determine if it is complete and correct. A complete and correct renewal application includes all requested documents and information, and the required fee.]~~

~~[(i) HHSC processes the renewal application according to the time frames in §97.31 of this chapter (relating to Time Frames for Processing and Issuing a License).]~~

~~[(2) If an agency decides not to continue the application process for a renewal license after submitting the renewal application and the renewal license fee, the agency must submit to HHSC a notarized statement requesting to withdraw the renewal application. HHSC does not refund the renewal license fee.]~~

~~[(3) HHSC notifies an agency, in writing, if an application does not include all documents and information. An agency must submit the missing documents or information to HHSC postmarked no later than 30 days after the date of the notice or HHSC considers the renewal application incomplete and denies the application. If HHSC denies the renewal application, HHSC does not refund the renewal license fee.]~~

~~[(4) If an agency receives a written notice from HHSC that a late fee is assessed in accordance with subsection (g) of this section, the agency's payment of the late fee must be postmarked no later than 30 days after the date of the notice or HHSC considers the renewal application incomplete and denies the application. If HHSC denies the renewal application, HHSC does not refund the renewal license fee.]~~

~~(g) [(i)] If an agency submits a renewal application to HHSC [that is postmarked] after the expiration date of the license, HHSC denies the renewal application and does not refund the renewal license fee. The agency is not eligible to renew the license and must cease operation on the date the license expires. An agency whose license expires must apply for an initial license in accordance with §558.13 [§97.13] of this subchapter (relating to Obtaining [Application Procedures for] an Initial License).~~

~~(h) [(j)] If an agency submits a [timely] renewal application before the expiration date of the license in accordance with this subsection [section], the license does not expire until HHSC has made a final determination on the application.~~

~~(1) If [and] an enforcement action is pending at the time the renewal applicant submits a renewal application, the agency's license does not expire and [to revoke, suspend, or deny renewal of the license is pending at the time of submission,] the agency may continue to operate until HHSC had made a final determination on the application, concurrent with the agency's [, and the license is valid until the agency has had an] opportunity for a formal hearing as described in §558.601 [§97.601] of this chapter (relating to Enforcement Actions). [Until the action to revoke, suspend, or deny renewal of the license is completed, the agency must continue to submit a renewal application in accordance with this section. HHSC issues a renewal license only if HHSC determines the reason for the proposed action no longer exists.]~~

~~(2) A license expires if the license holder fails to submit a renewal application in accordance with the subsection before the expiration date.~~

~~(i) [(k)] If a license holder fails to submit a [timely] renewal application in accordance with subsection (h) of this section because the license holder is or was on active duty with the armed forces of the United States of America outside the State [state] of Texas, the license holder may renew the license pursuant to this subsection.~~

(1) An individual having power of attorney from the license holder or other authority to act on behalf of the license holder may request renewal of the license. The renewal application must include a current address and telephone number for the individual requesting the renewal.

(2) An agency may submit a request for a renewal application through the online portal before or after the expiration of the license.

(3) A copy of the official orders or other official military documentation showing that the license holder is or was on active military duty serving outside the State [state] of Texas must be submitted to HHSC with the renewal application.

(4) A copy of the power of attorney from the license holder or other authority to act on behalf of the license holder must be submitted to HHSC with the renewal application.

(5) A license holder applying to renew [renewing] a license under this subsection must pay the required renewal fee in full.

(6) A license holder may not operate the agency for which the license was obtained after the expiration of the license unless and until HHSC renews the license.

(7) This subsection applies to a license holder who is an individual or a partnership comprised of individuals, all of whom are or were on active duty with the armed forces of the United States of America serving outside the State [state] of Texas.

(j) [(H)] An applicant for a renewal license must comply with §558.30 [§97.30] of this subchapter (relating to Operation of an Inpatient Unit at a Parent Agency) to operate an inpatient unit at the applicant's parent agency.

#### §558.19. Issuance of a Renewal License.

(a) A license issued under this chapter expires three years after the date HHSC issues it, except as provided in subsections (e)(1) and (f)(1) of this section [renewal license is valid for two years. The new licensure period begins the day after the previous license expires].

(b) Except as specified in §558.503 [§97.503] of this chapter (relating to Exemption From a Survey), HHSC [DADS] may not renew an initial license unless HHSC [DADS] conducts an initial survey of the agency. For renewal of an initial license, an agency must:

(1) meet the requirements for an initial survey as specified in Subchapter E of this chapter (relating to Licensure Surveys);

(2) demonstrate substantial compliance with the Statute [statute] and this chapter for the services authorized under the license as confirmed by an initial survey; and

(3) apply for renewal of the license in accordance with §558.17 [§97.17] of this subchapter (relating to Application Procedures for a Renewal License).

(c) For renewal of a license other than an initial license, an agency must:

(1) maintain substantial compliance with the Statute [statute] and this chapter for the services authorized under the license; and

(2) apply for renewal of the license in accordance with §558.17 [§97.17] of this subchapter.

(d) If HHSC grants the renewal application, it issues a renewal license effective on the day after the previous license expires.

(e) If HHSC renews a license that expires after February 1, 2021, and before January 1, 2022, HHSC:

(1) issues a license that is valid for two years, if the license is for an agency with a license number that ends in 0-3 or 7-9; and

(2) issues a license that is valid for three years, if the license is for an agency with a license number that ends in 4-6.

(f) If HHSC renews a license that expires after February 1, 2021, and before January 1, 2023, HHSC:

(1) issues a license that is valid for two years, if the license is for an agency with a license number that ends in 4-6; and

(2) issues a license that is valid for three years, if the license is for an agency with a license number that ends in 0-3 or 7-9.

(g) [(4)] HHSC [DADS] may deny a renewal application:

(1) if an agency fails to meet the eligibility criteria in §558.11 [§97.11] of this subchapter (relating to Criteria and Eligibility for Licensing);

(2) if the agency fails to meet the requirements for renewal of a license as specified in this subchapter [section]; or

(3) for any of the reasons specified in §558.21 [§97.21] of this subchapter (relating to Denial of an Application or a License).

(h) [(e)] A renewal license designates an agency's place of business from which services are to be provided or directed and designates an agency's authorized category or categories of service.

#### §558.21. Denial of an Application or a License.

(a) HHSC [DADS] may deny an application for [an initial license or for renewal of] a license on any ground described in this chapter, or if any person described in §558.11(g) or (h) [§97.11(g)] of this subchapter (relating to Criteria and Eligibility for Licensing):

(1) fails to comply with the Statute [statute];

(2) fails to comply with this chapter;

(3) knowingly aids, abets, or permits another person to violate the Statute [statute] or this chapter;

(4) fails to meet the criteria for a license established in §558.11 [§97.11] of this subchapter; or

(5) violates Texas Occupations Code[, §] 102.001 [(relating to Soliciting Patients; Offense) or §102.006 (relating to Failure to Disclose; Offense)].

(b) If HHSC [DADS] denies an application for [an initial license or for renewal of] a license, the applicant or agency may request an administrative hearing in accordance with §558.601 [§97.601] of this chapter (relating to Enforcement Actions).

#### §558.23. Change of Ownership.

(a) A license holder may not transfer its license. If there is a change of ownership, the license holder's license becomes invalid on the date of the licensure change of ownership. The prospective license holder must apply for [obtain] a license in accordance with §558.12 of this subchapter (relating to General Application) and §558.13 [§97.13] of this subchapter (relating to Obtaining [Application Procedures for] an Initial License).

(b) If HHSC grants the application for an initial change of ownership license and allows an initial change of ownership application to occur without a gap in the agency's licensed status, the license holder at the time of the application must maintain an active and valid license until HHSC grants and issues an initial license to the change of ownership applicant.

(c) [(b)] A change of ownership for a parent agency is a change of ownership for the parent agency's branch office or ADS [alternate delivery site] and requires the submittal of an [initial] application and license fee for each [the] branch office and ADS at the same time as the parent agency application and fee [or alternate delivery site].

(d) [(e)] HHSC [DADS] conducts an on-site health inspection to verify compliance with the licensure requirements after issuing a

license as a result of a change of ownership. HHSC [DADS] may conduct a desk review instead of an on-site health inspection after issuing a license as a result of a change of ownership if:

(1) less than 50 percent of the direct or indirect ownership interest in the former license holder changed, when compared to the new license holder; or

(2) every owner with a disclosable interest in the new license holder had a disclosable interest in the former license holder.

(c) [(d)] For an agency [agencies] licensed to provide licensed and certified home health services or certified, as well as [and] licensed, to provide [and certified] hospice services, applicable federal laws and regulations relating to change of ownership or control apply in addition to the requirements of this section.

*§558.25. [Application Procedures and] Requirements for Change of Ownership.*

[(a)] [An application for an initial license resulting from a change of ownership must be requested at least 60 days before the effective date of the change of ownership.]

[(4)] To apply for an initial change of ownership license [avoid a gap in the license period], a prospective new owner must submit an initial license application to HHSC through the online portal in accordance with paragraph (2) of this subsection. The application must be [a] complete and accurate, as described in §558.12(c) of this subchapter (relating to General Application), and the applicant must submit [correct application packet for a license and] the appropriate license fee with the application. [to DADS at least 30 days before the anticipated date of sale or other transfer of ownership, and before expiration date of the license.]

(1) The change of ownership applicant must submit the complete and accurate initial application with full payment of required license fees at least 30 days before the anticipated date of sale or other transfer of ownership and before the expiration date of the license.

(A) HHSC may accept a change of ownership application less than 30 days before the effective date.

(B) HHSC may assess a late fee set out in §558.3(d) of this chapter (relating to License Fees).

(2) An applicant must submit a complete and correct application packet to DADS in accordance with the instructions provided with the application packet.]

(2) [(3)] The change of ownership [An] applicant must apply for the initial license in accordance with §558.23(a) of this subchapter (relating to Change of Ownership) and meet the criteria for a license as described in §558.11 [§97.11] of this subchapter (relating to Criteria and Eligibility for Licensing) and §558.13 of this subchapter (relating to Obtaining an Initial License).

(3) [(4)] If an applicant submits a complete and accurate [timely and sufficient] application through the online portal, has met all the criteria for a license, [packet] and HHSC has received funds constituting full payment of all required license fee [and meets all criteria for a license,] HHSC [DADS] issues the change of ownership applicant an initial [a] license. The effective [on the] date of the license constitutes the licensure change [transfer] of ownership date. [DADS considers an applicant to have filed a timely and sufficient application for a license if the applicant submits:]

[(A) a complete and correct application packet and license fee to DADS that is postmarked at least 30 days before the anticipated date of sale or other transfer of ownership, and before the expiration date of the license;]

[(B) an incomplete application packet and license fee to DADS with a letter explaining the circumstances that prevented its completion that is postmarked at least 30 days before the anticipated date of sale or other transfer of ownership, and before the expiration date of the license; and DADS accepts the explanation. The applicant must submit the missing information to DADS within 30 days after the date of the letter;]

[(C) a complete and correct application packet and license fee to DADS that is postmarked less than 30 days before the anticipated date of sale or other transfer of ownership, and before the expiration date of the license; and the applicant pays the late fee set out in §97.3(d) of this chapter (relating to License Fees); or]

[(D) a complete and correct application packet and license fee to DADS that is received by the date of sale or other transfer of ownership, and before the expiration date of the license; and the applicant proves to DADS' satisfaction that the health and safety of the agency's clients required an emergency change of ownership.]]

[(5) If an applicant files a timely application packet and license fee, but DADS determines that the application packet is incomplete and a letter explaining the circumstances that prevented its completion was not filed with the application, DADS considers the application timely filed but incomplete.]]

[(A) DADS provides the applicant with written notification of the missing information required to complete the application and may assess the late fee set out in §97.3(d) of this chapter for failure to comply with paragraph (1) of this subsection.]]

[(B) An applicant must submit the required information and late fee, if assessed, no later than 30 days after the date of the notice. If an applicant fails to submit the required information within 30 days after the notice date, DADS considers the application incomplete and DADS denies the license. If DADS denies the license, DADS does not refund the license fee.]]

(4) [(6)] The initial license issued to the new owner is valid for three [two] years from the date of issuance.

[(7) The previous owner's license is void on the effective date of the new owner's initial license. The previous owner's license must be surrendered to DADS within five working days after the effective date of the change of ownership.]]

[(8) DADS may deny issuance of a license for any of the reasons specified in §97.21 of this subchapter (relating to Denial of an Application or a License).]]

[(b) For agencies licensed to provide licensed and certified home health services and licensed and certified hospice services, applicable federal laws and regulations relating to change of ownership or control apply in addition to the requirements of this section.]]

*§558.27. Application and Issuance of an Initial [a] Branch Office License.*

(a) An agency with a current license to provide licensed home health services, licensed and certified home health services, or personal assistance services may qualify for a branch office license, if the parent agency:

(1) is found to be in substantial compliance with the Statute [statute] and this chapter; [and]

(2) has no enforcement action pending against the license; and [.]

(3) meets its initial survey requirements before HHSC approves a branch office license.

[(b) Upon request, DADS furnishes a parent agency with an application packet for a branch office license.]

(b) [(e)] To apply for a branch office license, an [An] agency must submit an application for the license to HHSC through the online portal, in accordance with §558.12 of this subchapter (relating to General Application). [to DADS a complete and correct application packet and the required license fee for a branch office license in accordance with the instructions provided with the application packet. A complete and correct application packet includes all documents and information that DADS requests as part of the application process.]

[(d) DADS reviews an application packet for a branch office license to determine whether it is complete and correct.]

[(1) DADS processes an application packet for a branch office license according to the time frames in §97.31 of this chapter (relating to Time Frames for Processing and Issuing a License).]

[(2) If an agency receives a notice from DADS that some or all of the information required by this section is missing or incomplete, the agency must submit the required information no later than 30 days after the date of the notice. If an agency fails to submit the required information within 30 days after the notice date, DADS considers the application for a branch office license incomplete and denies the application. If DADS denies the application, DADS does not refund the license fee.]

(c) [(e)] A designated survey office conducts a review of an agency's request to establish a branch office. The survey office makes a recommendation to approve or disapprove the branch office request.

(d) [(f)] HHSC [DADS] approves or denies the application for a branch office license after considering the designated survey office's recommendation. If HHSC [DADS] denies the application, HHSC [DADS] sends the agency a written notice:

(1) [informing the agency] of its decision; and

(2) [providing] the agency's [agency with an] opportunity to appeal its decision through a formal hearing process as described in §558.601 [§97.601] of this chapter (relating to Enforcement Actions).

(e) [(g)] CMS approves or denies the branch location if an agency is licensed to provide licensed and certified home health services.

(f) [(h)] A branch office license expires on the same expiration date as the parent agency's license. To renew a branch office license, the license holder must submit, to HHSC through the online portal, a complete and accurate renewal application and all required fees for the branch office license application, and the agency may renew it with the parent agency's license.

(g) [(i)] If HHSC grants a branch office license, it provides the branch office license to the license holder for the parent agency and branch office. [DADS mails the branch office license to the parent agency.] The branch office must post the license in a conspicuous place on the licensed branch office premises.

(h) [(j)] A branch office must comply with §558.321 [§97.321] of this title (relating to Standards for Branch Offices) and the additional standards that relate to the agency's authorized categories under the license.

(i) [(k)] Unless an agency is exempt from the survey, as specified in §558.503 of this chapter (relating to Exemption From a Survey), HHSC does not renew a branch office license if it has not conducted [DADS may conduct] a health survey of a branch office after issuance of the license to verify compliance with the Statute [statute] and this chapter.

§558.29. *Application and Issuance of an Alternate Delivery Site License.*

(a) An agency with a license to provide hospice services may qualify for an ADS [alternate delivery site] license if the parent agency:

(1) is in substantial compliance with the Statute [statute] and this chapter; and

(2) has no enforcement action pending against its license.

(b) To apply for an ADS license, an agency must submit an ADS application to HHSC through the online portal, in accordance with §558.12 of this subchapter (relating to General Application).

(1) In the application, an agency may request to operate an inpatient unit at the ADS location.

(2) To add an inpatient unit to a licensed ADS, an agency must submit a change of service category application through the online portal according to the instructions for requesting HHSC approval, and otherwise comply with requirements of this section.

[(b) An agency may obtain an application for an ADS license on DADS website. If needed, an applicant can use information provided on DADS website to call DADS to obtain an application by mail. On the application, an agency may request to operate an inpatient unit at the alternate delivery site location.]

[(e) An agency must submit to DADS a complete and correct application and the required license fee specified in §97.3 of this chapter (relating to License Fees) for an ADS in accordance with instructions provided with the application. A complete and correct application includes all documents and information that DADS requests as part of the application process.]

(c) [(d)] After an agency submits an application for an ADS with an inpatient unit, the agency must contact the HHSC [DADS] Architectural Unit to request a Life Safety Code survey. Before HHSC [DADS] considers whether the application is complete, HHSC determines [DADS must determine] an agency's compliance with the Life Safety Code requirements §558.871 of this chapter (relating to Physical Environment in a Hospice Inpatient Unit) [in Subchapter H, Division 7 of this chapter (relating to Hospice Inpatient Units)].

[(e) DADS reviews an application for an ADS license to determine whether it is complete and correct.]

[(1) DADS processes an application for an ADS license according to the time frames in §97.31 of this subchapter (relating to Time Frames for Processing and Issuing a License).]

[(2) If an agency receives a written notice from DADS that some or all of the documents, information, or the license fee required by this section is missing or incomplete, the agency must submit the required information to DADS postmarked within 30 days after the date of the notice. If an agency fails to submit the required information postmarked within 30 days after the notice date, DADS considers the application for an ADS license incomplete and denies the application. If DADS denies the application, DADS does not refund the license fee.]

(d) [(f)] A designated survey office reviews an agency's application for an ADS license and makes a recommendation to the HHSC HCSSA [DADS Home and Community Support Services Agencies] licensing unit whether to approve or deny the application. The HCSSA [DADS] licensing unit approves or denies the agency's application.

(e) [(g)] If HHSC [DADS] denies an agency's application, HHSC [DADS] sends the agency a written notice:

(1) informing the agency of its decision; and

(2) providing the agency with an opportunity to appeal its decision through a formal hearing process as described in §558.601 [§97.604] of this chapter (relating to Enforcement Actions).

(f) [(h)] Except as provided in subsection (g) of this section, after HHSC [After DADS] issues a license for an ADS with an inpatient unit, the agency must, after providing inpatient services to a client, submit the Notification of Readiness for a Health Survey of a Hospice Inpatient Unit (HHSC [DADS] Form 2020-A), to the designated survey office. HHSC [DADS] conducts an initial licensure health survey to review the requirements in §558.871 of this chapter [standards] specified in Subchapter H, Division 7 of this chapter (relating to Hospice Inpatient Units) that an HHSC [a DADS] Life Safety Code surveyor did not review during the initial Life Safety Code survey.

(g) [(i)] An agency is not required to request an initial licensure health survey of an ADS with an inpatient unit if the agency is exempt from the health survey as specified in §558.503 [§97.503] of this chapter (relating to Exemption From a Survey). To demonstrate that it is exempt, the agency must send the accreditation documentation from the accreditation organization [JCAHO or CHAP] to the HHSC [DADS] designated survey office within seven days after the agency receives the accreditation documentation.

(h) [(j)] If an agency receives accreditation documentation from the accreditation organization [JCAHO or CHAP] after the agency submits a written request to HHSC [DADS] for an initial licensure health survey, the agency may demonstrate that it is exempt from the survey by sending the accreditation documentation to the HHSC [DADS] designated survey office before HHSC [DADS] arrives at the agency to conduct an initial health survey.

(i) [(k)] A Medicare-certified hospice agency must also submit a request to CMS for approval of an ADS, including an ADS with an inpatient unit. CMS approves or denies the request.

(j) [(H)] An ADS license expires on the same date the parent agency's license expires. To renew an [The agency may renew its] ADS license, the license holder must submit to HHSC through the online portal a renewal application and all required fees for the ADS license when submitting a renewal application for [with] the parent agency's license.

(k) [(m)] If HHSC grants an ADS license, it will provide the license to the parent agency. [DADS mails an ADS license to the parent agency.] The agency must post the ADS license in a conspicuous place on the licensed ADS premises.

(l) [(n)] An ADS must comply with the Statute [statute] and this chapter, including the applicable additional standards for hospice agencies in Subchapter H of this chapter (relating to Standards Specific to Agencies Licensed to Provide Hospice Services) and §558.322 [§97.322] of this chapter (relating to Standards for Alternate Delivery Sites). A Medicare-certified hospice agency's ADS must also comply with the applicable federal rules and regulations for hospice agencies in 42 CFR Part 418[; Hospice Care].

#### §558.30. Operation of an Inpatient Unit at a Parent Agency.

(a) To operate an inpatient unit at a [the] parent agency, the license holder for the parent [an] agency or an applicant for an initial license to provide hospice services must:

(1) submit an initial parent application through the online portal according to applicable instructions for requesting HHSC approval to operate an inpatient unit at the parent agency; [notify HHSC of its intent to operate an inpatient unit at the parent agency by:]

[(A) indicating its intent on an initial or renewal license application submitted to HHSC; or]

[(B) sending written notice of its intent to HHSC;]

(2) send written notice to HHSC that it is ready for a Life Safety Code inspection through the online portal;

(3) allow HHSC to conduct an on-site Life Safety Code inspection to determine if the inpatient unit is in compliance with §558.871 [§97.874] of this chapter (relating to Physical Environment in a Hospice Inpatient Unit);

(4) obtain verification from HHSC that the inpatient unit is in compliance with Subchapter H, Division 7 of this chapter (relating to Hospice Inpatient Units) before admitting a client to the inpatient unit;

(5) after HHSC issues a license authorizing the inpatient unit, admit and provide hospice services to a client in the inpatient unit; and

(6) except as provided in subsection (c) of this section:

(A) submit the Notification of Readiness for a Health Survey of a Hospice Inpatient Unit (HHSC Form 2020-A) to HHSC after admitting and providing services to at least one client in the inpatient unit; and

(B) be determined by HHSC to be in substantial compliance with the Statute [statute] and this chapter, including Subchapter H of this chapter (relating to Standards Specific to Agencies Licensed to Provide Hospice Services).

(b) If the applicant is currently licensed at [At] the time an agency notifies HHSC in accordance with subsection (a)(1) of this section, the agency must not have enforcement action pending against the license under which the agency would operate the inpatient unit.

(c) An agency that provides hospice services is not required to submit the Notification of Readiness for a Health Survey of a Hospice Inpatient Unit (HHSC Form 2020-A) in accordance with subsection (a)(6)(A) of this section if the agency demonstrates that it is exempt from a health survey, as described in §558.503 [§97.503] of this chapter (relating to Exemption From a Survey). The agency may demonstrate that it is exempt from the initial health survey described in §558.521 [§97.524] of this chapter (relating to Requirements for an Initial Survey) by submitting the accreditation documentation from an approved accreditation organization referenced in §558.503 of this chapter to the [HHSC] designated HHSC survey office within seven days after the agency receives the accreditation documentation.

(d) If HHSC grants an application for an initial parent agency license with an inpatient unit or to add an inpatient unit to a licensed parent [An] agency, the licensed [operating an inpatient unit at a parent] agency and the license holder must comply with the Statute [statute] and this chapter, including Subchapter H of this chapter.

#### §558.31. Time Frames for Processing and Issuing a License.

(a) General.

(1) In this section, the date of an application is the date an applicant successfully submits an application to HHSC through the online portal as described in subsection (b)(1) of this section. [the DADS' Home and Community Support Services Agencies (HCSSA) Licensing Unit receives the application.]

(2) HHSC [DADS] considers an application [for an initial license] complete for purposes of this section when it is complete and accurate as described in §558.12 of this subchapter (relating to General Applications), and the applicant has met all requirements for licensure, including applicable background and survey standards before HHSC issues a license. [DADS receives, reviews, and accepts the information

described in §97.13 of this subchapter (relating to Application Procedures for an Initial License).]

[(3) DADS considers an application for a renewal license complete when DADS receives, reviews, and accepts the information described in §97.17 of this subchapter (relating to Application Procedures for a Renewal License). An agency may continue to operate in accordance with §97.17(j) of this subchapter.]

[(4) DADS considers an application for a change of ownership license complete when DADS receives, reviews, and accepts the information described in §97.25 of this subchapter (relating to Change of Ownership).]

[(5) DADS considers an application for a branch office license complete when DADS receives, reviews, and accepts the information described in §97.27 of this subchapter (relating to Application and Issuance of a Branch Office License).]

[(6) DADS considers an application for an alternate delivery site license complete when DADS receives, reviews, and accepts the information described in §97.29 of this subchapter (relating to Application and Issuance of an Alternate Delivery Site License).]

(b) Time frames. HHSC processes an [An] application [from an agency for an initial, renewal, change of ownership, branch office, or alternate delivery site license is processed] in accordance with the following time frames. [:]

(1) The first time frame begins on the date the applicant successfully submits [DADS' HCSSA Licensing Unit receives] an application through the online portal and the online portal reflects a status of "payment received" for applicable license fees, including late fees, and ends on the date HHSC determines the submission is complete and accurate, as described in §558.12 of this subchapter (relating to General Applications) [a license is issued]. If HHSC [DADS' HCSSA Licensing Unit] receives an incomplete application, the first time frame ends on the date HHSC [DADS' HCSSA Licensing Unit] sends an electronic [a written] notice, through the online portal, to the agency that the application is incomplete. The electronic [written] notice specifies [describes] the [specific] information that the applicant must submit to complete the application. The first time frame is no longer than 45 days.

(2) The second time frame begins on the date that the application is complete, as described for the purpose of this section, in subsection (a)(2) of this section, [DADS' HCSSA Licensing Unit receives the last item necessary to complete the application] and ends on the date the license is issued. The second time frame is no longer than 45 days.

(3) If an agency is subject to a proposed or pending enforcement action on its license, on or within 45 days before the expiration date of the license, HHSC [DADS] may postpone decision on [suspend issuance of] a renewal application while the action is pending. [license until a formal hearing as described in §97.601 of this chapter (relating to Enforcement Actions) is complete.]

(c) Reimbursement of fees.

(1) If HHSC [DADS] does not process the application in the time frames stated in subsection (b) of this section, the applicant has the right to request that HHSC [DADS] reimburse the license fee. If HHSC [DADS] does not agree that the established time frames have been violated or finds that good cause existed for exceeding the established time frames, HHSC [DADS] denies the request.

(2) HHSC [DADS] considers that good cause for exceeding the established time frames exists if:

(A) the number of applications to be processed exceeds by 15 percent [15%] or more the number of applications processed in the same quarter for the preceding year;

(B) another public or private entity used in the application process caused the delay; or

(C) other conditions existed giving good cause for exceeding the established time frames.

(d) Appeal. If HHSC [DADS] denies the request for reimbursement of the license fee, as authorized by subsection (c) of this section, the applicant may appeal the denial. In order to appeal, the applicant must send a written request for reimbursement of the license fee to the HHSC executive [DADS] commissioner. The request must include that the application was not processed within the established time frame. The HHSC [DADS'] HCSSA licensing unit [Licensing Unit] provides the HHSC executive [DADS] commissioner with a written report of the facts related to the processing of the application and good cause for exceeding the established time frame. The HHSC executive [DADS] commissioner makes the final decision and provides written notification of the decision to the applicant and the HHSC [DADS'] HCSSA licensing unit [Licensing Unit].

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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Health and Human Services Commission

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



## SUBCHAPTER C. MINIMUM STANDARDS FOR ALL HOME AND COMMUNITY SUPPORT SERVICES AGENCIES

### DIVISION 1. GENERAL PROVISIONS

#### 26 TAC §558.202

#### STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; and Texas Health and Safety Code §§142.012, 142.010, and 142.006(b), which respectively authorize the Executive Commission of HHSC to adopt rules in accordance with those sections that are necessary to implement Chapter 142 and set minimum standards for home and community support services agencies licensed under that Chapter, set reasonable license fees for such agencies, and establish a system for staggered three-year license expiration dates.

The amendment implements Texas Government Code §531.0055 and Texas Health and Safety Code §§142.012, 142.010(a), 142.006(b) and 142.0095, and Texas Health and Safety Code Chapter 142, Subchapter C.



§558.202. *Habilitation.*

(a) An agency may provide habilitation.

(b) An agency that provides habilitation must provide habilitation in accordance with this chapter, including any licensure standards in Subchapter D of this chapter (relating to Additional Standards Specific to License Category and Specific to Special Services) that apply to the categories of service designated on the agency's license.

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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## DIVISION 2. CONDITIONS OF A LICENSE

### 26 TAC §§558.208, 558.213 - 558.220, 558.222

#### STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; and Texas Health and Safety Code §§142.012, 142.010, and 142.006(b), which respectively authorize the Executive Commission of HHSC to adopt rules in accordance with those sections that are necessary to implement Chapter 142 and set minimum standards for home and community support services agencies licensed under that Chapter, set reasonable license fees for such agencies, and establish a system for staggered three-year license expiration dates.

The amendments implement Texas Government Code §531.0055 and Texas Health and Safety Code §§142.012, 142.010(a), 142.006(b) and 142.0095, and Texas Health and Safety Code Chapter 142, Subchapter C.

§558.208. *Reporting Changes in Application Information and Fees.*

(a) If certain information provided on an initial or renewal application changes after HHSC [DADS] issues the license, an agency must report the change to HHSC via the online portal [DADS]. The agency must use the Home and Community Support Services Agency License Application, (HHSC [DADS] Form 2021)[i] to report the change. To avoid a late fee, an agency must report a change as required in this subsection and pay in full applicable fees required under subsection (b) of this section, [must be reported] within the time frame specified for the type of change.

(1) For requirements on reporting a change in the agency's location, see §558.213 [§97.213] of this division [subchapter] (relating to Agency Relocation);

(2) For requirements on reporting a change in the agency's contact information and operating hours, see §558.214 [§97.214] of this division [subchapter] (relating to Notification Procedures for a Change in Agency Contact Information and Operating Hours);

(3) For requirements on reporting a change to the agency's name, see §558.215 [§97.215] of this division [subchapter] (relating to Notification Procedures for an Agency Name Change);

(4) For requirements on reporting a change in the agency's organizational management personnel, see §558.218 [§97.218] of this division [subchapter] (relating to Agency Organizational Changes);

(5) For requirements on adding or deleting a category of service to the license, see §558.219 [§97.219] of this division [subchapter] (relating to Procedures for Adding or Deleting a Category to the License); and

(6) For requirements on expanding or reducing the agency's service area, see §558.220 [§97.220] of this division [subchapter] (relating to Service Areas).

(b) The schedule of fees an agency must pay when the agency timely submits HHSC [DADS] Form 2021, to report changes in application information, is as follows.

(1) An agency is not required to pay a fee if the agency reports changes to contact information and operating hours, within the required time frame, as specified in §558.214 [§97.214] of this division [subchapter].

(2) An agency is not required to pay a fee if the agency reports a change in the alternate administrator, within the required time frame, as specified in §558.218 [§97.218] of this division [subchapter].

(3) An agency must pay a fee of \$30 if the agency, within the required time frame, reports one or more of the following changes:

(A) a change in physical location, as specified in §558.213 [§97.213] of this division [subchapter];

(B) a change in name (legal entity or doing business as), as specified in §558.215 [§97.215] of this division [subchapter];

(C) a change in administrator, chief financial officer, or controlling person, as specified in §558.218 [§97.218] of this division [subchapter];

(D) a change in category of service designated on a license, as specified in §558.219 [§97.219] of this division [subchapter]; or

(E) a change in service area, as specified in §558.220 [§97.220] of this division [subchapter].

(4) HHSC does not consider a change of information as officially submitted until the online portal reflects a status of payment received, if a fee is applicable.

(c) If an agency untimely submits HHSC [DADS] Form 2021 to report one or more changes referenced in subsection (a) of this section, the agency must pay a late fee of \$100. If an agency must pay a fee of \$30 for reporting a change referenced in subsection (b)(3) of this section, the \$100 late fee is in addition to the \$30 fee.

(d) If HHSC [DADS] determines, based on review of an agency's renewal application, that an agency did not report a change in application information as required by this section, HHSC [DADS] notifies the agency in writing of the fee amount due for payment.

(e) If HHSC [DADS] determines, based on a survey, that an agency did not report a change in application information as required by this section, HHSC [DADS] notifies the agency in writing of the fee amount due for payment. Reporting the change and paying the required fee does not preclude HHSC [DADS] from taking other enforcement action against the agency as specified in §558.601 [§97.601] of this chapter (relating to Enforcement Actions).

(f) If an agency pays a fee to HHSC [DADS] to report a change in application information, the fee is not refundable. HHSC [DADS] accepts payment for a required fee as described in §558.3(f) [§97.3(f)] of this chapter (relating to License Fees).

(g) HHSC [DADS] may suspend or revoke a license or deny an application for a renewal license if an agency does not pay a fee, as required by this section, within 30 days after HHSC [DADS] provides written notice of a fee amount due for payment. Within 10 days after receipt of HHSC's [DADS] written notice of a fee amount due for payment, an agency may submit proof to HHSC [DADS] that the agency:

(1) submitted HHSC [DADS] Form 2021 to timely report a change in application information, as specified in each rule referenced in subsection (a) of this section; and [or]

(2) paid the fee amount required by this section when the agency submitted HHSC [DADS] Form 2021.

#### §558.213. Agency Relocation.

(a) An agency must not transfer a license from one location to another without prior notice to HHSC [DADS]. If an agency is considering relocation, the agency must submit written notice to HHSC [DADS] to report a change in physical location at least 30 days before the intended relocation, unless HHSC [DADS] grants the agency an exemption from the 30-day time frame as specified in subsection (b) of this section. A change in physical location for a hospice inpatient unit requires HHSC [DADS] to conduct a survey to approve the new location.

(b) An agency must notify HHSC [DADS] immediately if an unexpected situation beyond the agency's control makes it impossible for the agency to submit written notice to HHSC [DADS] no later than 30 days before the agency relocates. HHSC [DADS] grants or denies the exemption.

(1) If HHSC [DADS] grants the exemption, the agency must submit written notice to HHSC [DADS] as described in subsection (c) of this section within 30 days after the date HHSC [DADS] grants the exemption.

(2) If HHSC [DADS] denies the exemption, the agency may not relocate until at least 30 days after the agency submits the written notice to HHSC, [DADS] as described in subsection (c) of this section.

(c) An agency must report [use the Home and Community Support Services Agency License Application, (DADS Form 2021), to submit the written notice and follow the instructions on the DADS website for reporting] a change in physical location to HHSC in accordance with §558.208 of this division (relating to Reporting Changes in Application Information and Fees).

(d) If an agency reports a change in physical location, the agency must pay a fee and may be subject to a late fee, as described in §558.208 [§97.208] of this division [subchapter] [(relating to Reporting Changes in Application Information and Fees)].

(e) HHSC [DADS] sends the agency a Notification of Change reflecting the new location. The agency must post the Notification of Change beside its license in accordance with §558.211 [§97.211] of this division [subchapter] (relating to Display of License).

(f) A Medicare certified home health and hospice agency must comply with applicable federal laws and regulations and the requirements of this section for reporting an agency relocation. A change in physical location for a Medicare-certified agency requires HHSC [DADS] review.

(g) An agency is exempt from the requirements in subsections (a) - (d) of this section when reporting a temporary relocation that results from the effects of an emergency or disaster, as specified in §558.256(o) [§97.256(o)] of this subchapter (relating to Emergency Preparedness Planning and Implementation).

#### §558.214. Notification Procedures for a Change in Agency Contact Information and Operating Hours.

(a) An agency must report [submit written notice] to HHSC [DADS] no later than seven days after a change in the agency's:

(1) telephone number; [or]

(2) mailing address, if different than the physical location; or [-]

(3) operating hours.

[(b) An agency must notify DADS no later than seven days after a change in the agency's operating hours.]

(b) [(e)] An agency must report [use the Home and Community Support Services Agency License Application, (DADS Form 2021), to submit the written notice and follow the instructions on DADS website for reporting] the changes described in subsection [subsections ](a) [and (b)] of this section to HHSC in accordance with §558.208 of this division (relating to Reporting Changes in Application Information and Fees).

(c) [(4)] If an agency reports the information after the timeframes required by this section, the agency must pay a late fee as described in §558.208 [§97.208] of this division [subchapter] [(relating to Reporting Changes in Application Information and Fees)].

#### §558.215. Notification Procedures for an Agency Name Change.

(a) If an agency intends to change its name (legal entity or assumed (doing business as) name), but does not undergo a change of ownership as defined in §558.23(c) [§97.23(b)] of this chapter (relating to Change of Ownership), the agency must report the name change to HHSC [DADS] no later than seven days after the effective date of the name change.

(b) An agency must report [use the Home and Community Support Services Agency License Application, (DADS Form 2021), to submit the written notice and follow the instructions on DADS website for reporting] a name change to HHSC in accordance with §558.208 of this division (relating to Reporting Changes in Application Information and Fees).

(c) If an agency reports a name change, the agency must pay a fee and may be subject to a late fee, as described in §558.208 [§97.208] of this division [subchapter] (relating to Reporting Changes in Application Information and Fees).

(d) After HHSC [DADS] receives and verifies the required documents and information, HHSC [DADS] sends the agency a Notification of Change reflecting the agency's new name. The agency must post the Notification of Change beside its license in accordance with §558.211 [§97.211] of this division [subchapter] (relating to Display of License).

#### §558.216. Change in Agency Certification Status.

(a) An agency must notify HHSC [DADS] in writing no later than five days after the agency decides to voluntarily withdraw from the Medicare program [Program]. If an agency's voluntary withdrawal from the Medicare program [Program] is based on the permanent closure of the agency, the agency must also comply with §558.217 [§97.217] of this division [subchapter] (relating to Agency Closure Procedures and Voluntary Suspension of Operations).

(b) If an agency chooses to voluntarily withdraw from the Medicare program [Program], or if CMS involuntarily terminates or denies its certification, the license will be affected as follows:

(1) If an agency licensed to provide licensed and certified home health services has no other license categories remaining on the license after losing its Medicare certification, its license is void and the agency must cease operation. If the agency wants to resume providing services, it must apply for an initial license.

(2) If a Medicare-certified agency has another license category remaining on the current license and the agency wants to continue providing services under the remaining license category, HHSC [DADS] surveys the agency under the remaining license category.

(c) As specified in §558.601(c)(2) [§97.601(c)(2)] of this chapter (relating to Enforcement Actions), HHSC [DADS] may take enforcement action against an agency licensed to provide licensed and certified home health services if the agency fails to maintain its Medicare certification. The agency may request an administrative hearing in accordance with §558.601 [§97.601] of this chapter to contest the enforcement action taken by HHSC [DADS] against the agency.

*§558.217. Agency Closure Procedures and Voluntary Suspension of Operations.*

(a) Permanent closure. An agency must notify HHSC [DADS] in writing within five days before the permanent closure of the agency, branch office, or ADS [alternate delivery site].

(1) The agency must include in the written notice the reason for closing, the location of the client records (active and inactive), and the name and address of the client record custodian.

(2) If the agency closes with an active client roster, the agency must transfer a copy of the active client record with the client to the receiving agency in order to ensure continuity of care and services to the client.

(3) The agency must mail or return the initial license or renewal license to HHSC [DADS] at the end of the day that services cease [ceased].

(4) If an agency continues to operate after the closure date specified in the notice, HHSC [DADS] may take enforcement action against the agency.

(b) Applicability. This subsection applies to an agency licensed to provide licensed home health services, personal assistance services, and licensed-only hospice services.

(1) Voluntary suspension of operations occurs when an agency voluntarily suspends its normal business operations for 10 or more consecutive days. A voluntary suspension of operations may not last longer than the licensure renewal period. If an agency voluntarily suspends operations, the agency must:

(A) discharge or arrange for backup services for active clients;

(B) provide written notification to the designated survey office at least five days before the voluntary suspension of operations, or within two working days before the voluntary suspension of operations, if an emergency occurs that is beyond the agency's control; and

(C) post a notice of voluntary suspension of operations on the entry door of the agency and leave a voice message [on an answering machine or with an answering service] that informs callers of the voluntary suspension of operations.

(2) An agency must notify the HHSC HCSSA licensing unit [Home and Community Support Services Agencies Licensing Unit] in writing no later than seven days after resuming operations.

*§558.218. Agency Organizational Changes.*

(a) If a change occurs in the following management personnel, an agency must submit written notice to HHSC [DADS] no later than seven days after the date of a change in:

(1) administrator;

(2) alternate administrator;

(3) chief financial officer; or

(4) controlling person, as defined in §558.2 [§97.2] of this chapter (relating to Definitions).

(b) An agency must report [use the Home and Community Support Services Agency License Application, (DADS Form 2021); to submit the written notice and follow the instructions on DADS website for reporting] a change in the management personnel listed in subsection (a) of this section to HHSC in accordance with §558.208 of this division (relating to Reporting Changes in Application Information and Fees).

(c) If an agency reports a change in the administrator, chief financial officer, or controlling person, the agency must pay a fee and may be subject to a late fee, as described in §558.208 [§97.208] of this division [subchapter] [(relating to Reporting Changes in Application Information and Fees)].

(d) An agency is not required to pay a fee to report a change in alternate administrator, but the agency must pay a late fee, as described in §558.208 [§97.208] of this division [subchapter], if the agency does not report the change within the time frame required in this section.

(e) A change in the management personnel listed in subsection (a) of this section requires HHSC [DADS] evaluation and approval. HHSC [DADS] reviews the required documents and information submitted. HHSC [DADS] notifies an agency if the information the agency provides does not reflect that a person listed in subsection (a)(1) - (4) of this section meets the required qualifications.

*§558.219. Procedures for Adding or Deleting a Category to the License.*

(a) To add or delete a category of service to a license, an agency must submit the appropriate application to HHSC through the online portal [written notice to DADS] at least 30 days before [the addition or deletion of the category] adding or deleting the category.

(b) HHSC [DADS] either approves or denies the application to add [addition of] a category of service no later than 30 days after HHSC [DADS] receives the application through the online portal [written notice]. An agency must not provide the services under the category the agency is adding until the agency receives written notice of approval from HHSC [DADS].

(1) To add a category of service to a license, an agency must:

(A) be in substantial compliance with the Statute [statute] and this chapter; and

(B) have no enforcement action pending against the license.

(2) If HHSC [DADS] denies the application to add [addition of] a category of service, HHSC [DADS] informs the agency of the reason for denial.

(3) HHSC [DADS] may conduct a survey after the approval of a category.

(c) An agency's submission of an application [DADS receipt of a request] to delete a category from a license does not preclude HHSC [DADS] from taking enforcement action as appropriate in accordance with Subchapter F of this chapter (relating to Enforcement).

(d) An agency must [use the Home and Community Support Services Agency License Application, (DADS Form 2021); to] submit to HHSC the application [written notice and follow the instructions on DADS website for requesting] to add or delete a category of service in accordance with §558.208 of this division (relating to Reporting Changes in Application Information and Fees).

(e) If an agency submits an application to add or delete [reports a change in] a category of service, the agency must pay a fee and may be subject to a late fee, as described in §558.208 [§97.208] of this division [subchapter (relating to Reporting Changes in Application Information and Fees)].

(f) If HHSC grants an agency's application to add or delete a category of service, HHSC [When DADS adds or deletes a category of service, DADS] sends the agency a Notification of Change reflecting the change in the category of service. The agency must post the Notification of Change beside its license in accordance with §558.211 [§97.211] of this division [subchapter] (relating to Display of License).

#### §558.220. Service Areas.

(a) An agency must identify its licensed service area. A branch office or ADS [alternate delivery site] must be located within the parent agency's licensed service area. An agency must not provide services outside its licensed service area, except as provided in subsections (i) and (j) of this section.

(b) An agency must maintain adequate staff to provide services and to supervise the provision of services.

(c) An agency may expand its service area at any time during the licensure period. An agency must submit an application to HHSC through the online portal [written notice to DADS] to expand the agency's service area at least 30 days before the expansion, unless HHSC [DADS] grants the agency an exemption from the 30-day time frame as specified in subsection (d) of this section.

(d) An agency is exempt from the requirement to submit an application to HHSC through the online portal [written notice to DADS] no later than 30 days before the agency expands its service area if HHSC [DADS] determines an emergency situation exists that would affect client health and safety.

(1) An agency must notify HHSC [DADS] immediately of a possible emergency situation that would affect client health and safety.

(2) HHSC [DADS] grants or denies an exemption from the 30-day application submission [written notice] requirement.

(A) If HHSC [DADS] grants an exemption, the agency must submit an application to HHSC through the online portal, [written notice to DADS] as described in subsection (e) of this section, no later than 30 days after the date HHSC [DADS] grants the exemption.

(B) If HHSC [DADS] denies an exemption, the agency may not expand the agency's service area until at least 30 days after the agency submits the written notice to HHSC, [DADS] as described in subsection (e) of this section.

(e) If an agency intends to expand or reduce the agency's service area, the agency must submit an application to HHSC through the

online portal, in accordance with §558.208 of this subchapter (relating to Reporting Changes in Application Information and Fees) [written notice to DADS by using the Home and Community Support Services Agency License Application, (DADS Form 2021), following the instructions on the DADS website for requesting to expand or reduce the agency's service area].

(f) If an agency reports a change in service area, the agency must pay a fee and may be subject to a late fee, as described in §558.208 [§97.208] of this subchapter [(relating to Reporting Changes in Application Information and Fees)].

(g) An agency may reduce its service area at any time during the licensure period. An agency must submit an application to HHSC through the online portal [written notice to DADS] informing HHSC [DADS] that the agency reduced its service area, no later than 10 days after the reduction.

(h) HHSC [DADS] sends the agency a Notification of Change reflecting the change in service area. An agency is not required to post the Notification of Change in service area beside its license.

(i) An agency is exempt from the requirements described in subsections (c) - (f) of this section if a temporary expansion results from an emergency or disaster, as specified in §558.256(o) [§97.256(o)] of this subchapter (relating to Emergency Preparedness Planning and Implementation).

(j) An agency may provide services to a client outside the agency's licensed service area, but within the State [state] of Texas, in accordance with this subsection and, for an agency licensed to provide hospice services, with the additional standards in §558.830 [§97.830] of this chapter (relating to Provision of Hospice Core Services).

(1) The agency may provide the services for no more than 60 consecutive days, unless the agency expands its service area as described in subsections (e) and (f) of this section [; except the written notice to DADS must be postmarked no later than the 60th day to comply with this subsection and avoid a late fee].

(2) The client must reside in the agency's service area and be receiving services from the agency at the time the client leaves the agency's service area.

(3) The agency must maintain compliance with the Statute [statute] and this chapter and, if applicable, federal home health and hospice regulations.

(4) The agency must document in the client record the start and end dates for the services.

(5) An agency's authority [ability] to provide services to a client outside its service area may depend on regulations or requirements established by the client's private or public funding source, including a health maintenance organization or other private third-party insurance; [; Medicaid, under 42 United States Code Chapter 7, Subchapter XVIII; [(Title XIX of the Social Security Act), Medicare (Title XVIII of the Social Security Act),] or a state-funded program. The agency is responsible for knowing these requirements.

(k) If a client notifies an agency that the client is leaving the agency's service area and the agency does not provide services in accordance with subsection (j) of this section [subsection (j)], the agency must inform the client that leaving the agency's [its] service area requires [will require] the agency to:

(1) place the client's services on hold in accordance with the agency's written policy, required by §558.281 [§97.281] of this subchapter (relating to Client Care Policies), until the client returns to the agency's service area;

(2) transfer and discharge the client in accordance with §558.295 [§97.295] of this subchapter (relating to Client Transfer or Discharge Notification Requirements) and the agency's written policy required by §558.281 [§97.281] of this subchapter; or

(3) discharge the client in accordance with §558.295 [§97.295] of this subchapter and the agency's written policy required by §558.281 [§97.281] of this subchapter.

*§558.222. Compliance.*

An agency must maintain satisfactory compliance with all the provisions of the Statute [statute] and this chapter to maintain licensure.

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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## DIVISION 3. AGENCY ADMINISTRATION

**26 TAC §§558.241 - 558.250, 558.252, 558.255 - 558.257, 558.259, 558.260**

### STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; and Texas Health and Safety Code §§142.012, 142.010, and 142.006(b), which respectively authorize the Executive Commission of HHSC to adopt rules in accordance with those sections that are necessary to implement Chapter 142 and set minimum standards for home and community support services agencies licensed under that Chapter, set reasonable license fees for such agencies, and establish a system for staggered three-year license expiration dates.

The amendments implement Texas Government Code §531.0055 and Texas Health and Safety Code §§142.012, 142.010(a), 142.006(b) and 142.0095, and Texas Health and Safety Code Chapter 142, Subchapter C.

*§558.241. Management.*

(a) Agency policies. The license holder is responsible for the conduct of the agency and for the adoption, implementation, enforcement, and monitoring of adherence to the written policies required throughout this chapter. The license holder is also responsible for ensuring that the policies comply with the Statute [statute] and the applicable provisions of this chapter and are administered to provide safe, professional, quality health care.

(b) Criminal conviction. The persons described in §558.11(g) [§97.11(g)] of this chapter (relating to Criteria and Eligibility for Licensing) must not have been convicted of an offense described in §560.2 [Chapter 99] of this title (relating to [Criminal] Convictions Barring [Facility] Licensure), during the time frames described in that section [chapter].

(c) Documentation. The license holder must ensure that all documents submitted to HHSC, [DADS] or maintained by the agency pursuant to this chapter, are accurate and do not misrepresent or conceal a material fact.

(d) Compliance with enforcement orders. The license holder must comply with an order of the HHSC executive [DADS] commissioner or other enforcement orders that may be imposed on the agency in accordance with the Statute [statute] and this chapter.

*§558.242. Organizational Structure and Lines of Authority.*

(a) An agency must prepare and maintain a current written description of the agency's organizational structure. The document may be either in the form of a chart or a narrative.

(b) The description must include:

(1) all services provided by the agency;

(2) the governing body, [the] administrator, [the] supervising nurse, advisory committee, interdisciplinary team, and staff, as appropriate, based on services provided by the agency; and

(3) the lines of authority and the delegation of responsibility down to and including the client care level.

*§558.243. Administrative and Supervisory Responsibilities.*

(a) Administrative responsibilities.

(1) A license holder, or the license holder's designee, must designate an individual who meets the qualifications and conditions set out in §558.244 [§97.244] of this division [chapter] (relating to Administrator Qualifications and Conditions and Supervising Nurse Qualifications) to serve as the administrator of the agency.

(2) A license holder, or the license holder's designee, must designate in writing an alternate administrator who meets the qualifications and conditions of an administrator to act in the absence of the administrator.

(b) Administrator responsibilities.

(1) An administrator must be responsible for implementing and supervising the administrative policies and operations of the agency and for administratively supervising the provision of all services to agency clients on a day-to-day basis. An administrator must:

(A) manage the daily operations of the agency;

(B) organize and direct the agency's ongoing functions;

(C) administratively supervise the provision of quality care to agency clients;

(D) supervise to ensure implementation of agency policy and procedures;

(E) ensure that the documentation of services provided is accurate and timely;

(F) employ or contract with qualified personnel;

(G) ensure adequate staff education and evaluations, according to requirements in §558.245(b) [§97.245(b)] of this division [chapter] (relating to Staffing Policies);

(H) ensure the accuracy of public information materials and activities;

(I) implement an effective budgeting and accounting system that promotes the health and safety of the agency's clients; and

(J) supervise and evaluate client satisfaction survey reports on all clients served.

(2) An administrator or alternate administrator must be available to agency personnel<sub>2</sub> in person or by telephone<sub>2</sub> during the agency's operating hours and in accordance with the rules in this chapter, including §558.210 [§97.210] of this subchapter (relating to Agency Operating Hours), §558.404(h)(2) [§97.404(h)(2)] of this chapter (relating to Standards Specific to Agencies Licensed to Provide Personal Assistance Services), §558.523 [§97.523] of this chapter (relating to Personnel Requirements for a Survey), and §558.527 [§97.527] of this chapter (relating to Post-Survey Procedures).

(3) An administrator must designate<sub>2</sub> in writing<sub>2</sub> an agency employee who must provide HHSC [DADS] surveyors entry to the agency in accordance with §558.523(e) [§97.523(e)] of this chapter (relating to Personnel Requirements for a Survey)<sub>2</sub> if the administrator and alternate administrator are not available.

(c) Supervision of services.

(1) Except as provided in paragraph (3) of this subsection, an agency licensed to provide licensed home health services, licensed and certified home health services, or hospice services must directly employ or contract with an individual who meets the qualifications in §558.244 [§97.244] of this division [chapter] to serve as the supervising nurse.

(2) An agency must designate<sub>2</sub> in writing<sub>2</sub> a similarly qualified alternate to serve as supervising nurse in the absence of the supervising nurse.

(A) The supervising nurse or alternate supervising nurse must:

(i) always be available to agency personnel<sub>2</sub> [at all times] in person or by telephone;

(ii) participate in activities relevant to services furnished, including the development of qualifications and assignment of agency personnel;

(iii) ensure that a client's plan of care or care plan is executed as written; and

(iv) ensure that an appropriate health care professional performs a reassessment of a client's needs:

(I) when there is a significant health status change in the client's condition;

(II) at the physician's request; or

(III) after hospital discharge.

(B) A supervising nurse may also be the administrator of the agency<sub>2</sub> if the supervising nurse meets the qualifications and conditions of an administrator described in §558.244(a) [§97.244(a)] and (b) of this division [chapter].

(3) An agency that provides only physical, occupational, speech or respiratory therapy, medical social services, or nutritional counseling is not required to employ or contract with a supervising nurse. A qualified licensed professional must supervise these services, as applicable.

(d) Supervision of branch offices and ADSs [alternate delivery sites]. An agency must adopt and enforce a written policy relating to the supervision of branch offices or ADSs [alternate delivery sites], if established. This policy must be consistent with the following:

(1) for a branch office, §558.27 [§97.27] of this chapter (relating to Application and Issuance of an Initial [a] Branch Office License) and §558.321 [§97.321] of this chapter (relating to Standards for Branch Offices); or

(2) for an ADS [alternate delivery site], §558.29 [§97.29] of this chapter (relating to Application and Issuance of an Alternate Delivery Site License) and §558.322 [§97.322] of this chapter (relating to Standards for Alternate Delivery Sites).

§558.244. *Administrator Qualifications and Conditions and Supervising Nurse Qualifications.*

(a) Administrator qualifications.

(1) For an agency licensed to provide licensed home health services, licensed and certified home health services, or hospice services, the administrator and the alternate administrator must:

(A) be a licensed physician, RN [registered nurse], licensed social worker, licensed therapist, or licensed nursing home administrator with at least one year of management or supervisory experience in a health-related setting, such as:

(i) a home and community support services agency;

(ii) a hospital;

(iii) a nursing facility;

(iv) a hospice;

(v) an outpatient rehabilitation center;

(vi) a psychiatric facility;

(vii) an intermediate care facility for individuals with an intellectual disability or related conditions; or

(viii) a licensed health care delivery setting providing services for individuals with functional disabilities; or

(B) have a high school diploma or a general equivalency degree (GED) with at least two years of management or supervisory experience in a health-related setting, such as:

(i) a home and community support services agency;

(ii) a hospital;

(iii) a nursing facility;

(iv) a hospice;

(v) an outpatient rehabilitation center;

(vi) a psychiatric facility;

(vii) an intermediate care facility for individuals with an intellectual disability or related conditions; or

(viii) a licensed health care delivery setting providing services for individuals with functional disabilities.

(2) For an agency licensed to provide hospice services, in addition to the qualifications listed in paragraph (1)(A) or (B) of this subsection, the administrator and the alternate administrator must:

(A) be a hospice employee; and

(B) have any additional education and experience required by the hospice's governing body<sub>2</sub> as specified in the agency's job description.

(3) For an agency licensed to provide only personal assistance services, the administrator and the alternate administrator must meet at least one of the following qualifications:

(A) have a high school diploma or a GED with at least one year of experience or training in caring for individuals with functional disabilities;

(B) have completed two years of full-time study at an accredited college or university in a health-related field; or

(C) meet the qualifications listed in paragraph (1)(A) or (B) of this subsection.

(b) Administrator conditions.

(1) An administrator and alternate administrator must be able to read, write, and comprehend English.

(2) An administrator and alternate administrator designated as an administrator or alternate administrator for the first time on or after December 1, 2006, must meet the initial educational training requirements specified in §558.259 [§97.259] of this division [subchapter] (relating to Initial Educational Training in Administration of Agencies).

(3) An administrator and alternate administrator designated as an administrator or alternate administrator before December 1, 2006, must meet the continuing education requirements specified in §558.260 [§97.260] of this division [subchapter] (relating to Continuing Education in Administration of Agencies).

(4) A person is not eligible to be the administrator or alternate administrator of any agency if the person was the administrator of an agency cited with a violation that resulted in HHSC [DADS] taking enforcement action against the agency while the person was the administrator of the cited agency.

(A) This paragraph applies for 12 months after the date of the enforcement action.

(B) For purposes of this paragraph, enforcement action means license revocation, suspension, emergency suspension of a license, denial of an application for a license, or the imposition of an injunction, but it does not include administrative or civil penalties.

(C) If HHSC [DADS] prevails in one enforcement action against the agency and [also] proceeds with, but does not prevail in, another enforcement action based on some or all of the same violations, this paragraph does not apply.

(5) An administrator and alternate administrator must not be convicted of an offense described in Chapter 560 [99] of this title (relating to Denial or Refusal of License) during the time frames described in that chapter.

(c) Supervising nurse qualifications.

(1) For an agency without a home dialysis designation, a supervising nurse and alternate supervising nurse must each:

(A) be an RN [a registered nurse (RN)] licensed in Texas or in accordance with the Texas Board of Nursing rules for Nurse Licensure Compact (NLC); and

(B) have at least one year of experience as an RN within the last 36 months.

(2) For an agency with home dialysis designation, a supervising nurse and alternate supervising nurse must each:

(A) be an RN licensed in Texas or in accordance with the Texas Board of Nursing rules, 22 TAC Chapter 220 for NLC, and:

(i) have at least three years of current experience in hemodialysis; or

(ii) have at least two years of experience as an RN and hold a current certification from a nationally recognized board in nephrology nursing or hemodialysis; or

(B) be a nephrologist or physician with training or demonstrated experience in the care of ESRD clients.

§558.245. Staffing Policies.

(a) An agency must adopt and enforce written staffing policies that govern all personnel used by the agency, including employees, volunteers, and contractors.

(b) An agency's written staffing policies must:

(1) include requirements for orientation to the policies, procedures, and objectives of the agency;

(2) include requirements for participation by all personnel in job-specific training. Agency training program policies must:

(A) ensure personnel are properly oriented to tasks performed;

(B) ensure demonstration of competency for tasks when competency cannot be determined through education, license, certification, or experience;

(C) ensure a continuing systematic program for the training of all personnel; and

(D) ensure personnel are informed of changes in techniques, philosophies, goals, client's rights, and products relating to client's care;

(3) address participation by all personnel in appropriate employee development programs;

(4) include a written job description (statement of those functions and responsibilities that [which] constitute job requirements) and job qualifications (specific education and training necessary to perform the job) for each position within the agency;

(5) include procedures for processing criminal history checks and searches of the nurse aide registry and the employee misconduct registry for unlicensed personnel in accordance with §558.247 [§97.247] of this division [subchapter] (relating to Verification of Employability and Use of Unlicensed Persons);

(6) ensure annual evaluation of employee and volunteer performance;

(7) address employee and volunteer disciplinary action and procedures;

(8) [if volunteers are used by the agency,] address the use of volunteers, if volunteers are used by the agency. The policy must be in compliance with §558.248 [§97.248] of this division [subchapter] (relating to Volunteers);

(9) address requirements for providing and supervising services to pediatric clients. Services provided to pediatric clients must be provided by staff who have been instructed and have demonstrated competency in the care of pediatric clients; and

(10) include a requirement that all personnel who are direct care staff and who have direct contact with clients (employed by or under contract with the agency) sign a statement that they have read, understand, and will comply with all applicable agency policies.

§558.246. Personnel Records.

(a) An agency must maintain a personnel record for an employee and volunteer. A personnel record may be maintained electronically if it meets the same requirements as a paper record. All information must be kept current. A personnel record must include the following:

(1) a signed job description and qualifications for each position accepted, or a signed statement that the person read the job description and qualifications for each position accepted;

(2) an application for employment or volunteer agreement;

(3) verification of license, permits, references, job experience, and educational requirements, as conducted by the agency to verify qualifications for each position accepted;

(4) performance evaluations and disciplinary actions;

(5) the signed statement about compliance with agency policies required by §558.245(b)(10) [§97.245(b)(10)] of this division [subchapter] (relating to Staffing Policies), if applicable; and

(6) for an unlicensed employee and unlicensed volunteer whose duties would or do include face-to-face contact with a client:

(A) a printed copy of the results of the initial and annual searches of the nurse aide registry (NAR) and employee misconduct registry (EMR) obtained from the HHSC [DADS Internet] website; and

(B) documentation that the employee, in accordance with §558.247(a)(4) [§97.247(a)(4)] of this division [subchapter] (relating to Verification of Employability and Use of Unlicensed Persons), or volunteer, in accordance with §558.247(b)(4) [§97.247(b)(4)] of this division [subchapter], received written information about the EMR.

(b) An agency may keep a complete and accurate personnel record for an employee and volunteer in any location, as determined by the agency. An agency must provide personnel records not stored at the site of a survey upon request by a HHSC [DADS] surveyor, as specified in §558.507(c) [§97.507(e)] of this chapter (relating to Agency Cooperation with a Survey).

*§558.247. Verification of Employability and Use of Unlicensed Persons.*

(a) The provisions in this subsection apply to an unlicensed applicant for employment and an unlicensed employee, if the person's duties would or do include face-to-face contact with a client.

(1) An agency must conduct a criminal history check authorized by, and in compliance with, Texas Health and Safety Code [THSC], Chapter 250 (relating to Nurse Aide Registry and Criminal History Checks of Employees and Applicants for Employment in Certain Facilities Serving the Elderly, or Persons with Disabilities, or Persons with Terminal Illnesses) for an unlicensed applicant for employment and an unlicensed employee.

(2) The agency must not employ an unlicensed applicant whose criminal history check includes a conviction listed in Texas Health and Safety Code [THSC] §250.006 that bars employment, or a conviction the agency has determined is a contraindication to employment. If an applicant's or employee's criminal history check includes a conviction of an offense that is not listed in Texas Health and Safety Code [THSC] §250.006, the agency must document its review of the conviction and its determination of whether the conviction is a contraindication to employment.

(3) Before the agency hires an unlicensed applicant, or before an unlicensed employee's first face-to-face contact with a client, the agency must search the nurse aide registry (NAR) and the employee misconduct registry (EMR) using the HHSC [DADS Internet] website to determine if the applicant or employee is listed in either registry as unemployable. The agency must not employ an unlicensed applicant who is listed as unemployable in either registry.

(4) The agency must provide written information about the EMR to an unlicensed employee in compliance with the requirements

of 40 TAC §93.3(c) [of this title] (relating to Employment and Registry Information).

(5) In addition to the initial verification of employability, the agency must search the NAR and the EMR to determine if the employee is listed as unemployable in either registry as follows:

(A) for an employee most recently hired before September 1, 2009, by August 31, 2011, and at least every twelve months thereafter; and

(B) for an employee most recently hired on or after September 1, 2009, at least every 12 months.

(6) The agency must immediately discharge an unlicensed employee whose duties would or do include face-to-face contact with a client when the agency becomes aware:

(A) that the employee is designated in the NAR or the EMR as unemployable; or

(B) that the employee's criminal history check reveals conviction of a crime that bars employment or that the agency has determined is a contraindication to employment.

(b) The provisions in this subsection apply to an unlicensed volunteer if the person's duties would or do include face-to-face contact with a client.

(1) An agency must conduct a criminal history check before an unlicensed volunteer's first face-to-face contact with a client of the agency.

(2) The agency must not use the services of an unlicensed volunteer for duties that would or do include face-to-face contact with a client whose criminal history information includes a conviction that bars employment under Texas Health and Safety Code [THSC] §250.006 or a conviction the agency has determined is a contraindication to employment. If an unlicensed volunteer's criminal history check includes a conviction of an offense that is not listed in Texas Health and Safety Code [THSC] §250.006, the agency must document its review of the conviction and its determination of whether the conviction is a contraindication to employment.

(3) Before an unlicensed volunteer's first face-to-face contact with a client, the agency must conduct a search of the NAR and the EMR using the HHSC [DADS Internet] website to determine if an unlicensed volunteer is listed in either registry as unemployable. The agency must not use the services of an unlicensed volunteer who is listed as unemployable in either registry.

(4) The agency must provide written information about the EMR that complies with the requirements of 40 TAC §93.3(c) [of this title] to an unlicensed volunteer within five working days from the date of the person's first face-to-face contact with a client.

(5) In addition to the initial verification of employability, the agency must search the NAR and the EMR to determine if a volunteer is designated in either registry as unemployable, as follows:

(A) for a volunteer with face-to-face contact with a client for the first time before September 1, 2009, by August 31, 2011, and at least every twelve months thereafter; and

(B) for a volunteer with face-to-face contact with a client for the first time on or after September 1, 2009, at least every twelve months.

(6) The agency must immediately stop using the services of an unlicensed volunteer for duties that would or do include face-to-face contact with a client when the agency becomes aware that:



(A) ~~[that]~~ the unlicensed volunteer is designated in the NAR or the EMR as unemployable; or

(B) ~~[that]~~ the unlicensed volunteer's criminal history check reveals conviction of a crime that bars employment or that the agency has determined is a contraindication to employment.

(c) Upon request by HHSC ~~[DADS]~~, an agency must provide documentation to demonstrate compliance with subsections (a) and (b) of this section.

(d) An agency that contracts with another agency or organization for an unlicensed person to provide home health services, hospice services, or personal assistance services under arrangement must also comply with the requirements in §558.289(c)-(d) ~~[(§97-289(e) - (d))]~~ of this subchapter (relating to Independent Contractors and Arranged Services).

§558.248. *Volunteers.*

(a) This section applies to all licensed agencies. However, agencies certified by CMS to provide hospice services also must comply with 42 CFR~~[-]~~ §418.78, Conditions of Participation--Volunteers.

(b) If an agency uses volunteers, the agency must use volunteers in defined roles under the supervision of a designated agency employee.

(1) A volunteer must meet the same requirements and standards in this chapter that apply to agency employees performing the same activities.

(2) An agency may use volunteers in administrative and direct client care roles.

(3) Volunteers must document services provided to a client and, if applicable, services provided to the client's family.

§558.249. *Self-Reported Incidents of Abuse, Neglect, and Exploitation.*

(a) The following words and terms, when used in this section or §558.250 of this division (relating to Agency Investigations), have the following meanings, unless the context clearly indicates otherwise.

(1) Abuse, neglect, and exploitation--Have the meanings assigned by:

(A) Chapter 711, Subchapter A of this title (relating to Introduction), if the term is used in connection with alleged conduct against a child or an adult receiving services from certain providers, as defined in Texas Human Resources Code §48.251, or against a child receiving services from an agency, as that term is defined in this chapter, whose employee is the alleged perpetrator; or

(B) 40 TAC Chapter 705, Subchapter A (relating to Definitions), if the term is used in connection with alleged conduct against an adult, other than as described in subparagraph (A) of this paragraph.

(1) Abuse, neglect, and exploitation of a client 18 years of age and older have the meanings assigned by the Texas Human Resources Code, §48.002.

(2) Adult--A client who is:

(A) 18 years of age or older; or

(B) under 18 years of age who:

(i) is or has been married; or

(ii) has had the disabilities of minority removed pursuant to the Texas Family Code Chapter 31.

~~[(2) Abuse, neglect, and exploitation of a child have the meanings assigned by the Texas Family Code, §261.401.]~~

~~(3) Agent--An individual (e.g., student, volunteer), not employed by but working under the auspices of an agency.~~

~~[(3) Employee means an individual directly employed by an agency, a contractor, or a volunteer.]~~

~~(4) Cause to believe--An [means that an] agency knows, suspects, or receives an allegation regarding abuse, neglect, or exploitation.~~

~~(5) Child--A client under 18 years of age who:~~

~~(A) is not and has not been married; or~~

~~(B) has not had the disabilities of minority removed pursuant to the Texas Family Code Chapter 31.~~

~~(6) Employee--An officer, an individual directly employed by an agency or a contractor, volunteer, or agent working under the auspices of an agency.~~

~~(b) An agency must adopt and enforce a written policy relating to the agency's procedures for reporting alleged acts of abuse, neglect, and exploitation of a client by an employee of the agency.~~

~~(c) If an agency has cause to believe that a client served by the agency has been abused, neglected, or exploited by an agency employee, the agency must report the information immediately, meaning within 24 hours, to:~~

~~(1) the Department of Family and Protective Services (DFPS) at 1-800-252-5400, or through the DFPS secure website at www.txabusehotline.org; and~~

~~(2) HHSC [DADS] at 1-800-458-9858.~~

§558.250. *Agency Investigations.*

(a) Written policy.

~~(1) An agency must adopt and enforce a written policy relating to the agency's procedures for investigating complaints and reports of abuse, neglect, and exploitation.~~

~~(2) The policy must meet the requirements of this section.~~

~~(b) Reports of abuse, neglect, and exploitation (ANE).~~

~~(1) Immediately upon witnessing the act or upon receipt of the allegation, an agency must initiate an investigation of known and alleged acts of ANE by agency employees, including volunteers and contractors.~~

~~(2) An agency must complete an HHSC [DADS'] Provider Investigation Report form and include the following information:~~

~~(A) incident date;~~

~~(B) the name of the alleged victim;~~

~~(C) the age of the alleged victim at the time of the incident;~~

~~(D) [(C)] the name of the alleged perpetrator;~~

~~(E) [(D)] any witnesses;~~

~~(F) [(E)] the allegation;~~

~~(G) [(F)] any injury or adverse effect [affect];~~

~~(H) [(G)] any assessments made;~~

~~(I) [(H)] any treatment required;~~

~~(J) [(H)] the investigation summary; and~~

(K) [(J)] any action taken.

(3) An agency must send the completed HHSC [DADS] Provider Investigation Report form to HHSC [DADS] Complaint Intake Unit no later than the 10th day after reporting the act to the Department of Family and Protective Services and HHSC [DADS].

(c) Agency complaint investigations.

(1) An agency must investigate complaints made by a client, a client's family or guardian, or a client's health care provider, in accordance with this subsection, regarding:

- (A) treatment or care that was furnished by the agency;
- (B) treatment or care that the agency failed to furnish;

or

(C) a lack of respect for the client's property by anyone furnishing services on behalf of the agency.

(2) An agency must:

(A) document receipt of the complaint and initiate a complaint investigation within 10 days after the agency's receipt of the complaint; and

(B) document all components of the investigation.

(d) Completing agency investigations. An agency must complete the investigation and documentation within 30 days after the agency receives a complaint or report of abuse, neglect, and exploitation, unless the agency has and documents reasonable cause for a delay.

(e) Retaliation.

(1) An agency may not retaliate against a person for filing a complaint, presenting a grievance, or providing, in good faith, information relating to home health, hospice, or personal assistance services provided by the agency.

(2) An agency is not prohibited from terminating an employee for a reason other than retaliation.

#### *§558.252. Financial Solvency and Business Records.*

An agency must have the financial ability to carry out its functions.

(1) An agency must not intentionally or knowingly pay employees or contracted staff with checks from accounts with insufficient funds.

(2) An agency must have sufficient funds to meet its payroll.

(3) An agency must make available to HHSC, [DADS] upon request, business records relating to its ability to carry out its functions. If there is a question relating to the accuracy of the records or the agency's financial ability to carry out its functions, HHSC [DADS] or its designee may conduct a more extensive review of the records.

(4) An agency must maintain business records in their original state. Each entry must be accurate and dated with the date of entry. Correction fluid or tape may not be used in the record. Corrections must be made in accordance with standard accounting practices.

#### *§558.255. Prohibition of Solicitation of Patients.*

(a) An agency must adopt and enforce a written policy to ensure compliance of the agency and its employees and contractors with [the] Texas Occupations Code[.] Chapter 102 [(relating to Solicitation of Patients)]. For the purpose of this section, a patient is considered to be a client.

(b) HHSC [DADS] may take enforcement action against an agency in accordance with §558.601 [§97.601] of this chapter (relating to Enforcement Actions) and §558.602 [§97.602] of this chapter (relating to Administrative Penalties), if the agency violates Texas Occupations Code[.] §102.001, [(relating to) Soliciting Patients; Offense[]] or §102.006, [(relating to) Failure to Disclose; Offense[]].

#### *§558.256. Emergency Preparedness Planning and Implementation.*

(a) An agency must have a written emergency preparedness and response plan that comprehensively describes its approach to a disaster that could affect the need for its services or its ability to provide those services. The written plan must be based on a risk assessment that identifies the disasters from natural and man-made causes that are likely to occur in the agency's service area. Except for [With the exception of] a freestanding hospice inpatient unit, HHSC [DADS] does not require an agency to physically evacuate or transport a client.

(b) Agency personnel that must be involved with developing, maintaining, and implementing an agency's emergency preparedness and response plan include:

(1) the administrator;

(2) the supervising nurse, if the agency is required to employ or contract with a supervising nurse, as required by §558.243 [§97.243] of this subchapter (relating to Administrative and Supervisory Responsibilities);

(3) the agency disaster coordinator; and

(4) the alternate disaster coordinator.

(c) An agency's written emergency preparedness and response plan must:

(1) designate, by title, an employee, and at least one alternate employee, to act as the agency's disaster coordinator;

(2) include a continuity of operations business plan that addresses emergency financial needs, essential functions for client services, critical personnel, and how to return to normal operations as quickly as possible;

(3) include how the agency will monitor disaster-related news and information, including after hours, weekends, and holidays, to receive warnings of imminent and occurring disasters;

(4) include procedures to release client information in the event of a disaster, in accordance with the agency's written policy required by §558.301(a)(2) [§97.301(a)(2)] of this subchapter (relating to Client Records); and

(5) describe the actions and responsibilities of agency staff in each phase of emergency planning, including mitigation, preparedness, response, and recovery.

(d) The response and recovery phases of the plan must describe:

(1) the actions and responsibilities of agency staff when warning of an emergency is not provided;

(2) who at the agency will initiate each phase;

(3) a primary mode of communication and alternate communication or alert systems in the event of telephone or power failure; and

(4) procedures for communicating with:

(A) staff;

(B) clients or persons responsible for a client's emergency response plan;

(C) local, state, and federal emergency management agencies; and

(D) other entities including HHSC [DADS] and other health care [healthcare] providers and suppliers.

(e) An agency's emergency preparedness and response plan must include procedures to triage clients that allow the agency to:

(1) readily access recorded information about an active client's triage category in the event of an emergency to implement the agency's response and recovery phases, as described in subsection (d) of this section; and

(2) categorize clients into groups based on:

(A) the services the agency provides to a client;

(B) the client's need for continuity of the services the agency provides; and

(C) the availability of someone to assume responsibility for a client's emergency response plan, if needed by the client.

(f) The agency's emergency preparedness and response plan must include procedures to identify a client who may need evacuation assistance from local or state jurisdictions because the client:

(1) cannot provide or arrange for his or her transportation; or

(2) has special health care needs requiring special transportation assistance.

(g) If the agency identifies a client who may need evacuation assistance, as described in subsection (f) of this section, agency personnel must provide the client with the amount of assistance the client requests to complete the registration process for evacuation assistance, if the client:

(1) wants to register with the State of Texas Emergency [Transportation] Assistance Registry (STEAR), accessed by dialing 2-1-1; and

(2) is not already registered, as reported by the client or LAR [legally authorized representative].

(h) An agency must provide and discuss the following information about emergency preparedness with each client:

(1) the actions and responsibilities of agency staff during and immediately following an emergency;

(2) the client's responsibilities in the agency's emergency preparedness and response plan;

(3) materials that describe survival tips and plans for evacuation and sheltering in place; and

(4) a list of community disaster resources that may assist a client during a disaster, including the STEAR, for which registration is [Transportation Assistance Registry] available through 2-1-1 Texas, and other community disaster resources provided by local, state, and federal emergency management agencies. An agency's list of community disaster resources must include information on how to contact the resources directly or instructions to call 2-1-1 for more information about community disaster resources.

(i) An agency must orient and train employees, volunteers, and contractors about their responsibilities in the agency's emergency preparedness and response plan.

(j) An agency must complete an internal review of the plan at least annually, and after each actual emergency response, to evaluate its effectiveness and to update the plan as needed.

(k) As part of the annual internal review, an agency must test the response phase of its emergency preparedness and response plan in a planned drill, if not tested during an actual emergency response. Except for a freestanding hospice inpatient unit, a planned drill can be limited to the agency's procedures for communicating with staff.

(l) An agency must make a good faith effort to comply with the requirements of this section during a disaster. If the agency is unable to comply with any of the requirements of this section, it must document in the agency's records attempts of staff to follow procedures outlined in the agency's emergency preparedness and response plan.

(m) An agency is not required to continue to provide care to clients in emergency situations that are beyond the agency's control and that make it impossible to provide services, such as when roads are impassable or when a client relocates to a place unknown to the agency. An agency may establish links to local emergency operations centers to determine a mechanism by which to approach specific areas within a disaster area [in order] for the agency to reach its clients.

(n) If written records are damaged during a disaster, the agency must not reproduce or recreate client records, except from existing electronic records. Records reproduced from existing electronic records must include:

(1) the date the record was reproduced;

(2) the agency staff member who reproduced the record; and

(3) how the original record was damaged.

(o) Notwithstanding the provisions specified in Division 2 of this subchapter (relating to Conditions of a License), no later than five working days after an agency temporarily relocates a place of business, or temporarily expands its service area resulting from the effects of an emergency or disaster, an agency must notify and provide the following information to the HHSC HCSSA [DADS Home and Community Support Services Agencies] licensing unit:

(1) if temporarily relocating a place of business:

(A) the license number for the place of business and the date of relocation;

(B) the physical address and phone number of the location; and

(C) the date the agency returns to a place of business after the relocation; or

(2) if temporarily expanding the service area to provide services during a disaster:

(A) the license number and revised boundaries of the service area;

(B) the date the expansion begins; and

(C) the date the expansion ends.

(p) An agency must provide the notice and information described in subsection (o) of this section by fax or email. If fax and email are unavailable, the agency may notify the HHSC [DADS] licensing unit by telephone [;] but must provide the notice and information in writing as soon as possible. If communication with the HHSC [DADS] licensing unit is not possible, the agency must provide the notice and information by fax, email [e-mail], or telephone to the designated survey office.

§558.257. *Medicare Certification Optional.*

(a) An agency that applies for the category of licensed and certified home health services must comply with the regulations in the Medicare Conditions of Participation for Home Health Agencies, 42 CFR [ ] Part 484, pending approval of certification granted by CMS. After HHSC [DADS] receives written approval from CMS, HHSC [DADS] amends the licensing status of the agency to include the licensed and certified home health services category.

(b) An agency providing hospice services and applying for participation in the Medicare program must comply with the Medicare Conditions of Participation for Hospice Care, 42 CFR Part 418, pending approval of certification granted by CMS. After HHSC [DADS] receives written approval from CMS, HHSC [DADS] enters the hospice provider number issued by CMS into its Home and Community Support Services Agencies database but does not amend the hospice services category on the license.

§558.259. *Initial Educational Training in Administration of Agencies.*

(a) This section applies only to an administrator and alternate administrator designated as an administrator or alternate administrator for the first time on or after December 1, 2006.

(b) In addition to the qualifications and conditions described in §558.244 [§97.244] of this division (relating to Administrator Qualifications and Conditions and Supervising Nurse Qualifications), a first-time administrator and alternate administrator of an agency must each complete a total of 24 clock hours of educational training in the administration of an agency before the end of the first 12 months after designation to the position.

(c) Prior to designation, a first-time administrator or alternate administrator must complete eight clock hours of educational training in the administration of an agency. The initial eight clock hours must be completed during the 12 months immediately preceding the date of designation to the position. The initial eight clock hours must include:

(1) information on the licensing standards for an agency; and

(2) information on the state and federal laws applicable to an agency, including:

(A) [the] Texas Health and Safety Code[;] Chapters [Chapter] 142 [; Home and Community Support Services;] and [Chapter] 250 [; Nurse Aide Registry and Criminal History Checks of Employees and Applicants for Employment in Certain Facilities Serving the Elderly or Persons with Disabilities];

(B) [the] Texas Human Resources Code[;] Chapter 102, Rights of the Elderly;

(C) the Americans with Disabilities Act;

(D) the Civil Rights Act of 1991;

(E) the Rehabilitation Act of 1993;

(F) the Family and Medical Leave Act of 1993; and

(G) the Occupational Safety and Health Administration requirements.

(d) A first-time administrator and alternate administrator must complete an additional 16 clock hours of educational training before the end of the first 12 months after designation to the position. Any of the additional 16 clock hours may be completed prior to designation, if completed during the 12 months immediately preceding the date of designation to the position. The additional 16 clock hours must include

the following subjects and may include other topics related to the duties of an administrator:

(1) information regarding fraud and abuse detection and prevention;

(2) legal issues regarding advance directives;

(3) client rights, including the right to confidentiality;

(4) agency responsibilities;

(5) complaint investigation and resolution;

(6) emergency preparedness planning and implementation;

(7) abuse, neglect, and exploitation;

(8) infection control;

(9) nutrition (for agencies licensed to provide inpatient hospice services); and

(10) the Outcome and Assessment Information Set (OA-SIS) (for agencies licensed to provide licensed and certified home health services).

(e) The 24-hour educational training requirement described in subsection (b) of this section must be met through structured, formalized classes, correspondence courses, competency-based computer courses, training videos, distance learning programs, or off-site training courses. Subject matter that deals with the internal affairs of an organization does not qualify for credit.

(1) The training must be provided or produced by:

(A) an academic institution;

(B) a recognized state or national organization or association;

(C) an independent contractor who consults with agencies; or

(D) an agency.

(2) If an agency or independent contractor provides or produces the training, the training must be approved by HHSC [DADS] or recognized by a state or national organization or association. The agency must maintain documentation of this approval or recognition for review by HHSC [DADS] surveyors.

(3) A first-time administrator and alternate administrator may apply joint training provided by HHSC [DADS] toward the 24 hours of educational training required by this section if the joint training meets the educational training requirements described in subsections (c) and (d) of this section.

(f) Documentation of administrator and alternate administrator training must:

(1) be on file at the agency; and

(2) contain the name of the class or workshop, the course content (such as the curriculum), the hours and dates of the training, and the name and contact information of the entity and trainer who provided the training.

(g) A first-time administrator and alternate administrator must not apply the HHSC Presurvey Training [a pre-survey conference] toward the 24 hours of educational training required in this section.

(h) After completing the 24 hours of initial educational training prior to or during the first 12 months after designation as a first-time administrator and alternate administrator, an administrator and alternate administrator must [then] complete the continuing education re-

quirements as specified in §558.260 [§97.260] of this division (relating to Continuing Education in Administration of Agencies) in each subsequent 12-month period after designation.

*§558.260. Continuing Education in Administration of Agencies.*

(a) In addition to the qualifications and conditions described in §558.244 [§97.244] of this division (relating to Administrator Qualifications and Conditions and Supervising Nurse Qualifications), an administrator and alternate administrator must complete 12 clock hours of continuing education within each 12-month period beginning with the date of designation. The 12 clock hours of continuing education must include at least two of the following topics and may include other topics related to the duties of an administrator:

- (1) any one of the educational training subjects listed in §558.259(d) [§97.259(d)] of this division (relating to Initial Educational Training in Administration of Agencies);
- (2) development and interpretation of agency policies;
- (3) basic principles of management in a licensed health-related setting;
- (4) ethics;
- (5) quality improvement;
- (6) risk assessment and management;
- (7) financial management;
- (8) skills for working with clients, families, and other professional service providers;
- (9) community resources; or
- (10) marketing.

(b) This subsection applies only to an agency administrator or alternate administrator designated as an agency administrator or alternate administrator before December 1, 2006, who has not served as an administrator or alternate administrator for 180 days or more immediately preceding the date of designation. Within the first 12 months after the date of designation, at least eight of the 12 clock hours of continuing education must include the topics listed in §558.259(c) [§97.259(e)] of this division. The remaining four [four] hours of continuing education must include topics related to the duties of an administrator and may include the topics listed in subsection (a) of this section.

(c) Documentation of administrator and alternate administrator continuing education must:

- (1) be on file at the agency; and
- (2) contain the name of the class or workshop, the topics covered, and the hours and dates of the training.

(d) An administrator or alternate administrator must not apply the HHSC Presurvey Training [pre-survey conference] toward the continuing education requirements in this section.

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

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## DIVISION 4. PROVISION AND COORDINATION OF TREATMENT SERVICES

**26 TAC §§558.281 - 558.287, 558.289 - 558.292, 558.295 - 558.299, 558.301 - 558.303**

### STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; and Texas Health and Safety Code §§142.012, 142.010, and 142.006(b), which respectively authorize the Executive Commission of HHSC to adopt rules in accordance with those sections that are necessary to implement Chapter 142 and set minimum standards for home and community support services agencies licensed under that Chapter, set reasonable license fees for such agencies, and establish a system for staggered three-year license expiration dates.

The amendments implement Texas Government Code §531.0055 and Texas Health and Safety Code §§142.012, 142.010(a), 142.006(b) and 142.0095, and Texas Health and Safety Code Chapter 142, Subchapter C.

*§558.281. Client Care Policies.*

An agency must adopt and enforce a written policy that specifies the agency's client care practices. The written policy must include the following elements if covered under the scope of services provided by the agency:

- (1) initial assessment, reassessment;
- (2) start of care, placing services on hold, transfer, and discharge;
- (3) intravenous services;
- (4) care of the pediatric client;
- (5) triaging clients in the event of disaster;
- (6) how to handle emergencies in the home;
- (7) safety of staff;
- (8) procedures the staff will perform for clients, such as dressing changes, Foley catheter changes, wound irrigation, administration of medication;
- (9) psychiatric nursing procedures;
- (10) patient and caregiver teaching relating to disease process/procedures;
- (11) care planning;
- (12) care of a client who has a terminal illness or a terminal prognosis [the dying patient/client];
- (13) receiving physician orders;
- (14) performing waived testing;
- (15) medication monitoring; and

(16) anything else pertaining to client care.

§558.282. *Client Conduct and Responsibility and Client Rights.*

(a) An agency must adopt and enforce a written policy governing client conduct and responsibility and client rights, in accordance with this section. The written policy must include a grievance mechanism under which a client can participate without fear of reprisal.

(b) An agency must protect and promote the rights of all clients.

(c) An agency must comply with the provisions of the Texas Human Resources Code[.] Chapter 102, [Rights of the Elderly,] which applies to a client 60 years of age or older.

(d) At the time of admission, an agency must provide a client who receives licensed home health services, licensed and certified home health services, hospice services, or personal assistance services, with a written statement that informs the client that a complaint against the agency may be directed to HHSC Complaint and Incident Intake, [the Department of Aging and Disability Services, DADS' Consumer Rights and Services Division,] P.O. Box 149030, Austin, Texas 78714-9030, toll free 1-800-458-9858. The statement also may inform the client that a complaint against the agency may be directed to the administrator of the agency. The statement about complaints directed to the administrator also must include the time frame in which the agency reviews [will review] and resolves a [resolve the] complaint.

(e) In advance of furnishing care to a client, or during the initial evaluation visit before the initiation of treatment, an agency must provide the client, or their legal representative, with a written notice of all policies governing client conduct and responsibility and client rights.

(f) A client has the following rights:

(1) A client has the right to be informed in advance about the care to be furnished, the plan of care, expected outcomes, barriers to treatment, and any changes in the care to be furnished. The agency must ensure that written informed consent, specifying the type of care and services that may be provided by the agency, has been obtained for every client, either from the client or their legal representative. The client or the legal representative must sign or mark the consent form.

(2) A client has the right to participate in planning the care or treatment and in planning a change in the care or treatment.

(A) An agency must advise or consult with the client or legal representative in advance of any change in the care or treatment.

(B) A client has the right to refuse care and services.

(C) A client has the right to be informed, before care is initiated, of the extent to which payment may be expected from the client, a third-party payer, and any other source of funding known to the agency.

(3) A client has the right to have assistance in understanding and exercising the client's rights. The agency must maintain documentation showing that it has complied with the requirements of this paragraph and that the client demonstrates understanding of the client's rights.

(4) A client has the right to exercise rights as a client of the agency.

(5) A client has the right to have the client's person and property treated with consideration, respect, and full recognition of the client's individuality and personal needs.

(6) A client has the right to be free from abuse, neglect, and exploitation by an agency employee, volunteer, or contractor.

(7) A client has the right to confidential treatment of the client's personal and medical records.

(8) A client has the right to voice grievances regarding treatment or care that is, or fails to be, furnished, or regarding the lack of respect for property by anyone who is furnishing services on behalf of the agency, and they must not be subjected to discrimination or reprisal for doing so.

(g) In the case of a client adjudged incompetent, the rights of the client are exercised by the person appointed by law to act on the client's behalf.

(h) In the case of a client who has not been adjudged incompetent, any legal representative may exercise the client's rights to the extent permitted by law.

§558.283. *Advance Directives.*

(a) An agency must maintain a written policy regarding implementation of advance directives. The policy must comply [~~be in compliance~~] with the Advance Directives Act, Texas Health and Safety Code[.] Chapter 166. The policy must include a clear and precise statement of any procedure the agency is unwilling or unable to provide or withhold in accordance with an advance directive.

(b) The agency must provide written notice to a client of the written policy required by subsection (a) of this section. The notice must be provided at the earlier of:

(1) the time the client is admitted to receive services from the agency; or

(2) the time the agency begins providing care to the client.

(c) If, at the time notice must be provided under subsection (b) of this section, the client is incompetent or otherwise incapacitated and unable to receive the notice, the agency must provide the required written notice, in the following order of preference, to:

(1) the client's legal guardian;

(2) a person responsible for the health care decisions of the client;

(3) the client's spouse;

(4) the client's adult child;

(5) the client's parent; or

(6) the person admitting the client.

(d) If subsection (c) of this section applies, except as provided by subsection (e) of this section, and [~~if~~] an agency is unable, after a diligent search, to locate an individual listed by subsection (c) of this section, the agency is not required to provide the notice.

(e) If a client who was incompetent or otherwise incapacitated and unable to receive the notice required by this section, at the time notice was to be provided under subsection (b) of this section, later becomes able to receive the notice, the agency must provide the written notice at the time the client becomes able to receive the notice.

(f) HHSC [~~DADS~~] assesses an administrative penalty of \$500 without an opportunity to correct against an agency that violates this section.

§558.284. *Laboratory Services.*

An agency that provides laboratory services must adopt and enforce a written policy to ensure that the agency meets applicable requirements of [~~the Clinical Laboratory Improvement Act,~~] 42 United States Code (USC) [~~Annotated,~~] §263a, concerning certification and certificates of waiver of a clinical laboratory (CLIA 1988). The section 42

USC §263a [CLIA 1988] applies to all agencies with laboratories that examine human specimens to provide information for the diagnosis, prevention, or treatment of any disease or impairment of, or the assessment of the health of, human beings.

*§558.285. Infection Control.*

An agency must adopt and enforce written policies addressing infection control, including the prevention of the spread of infectious and communicable disease. The policies must:

(1) ensure compliance by the agency, its employees, and its contractors with:

(A) Texas [~~the Communicable Disease Prevention and Control Act,~~] Health and Safety Code[~~;~~] Chapter 81, relating to prevention and control of communicable diseases;

(B) [~~the~~] Occupational Safety and Health Administration regulations relating to Bloodborne Pathogens at [(OSHA)], 29 CFR Part 1910.1030, and Appendix A to that section [relating to Bloodborne Pathogens]; and

(C) Texas [~~the~~] Health and Safety Code[~~;~~] Chapter 85, Subchapter I, concerning the prevention of the transmission of human immunodeficiency virus and hepatitis B virus; and

(2) require documentation of infections that the client acquires while receiving services from the agency.

(A) If an agency is licensed to provide services other than personal assistance services, documentation must include the date that the infection was detected, the client's name, primary diagnosis, signs and symptoms, type of infection, pathogens identified, and treatment.

(B) If an agency is licensed to provide only personal assistance services, documentation must include the date that the infection was disclosed to the agency employee, the client's name, and treatment as disclosed by the client.

*§558.286. Disposal of Special or Medical Waste.*

(a) An agency must adopt and enforce a written policy for the safe handling and disposal of biohazardous waste and materials, if applicable.

(b) An agency that generates special or medical waste while providing home health services must dispose of the waste according to the requirements in 25 TAC Chapter 1, Subchapter K [~~;~~ §§1.131-1.137] (relating to Definition, Treatment, and Disposition of Special Waste from Health Care-Related Facilities). An agency must provide both verbal and written instructions to the agency's clients regarding the proper procedure for disposing of sharps. For purposes of this subsection, sharps include hypodermic needles, hypodermic syringes with attached needles, scalpel blades, razor blades, disposable razors, disposable scissors used in medical procedures, and intravenous stylets and rigid introducers.

*§558.287. Quality Assessment and Performance Improvement.*

(a) Quality Assessment and Performance Improvement (QAPI) Program.

(1) An agency must maintain a QAPI Program that is implemented by a QAPI Committee. The QAPI Program must be ongoing, focused on client outcomes that are measurable, and have a written plan of implementation. The QAPI Committee must review and update or revise the plan of implementation at least once within a calendar year, or more often if needed. The QAPI Program must include:

(A) a system that measures significant outcomes for optimal care. The QAPI Committee must use the measures in the care

planning and coordination of services and events. The measures must include the following as appropriate for the scope of services provided by the agency:

(i) an analysis of a representative sample of services furnished to clients contained in both active and closed records;

(ii) a review of:

(I) negative client care outcomes;

(II) complaints and incidents of unprofessional conduct by licensed staff and misconduct by unlicensed staff;

(III) infection control activities;

(IV) medication administration and errors; and

(V) effectiveness and safety of all services provided, including:

(-a-) the competency of the agency's clinical staff;

(-b-) the promptness of service delivery; and

(-c-) the appropriateness of the agency's responses to client complaints and incidents;

(iii) a determination that services have been performed as outlined in the individualized service plan, care plan, or plan of care; and

(iv) an analysis of client complaint and satisfaction survey data; and

(B) an annual evaluation of the total operation, including services provided under contract or arrangement.

(i) An agency must use the evaluation to correct identified problems and, if necessary, to revise policies.

(ii) An agency must document corrective action to ensure that improvements are sustained over time.

(2) An agency must immediately correct identified problems that directly or potentially threaten the client care and safety.

(3) QAPI documents must be kept confidential and be made available to HHSC [~~DADS~~] staff upon request.

(b) QAPI Committee membership. At a minimum, the QAPI Committee must consist of:

(1) the administrator;

(2) the supervising nurse or therapist, or the supervisor of an agency licensed to provide personal assistance services; and

(3) an individual representing the scope of services provided by the agency.

(c) Frequency of QAPI Committee meeting. The QAPI Committee must meet twice a year or more often if needed.

*§558.289. Independent Contractors and Arranged Services.*

(a) Independent contractors. If an agency uses independent contractors, there must be a contract between each independent contractor that performs services and the agency. The contract must be enforced by the agency and clearly designate:

(1) that clients are accepted for care only by the agency;

(2) the services to be provided by the contractor and how they will be provided (i.e. per visit, per hours, etc.);

(3) the necessity of the contractor to conform to all applicable agency policies, including personnel qualifications;

(4) the contractor's responsibility for participating in developing the plan of care, care plan, or individualized service plan;

(5) the way ~~[manner in which]~~ services will be coordinated and evaluated by the agency in accordance with §558.288 [~~§97.288~~] of this ~~division~~ ~~[subchapter]~~ (relating to Coordination of Services);

(6) the procedures for:

(A) submitting information and documentation by the contractor, in accordance with the agency's client record policies;

(B) scheduling of visits by the contractor or the agency;

(C) periodic client evaluation by the contractor; and

(D) determining charges and reimbursement payable by the agency for the contractor's services under the contract.

(b) Arranged services. Home health services, hospice services, or personal assistance services provided by an agency under arrangement with another agency or organization must be provided under a written contract conforming to the requirements specified in subsection (a) of this section.

(c) If an agency contracts with another agency or organization for an unlicensed person to provide home health services, hospice services, or personal assistance services under arrangement, the agency must ensure that either it or the contracting agency or organization:

(1) searches the nurse aide registry (NAR) and the employee misconduct registry (EMR) before the unlicensed person's first face-to-face contact with a client of the agency, using the HHSC [~~DADS~~] Internet website to confirm that the unlicensed person is not listed in either registry as unemployable;

(2) provides written information to the unlicensed person about the EMR that complies with the requirements of 40 TAC §93.3(c) [~~of this title~~] (relating to Employment and Registry Information); and

(3) searches the NAR and the EMR at least every 12 [~~twelve~~] months using the HHSC [~~DADS~~] Internet website to confirm that the person is not listed in either registry as unemployable.

(d) If an agency contracts with another agency or organization for an unlicensed person to provide home health services, hospice services, or personal assistance services under arrangement, the agency must ensure that the contracting agency or organization:

(1) conducts a criminal history check before the unlicensed person's first face-to-face contact with a client of the agency; and

(2) verifies that the unlicensed person's criminal history information does not include a conviction that bars employment under [~~the~~] Texas Health and Safety Code [~~(THSC)~~] §250.006.

(e) Documentation for contract staff. An agency is not required to maintain a personnel record for independent contractors or staff who provide services under arrangement with another agency or organization. Upon request by HHSC [~~DADS~~], an agency must provide documentation at the site of a survey within eight working hours of the request to demonstrate that:

(1) [~~that~~] independent contractors or staff under arrangement meet the agency's written job qualifications for the position and duties performed;

(2) the agency ensures compliance with subsection (c) of this section for unlicensed staff providing services to the agency's clients under arrangement; and

(3) the agency complies with subsection (d) of this section for unlicensed staff providing services to the agency's clients under arrangement by providing a written statement, signed by a person authorized to make decisions on personnel matters for the contracting agency or organization, attesting that a criminal history check was conducted before an unlicensed person's first face-to-face contact with a client, and did not include a conviction barring employment under Texas Health and Safety Code [~~THSC~~] §250.006.

§558.290. *Backup Services and After-Hours [~~After Hours~~] Care.*

(a) Backup services. An agency must adopt and enforce a written policy to ensure that backup services are available when an agency employee or contractor is not available to deliver the services.

(1) Backup services may be provided by an agency employee, a contractor, or the client's designee who is willing and able to provide the necessary services.

(2) If the client's designee has agreed to provide backup services required by this section, the agency must have the designee sign a written agreement to be the backup service provider. The agency must keep the agreement in the client's file.

(3) An agency must not coerce a client to accept backup services.

(b) After-hours [~~After hours~~] care. An agency must adopt and enforce a written policy to ensure that clients are educated in how to access care from the agency or another health care provider after regular business hours.

§558.291. *Agency Dissolution.*

An agency must adopt and enforce a written policy that describes the agency's written contingency plan.

(1) The plan must be implemented in the event of dissolution to assure continuity of client care.

(2) The plan must:

(A) be consistent with §558.295 [~~§97.295~~] of this ~~division~~ [~~title~~] (relating to Client Transfer or Discharge Notification Requirements);

(B) include procedures for:

(i) notifying the client of the agency's dissolution;

(ii) documenting the notification;

(iii) carrying out the notification; and

(C) comply with §558.217(a)(2) [~~§97.217(a)(2)~~] of this ~~subchapter~~ [~~chapter~~] (relating to Agency Closure Procedures and Voluntary Suspension of Operations).

§558.292. *Agency and Client Agreement and Disclosure.*

(a) The agency must provide the client or the client's family with a written agreement for services. The agency must comply with the terms of the agreement. The agreement must include at a minimum the following:

(1) notification of client rights;

(2) documentation concerning notification to the client of the availability of medical power of attorney for health care, advance directive or "Do Not Resuscitate" orders in accordance with the applicable law;

(3) services to be provided;

(4) supervision by the agency of services provided;



(5) agency charges for services rendered if the charges will be paid in full or in part by the client or the client's family, or on request;

(6) a written statement containing procedures for filing a complaint in accordance with §558.282(d) [§97.282(d)] of this division [chapter] (relating to Client Conduct and Responsibility and Client Rights); and

(7) a client agreement to and acknowledgement of services by home health medication aides, if home health medication aides are used.

(b) The agency must obtain an acknowledgment of receipt from the client or his family of the items listed under subsection (a) of this section. This acknowledgment of receipt must be kept in the client's record.

*§558.295. Client Transfer or Discharge Notification Requirements.*

(a) Except as provided in subsection (e) of this section, an agency intending to transfer or discharge a client must:

(1) provide written notification to the client or the client's parent, family, spouse, significant other, or legal representative; and

(2) notify the client's attending physician or practitioner if he is involved in the agency's care of the client.

(b) An agency must ensure delivery of the written notification no later than five days before the date on which the client will be transferred or discharged.

(c) The agency must deliver the required notice by hand or by mail.

(d) If the agency delivers the written notice by mail:

(1) the notice must be mailed at least eight working days before the date of transfer or discharge [discharge or transfer]; and

(2) the agency must speak with the client by telephone or in person to ensure the client's knowledge of the transfer or discharge, at least five days before the date of transfer or discharge [discharge or transfer].

(e) An agency may transfer or discharge a client without prior notice required by subsection (b) of this section:

(1) upon the client's request;

(2) if the client's medical needs require transfer, such as a medical emergency;

(3) in the event of a disaster when the client's health and safety is at risk, in accordance with provisions of §558.256 [§97.256] of this subchapter [chapter] (relating to Emergency Preparedness Planning and Implementation);

(4) for the protection of staff or a client after the agency has made a documented reasonable effort to notify the client, the client's family and physician, and appropriate state or local authorities, of the agency's concerns for staff or client safety, and in accordance with agency policy;

(5) according to physician orders; or

(6) if the client fails to pay for services, except as prohibited by federal law.

(f) An agency must keep the following in the client's file:

(1) a copy of the written notification provided to the client or the client's parent, family, spouse, significant other, or legal representative;

(2) documentation of the personal contact with the client, if the required notice was delivered by mail; and

(3) documentation that the client's attending physician or practitioner was notified of the date of discharge.

*§558.296. Physician Delegation and Performance of Physician-Delegated Tasks.*

(a) An agency must adopt and enforce a written policy that states whether [~~or not~~] physician delegation will be honored by the agency. If an agency accepts physician delegation, the agency must comply with Texas [~~the Medical Practice Act,~~] Occupations Code[~~],~~] Chapter 157, concerning physician delegation.

(b) An agency may accept delegation from a physician only if the agency receives the following from the physician:

(1) the name of the client;

(2) the name of the delegating physician;

(3) the task(s) to be performed;

(4) the name of the individual(s) to perform the task(s);

(5) the time frame for the delegation order; and

(6) if the task is medication administration, the medication to be given, route, dose, and frequency.

*§558.297. Receipt of Physician Orders*

An agency must adopt and enforce a written policy describing protocols and procedures agency staff must follow when receiving physician orders.

(1) The policy must address the time frame for countersignature of physician verbal orders.

(2) Signed physician orders may be submitted via fax [facsimile] machine. The agency is not required to have the original signatures on file. However, the agency must be able to obtain original signatures if an issue surfaces that would require verification of an original signature. The policy must include protocols to follow when accepting physician orders via fax [facsimile]. If physician orders are accepted via fax [facsimile], the policy must:

(A) outline safeguards to assure that transmitted information is sent to the appropriate individual; and

(B) outline the procedures to be followed in the case of misdirected transmission.

*§558.298. Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel and Tasks Not Requiring Delegation.*

(a) An agency must adopt and enforce a written policy to ensure compliance with the following rules adopted by the Texas Board of Nursing:

(1) 22 TAC Chapter 224 (relating to Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel for Clients with Acute Conditions or in Acute Care Environments); and

(2) 22 TAC[~~],~~] Chapter 225 (relating to RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegation in Independent Living Environments for Clients with Stable and Predictable Conditions).

(b) Requirements for RN delegation for personal assistance service clients are located in §558.404 [§97.404] of this chapter (relating to Standards Specific to Agencies Licensed to Provide Personal Assistance Services).

§558.299. *Nursing Education, Licensure and Practice.*

If providing nursing services, an agency must adopt and enforce a written policy to ensure compliance with the rules of the Texas Board of Nursing adopted in [at] 22 TAC Chapters 211 - 226 (relating to Nursing Continuing Education, Licensure, and Practice in the State of Texas).

§558.301. *Client Records.*

(a) In accordance with accepted principles of practice, an agency must establish and maintain a client record system to ensure that the care and services provided to each client are completely and accurately documented, readily accessible, and systematically organized to facilitate the compilation and retrieval of information.

(1) An agency must establish a record for each client and must maintain the record in accordance with and contain the information described in paragraph (9) of this subsection. An agency must keep a single file or separate files for each category of service provided to the client and the client's family. Hospice services provided to a client's family must be documented in the clinical record.

(2) The agency must adopt and enforce written procedures regarding the use and removal of records, the release of information, and when applicable, the incorporation of clinical, progress, or other notes into the client record. An agency may not release any portion of a client record to anyone other than the client except as allowed by law.

(3) All information regarding the client's care and services must be centralized in the client's record and be protected against loss or damage.

(4) The agency must establish an area for original active client record storage at the agency's place of business. The original active client record must be stored at the place of business (parent agency, branch office, or ADS [alternate delivery site]) from which services are [actually] provided. Original active client records must not be stored at an administrative support site or records storage facility.

(5) The agency must ensure that each client's record is treated with confidentiality, safeguarded against loss and unofficial use, and is maintained according to professional standards of practice.

(6) A clinical record must be an original, a microfilmed copy, an optical disc imaging system, or a certified copy.

(A) An original record is a signed paper record or an electronically signed computer record. A signed paper record may include a physician's stamped signature if the agency meets the following requirements:

(i) An agency must have on file at the agency a current written authorization letter from the physician whose signature the stamp represents, stating that he is the only person authorized to have the stamp and use it.

(ii) The authorization letter must be dated before a stamped record from the physician was accepted by the agency.

(iii) An agency must obtain a new authorization letter from the physician annually. A physician authorization letter is void one year from the date of the letter.

(iv) The authorization letter must be manually signed by the physician and include a copy of the stamped signature that the physician will use.

(B) Computerized records must meet all requirements of paper records, including protection from unofficial use and retention for the period specified in subsection (b) of this section.

(C) An agency must ensure that entries regarding the delivery of care or services are not altered without evidence and explanation of such alteration.

(7) Each entry to the client record must be current, accurate, signed, and dated with the date of entry by the individual making the entry. The record must include all services whether furnished directly or under arrangement. Correction fluid or tape must not be used in the record. Corrections must be made by striking through the error with a single line and must include the date the correction was made and the initials of the person making the correction.

(8) Inactive client records may be preserved on microfilm, optical disc or other electronic means and may be stored at the parent agency location, branch office, ADS [alternate delivery site], administrative support site, or records storage facility. Security must be maintained, and the record must be readily retrievable by the agency.

(9) Each client record must include the following elements as applicable to the scope of services provided by the agency:

(A) client application for services including, but not limited to, the following information:

(i) the client's full name;

(ii) sex;

(iii) date of birth;

(iv) the name, address, and telephone number of each parent or legal guardian [parent(s)] of a minor child; [; or legal guardian, or]

(v) the name, address, and telephone number of any other person, [other(s)] as identified by the individual;

(vi) the physician's name and telephone numbers, including emergency numbers; and

(vii) services requested;

(B) initial health assessment, pertinent medical history, and subsequent health assessments;

(C) care plan, plan of care, or individualized service plan, as applicable. The care plan or the plan of care must include, as applicable, medication, dietary, treatment, and activities orders. An [The requirements for the] individualized service plan for a personal assistance service client must comply with §558.404 [clients are located in §97.404] of this chapter (relating to Standards Specific to Agencies Licensed to Provide Personal Assistance Services). A [The requirements for the] plan of care for a hospice client must comply with §558.821 [clients are located in §97.403] of this chapter (relating to [Standards Specific to Agencies Licensed to Provide] Hospice Plan of Care [Services]);

(D) clinical and progress notes. Such notes must be written the day service is rendered and incorporated into the client record within 14 working days;

(E) current medication list;

(F) medication administration record (if medication is administered by agency staff). Notation must also be made in the medication administration record or in the clinical notes of medications not given and the reason. Any adverse reaction must be reported to a supervisor and documented in the client record;

(G) acknowledgement of hospice agency's policy regarding disposal of controlled substance prescription drugs;

(H) [(G)] records of supervisory visits;

(I) ~~[(H)]~~ complete documentation of all known services and significant events. Documentation must show that effective interchange, reporting, and coordination of care occurs as required in §558.288 ~~§97.288~~ of this division ~~chapter~~ (relating to Coordination of Services);

(J) ~~[(H)]~~ for clients 60 years and older, acknowledgment of the client's receipt of a copy of the right and responsibilities listed in Texas Human Resources Code ~~Chapter 102~~ Chapter 102 ~~[Rights of the Elderly]~~;

(K) ~~[(H)]~~ acknowledgment of the client's receipt of the agency's policy relating to the reporting of abuse, neglect, or exploitation of a client;

(L) ~~[(K)]~~ documentation that the client has been informed of how to register a complaint in accordance with §558.282(d) ~~§97.282(d)~~ of this division ~~chapter~~ (relating to Client Conduct and Responsibility and client Rights);

(M) ~~[(L)]~~ client agreement to and acknowledgment of services by home health medication aides, if home health medication aides are used;

(N) ~~[(M)]~~ discharge summary, including the reason for discharge or transfer and the agency's documented notice to the client, the client's physician (if applicable), and other individuals as required in §558.295 ~~§97.295~~ of this division ~~chapter~~ (relating to Client Transfer or Discharge Notification Requirements);

(O) ~~[(N)]~~ acknowledgement of receipt of the notice of advance directives;

(P) ~~[(O)]~~ services provided to the client's family (as applicable); and

(Q) ~~[(P)]~~ consent and authorization and election forms, as applicable.

(b) An agency must adopt and enforce a written policy relating to the retention of records in accordance with this subsection.

(1) An agency must retain original client records for a minimum of five years after the discharge of the client.

(2) The agency may not destroy client records that relate to any matter that is involved in litigation if the agency knows the litigation has not been finally resolved.

(3) There must be an arrangement for the preservation of inactive records to insure compliance with this subsection.

#### *§558.302. Pronouncement of Death.*

An agency must adopt and enforce a written policy on pronouncement of death, if that function is carried out by an agency RN ~~[registered nurse]~~. The policy must comply ~~[be in compliance]~~ with Texas ~~[the]~~ Health and Safety Code ~~§~~ §671.001 ~~(relating to Standard Used in Determining Death [concerning Determination of Death and Autopsy Reports])~~.

#### *§558.303. Standards for Possession of Sterile Water or Saline, Certain Vaccines or Tuberculin, and Certain Dangerous Drugs.*

An agency that possesses sterile water or saline, certain vaccines or tuberculin, or certain dangerous drugs, as specified by this section, must comply with the provisions of this section.

(1) Possession of sterile water or saline. An agency or its employees, who are RNs ~~[registered nurses]~~ or LVNs, ~~[licensed vocational nurses]~~ may purchase, store, or transport for the purpose of administering to their home health or hospice clients under physician's orders:

(A) sterile water for injection and irrigation; and

(B) sterile saline for injection and irrigation.

(2) Possession of certain vaccines or tuberculin.

(A) An agency or its employees, who are RNs ~~[registered nurses]~~ or LVNs, ~~[licensed vocational nurses]~~ may purchase, store, or transport for ~~[the purpose of]~~ administering to the agency's employees, home health or hospice clients, or client family members under physician's standing orders the following dangerous drugs:

(i) hepatitis B vaccine;

(ii) influenza vaccine;

(iii) tuberculin purified protein derivative for tuberculosis testing; and

(iv) pneumococcal polysaccharide vaccine.

(B) An agency that purchases, stores, or transports a vaccine or tuberculin under this section must ensure that any standing order for the vaccine or tuberculin:

(i) is signed and dated by the physician;

(ii) identifies the vaccine or tuberculin covered by the order;

(iii) indicates that the recipient of the vaccine or tuberculin has been assessed as an appropriate candidate to receive the vaccine or tuberculin and has been assessed for the absence of any contraindication;

(iv) indicates that appropriate procedures are established for responding to any negative reaction to the vaccine or tuberculin; and

(v) orders that a specific medication or category of medication be administered if the recipient has a negative reaction to the vaccine or tuberculin.

(3) Possession of certain dangerous drugs.

(A) In compliance with Texas Health and Safety Code ~~§~~ §142.0063, an agency or its employees, who are RNs ~~[registered nurses]~~ or LVNs, ~~[licensed vocational nurses]~~ may purchase, store, or transport for the purpose of administering to their home health or hospice patients, in accordance with subparagraph (C) of this paragraph, the following dangerous drugs:

(i) any of the following items in a sealed portable container of a size determined by the dispensing pharmacist:

(I) 1,000 milliliters of 0.9 percent ~~[0.9%]~~ sodium chloride intravenous infusion;

(II) 1,000 milliliters of 5.0 percent ~~[5.0%]~~ dextrose in water injection; or

(III) sterile saline; or

(ii) not more than five dosage units of any of the following items in an individually sealed, unused portable container:

(I) heparin sodium lock flush in a concentration of 10 units per milliliter or 100 units per milliliter;

(II) epinephrine HCl solution in a concentration of one to 1,000;

(III) diphenhydramine HCl solution in a concentration of 50 milligrams per milliliter;

(IV) methylprednisolone in a concentration of 125 milligrams per two milliliters;

(V) naloxone in a concentration of one milligram per milliliter in a two-milliliter vial;

(VI) promethazine in a concentration of 25 milligrams per milliliter;

(VII) glucagon in a concentration of one milligram per milliliter;

(VIII) furosemide in a concentration of 10 milligrams per milliliter;

(IX) lidocaine 2.5 percent [2.5%] and prilocaine 2.5 percent [2.5%] cream in a five-gram tube; or

(X) lidocaine HCL solution in a concentration of 1 percent [1%] in a two-milliliter vial.

(B) An agency or the agency's authorized employees may purchase, store, or transport dangerous drugs in a sealed portable container only if the agency has established policies and procedures to ensure that:

(i) the container is handled properly with respect to storage, transportation, and temperature stability;

(ii) a drug is removed from the container only on a physician's written or oral order;

(iii) the administration of any drug in the container is performed in accordance with a specific treatment protocol; and

(iv) the agency maintains a written record of the dates and times the container is in the possession of an RN [a registered nurse] or LVN [licensed vocational nurse].

(C) An agency or the agency's authorized employee who administers a drug listed in subparagraph (A) of this paragraph may administer the drug only in the client's residence, under physician's orders, in connection with the provision of emergency treatment or the adjustment of:

(i) parenteral drug therapy; or

(ii) vaccine or tuberculin administration.

(D) If an agency or the agency's authorized employee administers a drug listed in subparagraph (A) of this paragraph, pursuant to a physician's oral order, the agency must receive a signed copy of the order:

(i) not later than 24 hours after receipt of the order, reduce the order to written form and send a copy of the form to the dispensing pharmacy by mail or fax [faesimile] transmission; and

(ii) not later than 20 days after receipt of the order, send a copy of the order, as signed by and received from the physician, to the dispensing pharmacy.

(E) A pharmacist that dispenses a sealed portable container under this subsection will ensure that the container:

(i) is designed to allow access to the contents of the container only if a tamper-proof seal is broken;

(ii) bears a label that lists the drugs in the container and provides notice of the container's expiration date, which is the earlier of:

(I) the date that is six months after the date on which the container is dispensed; or

(II) the earliest expiration date of any drug in the container; and

(iii) remains in the pharmacy or under the control of a pharmacist, RN [registered nurse], or LVN [licensed vocational nurse].

(F) If an agency or the agency's authorized employee purchases, stores, or transports a sealed portable container under this subsection, the agency must deliver the container to the dispensing pharmacy for verification of drug quality, quantity, integrity, and expiration dates not later than the earlier of:

(i) the seventh day after the date on which the seal on the container is broken; or

(ii) the date for which notice is provided on the container label.

(G) A pharmacy that dispenses a sealed portable container under this section is required to take reasonable precautionary measures to ensure that the agency receiving the container complies with subparagraph (F) of this paragraph. On receipt of a container under subparagraph (F) of this paragraph, the pharmacy will perform an inventory of the drugs used from the container and will restock and reseal the container before delivering the container to the agency for reuse.

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

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Karen Ray

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Health and Human Services Commission

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



## DIVISION 5. BRANCH OFFICES AND ALTERNATE DELIVERY SITES

### 26 TAC §558.321, §558.322

#### STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; and Texas Health and Safety Code §§142.012, 142.010, and 142.006(b), which respectively authorize the Executive Commission of HHSC to adopt rules in accordance with those sections that are necessary to implement Chapter 142 and set minimum standards for home and community support services agencies licensed under that Chapter, set reasonable license fees for such agencies, and establish a system for staggered three-year license expiration dates.

The amendments implement Texas Government Code §531.0055 and Texas Health and Safety Code §§142.012, 142.010(a), 142.006(b) and 142.0095, and Texas Health and Safety Code Chapter 142, Subchapter C.

#### §558.321. *Standards for Branch Offices.*

(a) A branch office operates as a part of the parent agency and must comply with the same regulations as the parent agency. The par-

ent agency is responsible for ensuring that its branches comply with licensing standards.

(b) A branch office providing licensed and certified home health services must comply with the standards for certified agencies in §558.402 [§97.402] of this chapter (relating to Standards Specific to Licensed and Certified Home Health Services).

(c) The service area of a branch office must be located within the parent agency's service area.

(1) A branch office must not provide services outside its licensed service area.

(2) A branch office must maintain adequate staff to provide services and to supervise the provision of services within the service area.

(3) A branch office may expand its service area at any time during the licensure period.

(A) Unless exempted under subparagraph (B) of the paragraph, a branch office must submit to HHSC [DADS] a written notice to expand its service area at least 30 days before the expansion. The notice must include:

- (i) revised boundaries of the branch office's original service area;
- (ii) the effective date of the expansion; and
- (iii) an updated list of management and supervisory personnel (including names), if changes are made.

(B) An agency is exempt from the 30-day written notice requirement under subparagraph (A) of this paragraph if HHSC [DADS] determines an emergency exists that would impact client health and safety. An agency must notify HHSC [DADS] immediately of a possible emergency. HHSC [DADS] determines if an exemption can be granted.

(4) A branch office may reduce its service area at any time during the licensure period by sending HHSC [DADS] written notification of the reduction, revised boundaries of the branch office's original service area, and the effective date of the reduction.

(d) A parent agency and a branch office providing home health or personal assistance services must meet the following requirements:

(1) The parent agency administrator or alternate administrator, or supervising nurse or alternate supervising nurse, must conduct an on-site supervisory visit to the branch office at least monthly. The parent agency may visit the branch office more frequently considering the size of the service area and the scope of services provided by the parent agency. The supervisory visits must be documented and include the date of the visit, the content of the consultation, the individuals in attendance, and the recommendations of the staff.

(2) The original active clinical record must be kept at the branch office.

(3) The parent agency must approve all branch office policies and procedures. This approval must be documented and filed in the parent and branch offices.

(e) HHSC [DADS] issues or renews a branch office license for applicants who meet the requirements of this section.

(1) Issuance or renewal of a branch office license is contingent upon compliance with the Statute [statute] and this chapter by the parent agency and branch office.

(2) HHSC [DADS] may take enforcement action against a parent agency license for a branch office's failure to comply with the Statute [statute] or this chapter in accordance with Subchapter F of this chapter (relating to Enforcement).

(3) Revocation, suspension, denial, or surrender of a parent agency license will result in the same revocation, suspension, denial, or surrender of a branch office license for all branch office licenses of the parent agency.

(f) A branch office may offer fewer health services or categories than the parent office but may not offer health services or categories that are not also offered by the parent agency.

§558.322. *Standards for Alternate Delivery Sites.*

(a) An ADS [alternate delivery site (ADS)] must comply with the Statute [statute] and this chapter, including the additional standards in Subchapter H of this chapter (relating to Standards Specific to Agencies Licensed to Provide Hospice Services).

(b) If certified by CMS, an ADS must comply with the applicable federal rules and regulations for hospice agencies in 42 CFR[3] Part 418 [3, Hospice Care].

(c) A parent agency and an ADS must meet the following requirements:

(1) The parent agency administrator or alternate administrator, or supervising nurse or alternate supervising nurse, must conduct an on-site supervisory visit to the ADS at least monthly. The parent agency may visit the ADS more frequently considering the size of the service area provided by the parent agency. The supervisory visits must be documented and include the date of the visit, the content of the consultation, the individuals in attendance, and the recommendations of the staff.

(2) The parent agency must approve all ADS policies and procedures. This approval must be documented and filed in the parent agency and ADS.

(d) Issuance or renewal of an ADS license is contingent upon compliance by the parent agency and ADS with the Statute [statute] and this chapter.

(1) HHSC [DADS] may take enforcement action against a parent agency license for an ADS' failure to comply with the Statute [statute] or this chapter in accordance with Subchapter F of this chapter (relating to Enforcement).

(2) Revocation, suspension, denial or surrender of a parent agency license results in the same revocation, suspension, denial or surrender of all ADS licenses of the parent agency.

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. ADDITIONAL STANDARDS SPECIFIC TO LICENSE CATEGORY AND SPECIFIC TO SPECIAL SERVICES

### 26 TAC §§558.401, 558.402, 558.404 - 558.407

#### STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; and Texas Health and Safety Code §§142.012, 142.010, and 142.006(b), which respectively authorize the Executive Commission of HHSC to adopt rules in accordance with those sections that are necessary to implement Chapter 142 and set minimum standards for home and community support services agencies licensed under that Chapter, set reasonable license fees for such agencies, and establish a system for staggered three-year license expiration dates.

The amendments implement Texas Government Code §531.0055 and Texas Health and Safety Code §§142.012, 142.010(a), 142.006(b) and 142.0095, and Texas Health and Safety Code Chapter 142, Subchapter C.

#### *§558.401. Standards Specific to Licensed Home Health Services.*

(a) In addition to the standards in Subchapter C of this chapter (relating to Minimum Standards for All [Licensed] Home and Community Support Services Agencies), an agency providing licensed home health services must also meet the standards of this section.

(b) The agency must accept a client for home health services based on a reasonable expectation that the client's medical, nursing, and social needs can be met adequately in the client's residence. An agency has made a reasonable expectation that it can meet a client's needs if, at the time of the agency's acceptance of the client, the client and the agency have agreed as to what needs the agency would meet; for instance, the agency and the client could agree that some needs would be met but not necessarily all needs.

(1) The agency must start providing licensed home health services to a client within a reasonable time after acceptance of the client and according to the agency's policy. The initiation of licensed home health services must be based on the client's health service needs.

(2) An initial health assessment must be performed in the client's residence by the appropriate health care professional prior to or at the time that licensed home health services are initially provided to the client. The assessment must determine whether the agency can [has the ability to] provide the necessary services.

(A) If a practitioner has not ordered skilled care for a client, then the appropriate health care professional must prepare a care plan. The care plan must be developed after consultation with the client and the client's family and must include services to be rendered, the frequency of visits or hours of service, identified problems, method of intervention, and projected date of resolution. The care plan must be reviewed and updated by all appropriate staff members involved in client care at least annually, or more often as necessary to meet the needs of the client.

(B) If a practitioner orders skilled treatment, then the appropriate health care professional must prepare a plan of care. The plan of care must be signed and approved by a practitioner in a timely manner. The plan of care must be developed in conjunction with agency staff and must cover all pertinent diagnoses, including mental status, types of services and equipment required, frequency of visits

at the time of admission, prognoses, functional limitations, activities permitted, nutritional requirements, medications and treatments, any safety measures to protect against injury, and any other appropriate items. The appropriate health care personnel must perform services as specified in the plan of care. The plan of care must be revised as necessary, but it must be reviewed and updated at least every six months.

(c) Agency staff must provide at least one home health service.

(d) All services must be provided and supervised by qualified personnel. The appropriate licensed health care professional must be available to supervise as needed, when services are provided. If medical social service is provided, the social worker must be licensed in the State [state] of Texas to provide social work services.

(e) All staff providing services, delegation, and supervision must be employed by or be under contract with the agency.

(f) An agency is not required to employ home health aides. If an agency employs home health aides, the agency must comply with §558.701 [§97.701] of this chapter (relating to Home Health Aides).

(g) Unlicensed personnel employed by an agency to provide licensed home health services must:

(1) have demonstrated competency in the task assigned when competency cannot be determined through education and experience; and

(2) be at least 18 years of age or, if under 18 years of age, be a high school graduate or enrolled in a vocational education program.

#### *§558.402. Standards Specific to Licensed and Certified Home Health Services.*

(a) In addition to the standards in Subchapter C of this chapter (relating to Minimum Standards for All [Licensed] Home and Community Support Services Agencies), an agency providing licensed and certified home health services must comply with applicable [the] requirements of 42 United States Code Chapter 7, Subchapter XVII [the Social Security Act] and the regulations in [Title] 42 CFR [of the Code of Federal Regulations,] Part 484. [Copies of the regulations adopted by reference in this section are indexed and filed in the Texas Department of Human Services, 701 W. 51st Street, Austin, Texas 78751-2321, and are available for public inspection during regular working hours.]

(b) An agency providing licensed and certified home health services that plans to implement a home health aide training and competency evaluation program must meet the requirements in §558.701(d)-(f) [§97.701(d)-(f)] of this chapter [title] (relating to Home Health Aides).

(c) An agency providing licensed and certified home health services that plans to implement a competency evaluation program must comply with §558.701(f) [§97.701(f)] of this chapter [title (relating to Home Health Aides)].

(d) An agency providing licensed and certified home health services may not use an individual as a home health aide unless:

(1) the individual has met the federal requirements under subsection (a) of this section;

(2) the individual qualifies as a home health aide based on [on the basis of] a:

(A) training and competency evaluation program, and the program meets the requirements of subsection (b) of this section; or

(B) competency evaluation program, and the program meets the requirements of subsection (c) of this section; or

(3) the individual is a licensed health care provider.

(e) Since the individual's most recent completion of a training and competency evaluation program, or a competency evaluation program, if there has been a period of 24 consecutive months during which the individual has not furnished home health services, the individual will not be considered as having completed a training and competency evaluation program or a competency evaluation program.

*§558.404. Standards Specific to Agencies Licensed to Provide Personal Assistance Services.*

(a) In addition to meeting the standards in Subchapter C of this chapter (relating to Minimum Standards for All Home and Community Support Services Agencies), an agency holding a license with the category of personal assistance services must meet the standards of this section.

(b) A person who is not licensed to provide personal assistance services under this chapter may not indicate or imply that the person is licensed to provide personal assistance services by using [the use of] the words "personal assistance services" or in any other manner.

(c) Personal assistance services, as defined in §558.2 [§97.2] of this chapter (relating to Definitions), may be performed by an unlicensed person who is at least 18 years of age and has demonstrated competency, when competency cannot be determined through education and experience, to perform the tasks assigned by the supervisor. An unlicensed person who is under 18 years of age, is a high school graduate or is enrolled in a vocational educational program, and has demonstrated competency to perform the tasks assigned by the supervisor, may perform personal assistance services.

(d) The following tasks may be performed under a personal assistance services category:

(1) personal care as defined in §558.2 [§97.2] of this chapter;

(2) health-related tasks provided by unlicensed personnel that may be delegated by an RN, or that an RN determines do not require delegation, in accordance with the agency's written policy adopted, implemented, and enforced to ensure compliance with the rules adopted by the Texas Board of Nursing in 22 TAC[.] Chapter 225 (relating to RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegation in Independent Living Environments for Clients with Stable and Predictable Conditions);

(3) health-related tasks that are not the practice of professional nursing under the memorandum of understanding between HHSC [DADS] and the Texas Board of Nursing; and

(4) health-related tasks that are delegated by a physician under the Texas Occupations Code[.] Chapter 157.

(e) The agency must ensure that when developing its operational policies, the policies are considerate of principles of individual and family choice and control, functional need, and accessible and flexible services.

(f) In addition to the client record requirements in §558.301(a)(9) [§97.301(a)(9)] of this chapter (relating to Client Records), the client file must include the following:

(1) documentation of determination of services based on an on-site visit by the supervisor where services will be primarily delivered and records of supervisory visits, if applicable;

(2) individualized service plan developed, agreed upon, and signed by the client or family and the agency. The individualized service plan must include [; but not be limited to the following]:

(A) types of services, supplies, and equipment to be provided;

(B) locations of services;

(C) frequency and duration of services;

(D) planned date of service initiation;

(E) charges for services rendered if the charges will be paid in full or in part by the client or significant other(s), or on request; and

(F) plan of supervision; and

(3) documentation that the services have been provided according to the individualized service plan.

(g) In addition to the written policies required by §558.245 [§97.245] of this chapter (relating to Staffing Policies) the agency must adopt and enforce a written policy addressing the supervision of personnel with input from the client or family on the frequency of supervision.

(1) Supervision of personnel must be in accordance with the agency's policies and applicable State [state] laws and rules, including rules adopted by the Texas Board of Nursing in 22 TAC[.] Chapter 225.

(2) A supervisor must be a licensed nurse or have completed two years of full-time study at an accredited college or university. An individual with a high school diploma or general equivalence diploma (GED) may substitute one year of full-time employment in a supervisory capacity in a health care facility, agency, or community-based agency for each required year of college.

(3) The client in a client managed attendant care program funded by HHSC [DADS] or the Department of Assistive and Rehabilitative Services is not required to meet the standard in paragraph (2) of this subsection.

(h) Tube feedings and medication administration through a permanently placed gastrostomy tube (g-tube) in accordance with subsection (d)(3) of this section may be performed by an unlicensed person only after successful completion of the training and competency program and procedures described in paragraphs (1) - (5) of this subsection.

(1) The training and competency program for the performance of g-tube feedings by an unlicensed person must be taught by an RN, physician, physician assistant (PA), or qualified trainer. A qualified trainer must:

(A) have successfully completed the training and competency program described in paragraphs (2) and (3) of this subsection taught by an RN, physician, or PA;

(B) have demonstrated upon return demonstration to an RN, physician, or PA the performance of the task and the ability to teach the task; and

(C) have been deemed competent by an RN, physician, or PA, to train unlicensed personnel in these procedures. Documentation of competency to perform, train, and teach must be maintained in the employee's or contractor's file. Competency must be evaluated and documented annually by an RN, physician, or PA [annually].

(2) The minimum training program must include:

(A) a description of the g-tube placement, including its purpose;

(B) infection control procedures and universal precautions to be used ~~[utilized]~~ when performing g-tube feedings or medication administration through a g-tube;

(C) a description of conditions that must be reported to the client or the primary caregiver, or in the absence of the primary caregiver, to the agency administrator, supervisor, or the client's physician. The description of conditions must include a plan to be effected if the g-tube comes out or is not positioned correctly to ensure medical attention is provided within one hour;

(D) review of a written procedure for g-tube feeding or medication administration through a g-tube. The written procedure must be equivalent to current acceptable nursing standards of practice, including addressing the crushing of medications;

(E) conditions under which g-tube feeding or medication administration must not be performed; and

(F) demonstration of a g-tube feeding and medication administration to a client. If the trainee will become a qualified trainer, the demonstration must be done by the RN, PA, or physician. If the trainee will not become a qualified trainer, the demonstration may be done by an RN, PA, physician, or qualified trainer.

(3) The minimum competency evaluation must be documented and maintained in the employee's file and must include:

(A) a score of 100 percent ~~[100%]~~ on a written ~~multiple-choice~~ ~~[multiple choice]~~ test that consists of situational questions to include the criteria in paragraph (2)(A) - (E) of this subsection and an evaluation of the trainee's judgment and understanding of the essential skills, risks, and possible complications of a g-tube feeding or medication administration through a g-tube;

(B) a skills checklist demonstrating that the trainee has successfully completed the necessary skills for a g-tube feeding and medication administration via g-tube, and if the trainee will become a qualified trainer, the skills checklist must also demonstrate the ability to teach another person to perform the task. The skills checklist must be completed by an RN, physician, or PA, if the trainee will become a qualified trainer. The skills checklist for a trainee who will not become a qualified trainer may be completed by an RN, physician, PA, or qualified trainer; and

(C) documentation of an accurate demonstration of the g-tube feeding and medication administration performed by the trainee as required by paragraph (2)(F) of this subsection. If the trainee will become a qualified trainer, documentation of competency to teach this task must be maintained in the file of the qualified trainer. The person responsible for the training of the trainee must document the successful demonstration of the g-tube feeding and medication administration via g-tube by the trainee and the trainee's competency to perform this task in the trainee's file.

(4) The client or primary caregiver must provide information on the client's g-tube feeding or medication administration to the agency supervisor. If the client is not capable of directing his or her own care, the client's primary caregiver must be present to instruct and orient the supervisor regarding the client's g-tube feeding and medication regime. A copy of the current regime including unique conditions specific to the client must be placed in the client's file by the agency supervisor and provided to the respite caregiver. The respite caregiver must be oriented by the client, the client's primary caregiver, or the agency supervisor. The supervisor of the delivery of these services must have successfully completed a training and competency program outlined in paragraphs (2) and (3) of this subsection or be a qualified trainer.

(5) Legend medications that are to be administered must be in a legally labeled container from a pharmacy that contains the name of the client. Instructions for dosages according to weight or age for over-the-counter drugs commonly given the client must be furnished by the primary caregiver to the respite caregiver performing the tube feeding or medication administration.

*§558.405. Standards Specific to Agencies Licensed to Provide Home Dialysis Services.*

(a) License designation. An agency may not provide peritoneal dialysis or hemodialysis services in a client's residence, independent living environment, or other appropriate location unless the agency holds a license to provide licensed home health or licensed and certified home health services and designated to provide home dialysis services. In order to receive a home dialysis designation, the agency must meet the licensing standards specified in this section and the standards for home health services in accordance with Subchapter C of this ~~chapter~~ ~~[title]~~ (relating to Minimum Standards for All Home and Community Support Services Agencies) and ~~§558.401~~ ~~[\$97.401]~~ of this ~~subchapter~~ ~~[title]~~ (relating to Standards Specific to Licensed Home Health Services), except for ~~§558.401(b)(2)(A) and (B)~~ ~~[\$97.401(b)(2)(A) and (B)]~~ of this ~~subchapter~~ ~~[title]~~ (relating to Standards Specific to Licensed Home Health Services)]. If there is a conflict between the standards specified in this section and those specified in Subchapter C of this ~~chapter~~ ~~and~~ ~~§558.401~~ ~~[title]~~ (relating to Minimum Standards for All Home and Community Support Services Agencies) ~~§97.401~~ of this ~~subchapter~~ ~~[title]~~ (relating to Standards Specific to Licensed Home Health Services)], the standards specified in this section will apply to the home dialysis services.

(b) Governing body. An agency must have a governing body. The governing body must appoint a medical director and the physicians who are on the agency's medical staff. The governing body must annually approve the medical staff policies and procedures. The governing body on a biannual basis must review and consider for approval continuing privileges of the agency's medical staff. The minutes from the governing body of the agency must be on file in the agency office.

(c) Qualifications and responsibilities of the medical director.

(1) Qualifications. The medical director must be a physician licensed in the State of Texas who:

(A) is eligible for certification or is certified in nephrology or pediatric nephrology by a professional board; or

(B) during the five-year period prior to September 1, 1996, served at least 12 months as director of a dialysis facility or program.

(2) Responsibilities. The medical director must:

(A) participate in the selection of a suitable treatment modality for all clients;

(B) assure adequate training of nurses in dialysis techniques;

(C) assure adequate monitoring of the client and the dialysis process; and

(D) assure the development and availability of a client care policy and procedures manual and its implementation.

(d) Personnel files. An agency must have individual personnel files on all physicians, including the medical director. The file must include the following:

(1) a curriculum vitae which documents undergraduate, medical school, and all pertinent post graduate training; and



(2) evidence of current licensure, and evidence of current United States Drug Enforcement Administration certification, Texas Department of Public Safety registration, and the board eligibility or certification, or the experience or training described in subsection (c)(1) of this section.

(e) Provision of services. An agency that provides home staff-assisted dialysis must, at a minimum, provide nursing services, nutritional counseling, and medical social service. These services must be provided as necessary and as appropriate at the client's home, by telephone, or by a client's visit to a licensed ESRD facility in accordance with this subsection. The use of dialysis technicians in home dialysis is prohibited.

(1) Nursing services.

(A) An RN [A registered nurse (RN)], licensed by the State of Texas, who has at least 18 months experience in hemodialysis obtained within the last 24 months and has successfully completed the orientation and skills education described in subsection (f) of this section, must be available whenever dialysis treatments are in progress in a client's home. The agency administrator must designate a qualified alternate to this RN [registered nurse].

(B) Dialysis services must be supervised by an RN who meets the qualifications for a supervising nurse as set out in §558.244(c)(2) [§97.244(e)(2)] of this chapter [title] (relating to Administrator Qualifications and Conditions and Supervising Nurse Qualifications).

(C) Dialysis services must be provided by a qualified licensed nurse who:

(i) is licensed as an RN [a registered] or LVN [licensed vocational nurse] by the State of Texas;

(ii) has at least 18 months experience in hemodialysis obtained within the last 24 months; and

(iii) has successfully completed the orientation and skills education described in subsection (f) of this section.

(2) Nutritional counseling. A dietitian who meets the qualifications of this paragraph must be employed by or under contract with the agency to provide services. A qualified dietitian must meet the definition of dietitian in §558.2 [§97.2] of this chapter (relating to Definitions) and have at least one year of experience in clinical nutrition after obtaining eligibility for registration by the American Dietetic Association, Commission on Dietetic Registration.

(3) Medical social services. A social worker who meets the qualifications established in this paragraph must be employed by or be under contract with the agency to provide services. A qualified social worker is a person who:

(A) is currently licensed under the laws of the State of Texas as a social worker and has a master's degree in social work from a graduate school of social work accredited by the Council on Social Work Education; or

(B) has served for at least two years as a social worker, one year of which was in a dialysis facility or program prior to September 1, 1976, and has established a consultative relationship with a licensed master social worker.

(f) Orientation, skills education, and evaluation.

(1) All personnel providing dialysis in the home must receive orientation and skills education and demonstrate knowledge of the following:

(A) anatomy and physiology of the normal kidney;

(B) fluid, electrolyte, and acid-base balance;

(C) pathophysiology of renal disease;

(D) acceptable laboratory values for the client with renal disease;

(E) theoretical aspects of dialysis;

(F) vascular access and maintenance of blood flow;

(G) technical aspects of dialysis;

(H) peritoneal dialysis catheter, testing for peritoneal membrane equilibration, and peritoneal dialysis adequacy clearance, if applicable;

(I) the monitoring of clients during treatment, beginning with treatment initiation through termination;

(J) the recognition of dialysis complications, emergency conditions, and institution of the appropriate corrective action. This includes training agency personnel in emergency procedures and how to use emergency equipment;

(K) psychological, social, financial, and physical complications of chronic dialysis;

(L) care of the client with chronic renal failure;

(M) dietary modifications and medications for the uremic client;

(N) alternative forms of treatment for ESRD;

(O) the role of renal health team members (physician, nurse, social worker, and dietitian);

(P) performance of laboratory tests (hematocrit and blood glucose);

(Q) the theory of blood products and blood administration; and

(R) water treatment to include:

(i) standards for treatment of water used for dialysis as described in §3.2.1 (Hemodialysis Systems) and §3.2.2 (Maximum Level of Chemical Contaminants) of the American National Standard, Hemodialysis Systems, March 1992 Edition, published by the Association for the Advancement of Medical Instrumentation (AAMI), 3330 Washington Boulevard, Suite 500, Arlington, Virginia 22201. Copies of the standards are indexed and filed in the Texas Health and Human Services Commission [Department of Aging and Disability Services], 701 W. 51st Street, Austin, Texas 78751[-2321], and are available for public inspection during regular working hours;

(ii) systems and devices;

(iii) monitoring; and

(iv) risks to clients of unsafe water.

(2) The requirements for the orientation and skills education period for licensed nurses are as follows.

(A) The agency must develop an 80-hour written orientation program that includes classroom theory and direct observation of the licensed nurse performing procedures on a client in the home.

(i) The orientation program must be provided by an RN [a registered nurse] qualified under subsection (e)(1) of this section to supervise the provision of dialysis services by a licensed nurse.

(ii) The licensed nurse must pass a written skills examination or competency evaluation at the conclusion of the orientation

program and prior to the time the licensed nurse delivers independent client care.

(B) The licensed nurse must complete the required classroom component as described in paragraph (1)(A) - (E), (K) - (O), (Q) and (R) of this subsection and satisfactorily demonstrate the skills described in paragraph (1)(F) - (J) and (P) of this subsection. The orientation program may be waived by successful completion of the written examination as described in subparagraph (A)(ii) of this paragraph.

(C) The supervising nurse or qualified designee must complete an orientation competency skills checklist for each licensed nurse to reflect the progression of learned skills, as described in subsection (f)(1) of this section.

(D) Prior to the delivery of independent client care, the supervising nurse or qualified designee must directly supervise the licensed nurse for a minimum of three dialysis treatments and ensure satisfactory performance. Dependent upon the trainee's experience and accomplishments on the skills checklist, additional supervised dialysis treatments may be required.

(E) Continuing education for employees must be provided quarterly.

(F) Performance evaluations must be done annually.

(G) The supervising nurse or qualified designee must provide direct supervision to the licensed nurse providing dialysis services monthly, or more often if necessary. Direct supervision means that the supervising nurse is on the premises but not necessarily immediately present where dialysis services are being provided.

(g) Hospital transfer procedure. An agency must establish an effective procedure for the immediate transfer to a local Medicare-certified hospital for clients requiring emergency medical care. The agency must have a written transfer agreement with such a hospital, or all physician members of the agency's medical staff must have admitting privileges at such a hospital.

(h) Backup dialysis services. An agency that supplies home staff-assisted dialysis must have an agreement with a licensed ESRD [end stage renal disease (ESRD)] facility to provide backup outpatient dialysis services.

(i) Coordination of medical and other information. An agency must provide for the exchange of medical and other information necessary or useful in the care and treatment of clients transferred between treating facilities. This provision must also include the transfer of the client care plan, hepatitis B status, and long-term program.

(j) Transplant recipient registry program. An agency must ensure that the names of clients awaiting cadaveric donor transplantation are entered in a recipient registry program.

(k) Testing for hepatitis B. An agency must conduct routine testing of home dialysis clients and agency employees to ensure detection of hepatitis B in employees and clients.

(1) An agency must offer hepatitis B vaccination to previously unvaccinated, susceptible new staff members in accordance with 29 CFR [Code of Federal Regulations,] §1910.1030(f)(1) - (2) (Blood-borne Pathogens).

(A) Staff vaccination records must be maintained in each staff member's personnel file.

(B) New staff members providing home dialysis care must be screened for hepatitis B surface antigen (HBsAg) and the results reviewed prior to the staff providing client care, unless the new

staff member provides the agency documentation of positive serologic response to hepatitis B vaccine.

(C) An agency must establish, implement, and enforce a policy for repeated serologic screening of staff. The repeated serologic screening must be based on each staff member's HBsAg/antibody to HBsAg (anti-HBs)[,] and must be congruent with Appendices i and ii of the National Surveillance of Dialysis Associated Disease in the United States, 1993, published by the United States Department of Health and Human Services (USDHHS). [This document may be obtained by writing the Home and Community Support Services Program, Department of Aging and Disability Services, 701 W. 51st Street, Austin, Texas 78751-2321 or calling 438-3011 or writing the United States Department of Health and Human Services at the Public Health Service, Centers for Disease Control and Prevention, National Center for Infectious Diseases, Hospital Infection Program, Mail Stop C01, Atlanta, Georgia 30333, or calling 404-639-2318.]

(2) With the advice and consent of a client's nephrologist or attending physician, an agency must make the hepatitis B vaccine available to a client who is susceptible to hepatitis B, provided that the client has coverage or is willing to pay for vaccination.

(A) An agency must make available to clients literature describing the risks and benefits of the hepatitis B vaccination.

(B) Candidates for home dialysis must be screened for HBsAg within one month before or at the time of admission to the agency.

(C) Repeated serologic screening must be based on the antigen or antibody status of the client.

(D) Monthly screening for HBsAg is required for clients whose previous test results are negative for HBsAg.

(E) Screening of HbsAg-positive or anti-HbsAg-positive clients may be performed on a less frequent basis, provided that the agency's policy on this subject remains congruent with Appendices i and ii of the National Surveillance of Dialysis Associated Diseases in the United States, 1993, published by the USDHHS.

(1) CPR certification. All direct client care employees must have current CPR certification.

(m) Initial admission assessment. Assessment of the client's residence must be made to ensure a safe physical environment for the performance of dialysis. The initial admission assessment must be performed by a qualified RN [registered nurse] who meets the qualifications under subsection (e)(1)(A) of this section.

(n) Client long-term program. The agency must develop a long-term program for each client admitted to home dialysis. Criteria must be defined in writing and must provide guidance to the agency in the selection of clients suitable for home staff-assisted dialysis and in noting changes in a client's condition that would require discharge from the program. For the purposes of this subsection, Long-term program means the written documentation of the selection of a suitable treatment modality and dialysis setting, which has been selected by the client and the interdisciplinary team.

(o) Client history and physical. The agency must ensure that the history and physical is conducted upon the client's admission, or no more than six months prior to the date of admission, then annually after the date of admission.

(p) Physician orders. If home staff-assisted dialysis is selected, the physician must prepare orders outlining specifics of prescribed treatment.

(1) If these physician's orders are received verbally, they must be confirmed in writing within a reasonable time frame. An agency must adopt and enforce a policy on the time frame for the countersignature of a physician's verbal orders. Medical orders for home staff-assisted dialysis must be revised as necessary but reviewed and updated at least every six months.

(2) The initial orders for home staff-assisted dialysis must be received prior to the first treatment and must cover all pertinent diagnoses, including mental status, prognosis, functional limitations, activities permitted, nutritional requirements, medications and treatments, and any safety measures to protect against injury. Orders for home staff-assisted dialysis must include frequency and length of treatment, target weight, type of dialyzer, dialysate, dialysate flow rate, heparin dosage, and blood flow rate, and must specify the level of preparation required for the caregiver, such as an LVN [a licensed vocational nurse] or RN [registered nurse].

(q) Client care plan. The client care plan must be developed after consultation with the client and the client's family by the interdisciplinary team. The interdisciplinary team must include the physician, the RN [registered nurse], the dietitian, and the qualified social worker responsible for planning the care delivered to the home staff-assisted dialysis patient.

(1) The initial client care plan must be completed by the interdisciplinary team within 10 [ten] calendar days after the first home dialysis treatment.

(2) The client care plan must implement the medical orders and must include services to be rendered, such as the identification of problems, methods of intervention, and the assignment of health care personnel.

(3) The client care plan must be in writing, be personalized for the individual, and reflect the ongoing medical, psychological, social, nutritional, and functional needs of the client, including treatment goals.

(4) The client care plan must include written evidence of coordination with other service providers, such as dialysis facilities or transportation providers, as needed to assure the provision of safe care.

(5) The client care plan must include written evidence of the client's or client's legal representative's input and participation, unless they refuse to participate. At a minimum, the client care plan must demonstrate that the content was shared with the client or the client's legal representative.

(6) For non-stabilized clients, where there is a change in modality, unacceptable laboratory work, uncontrolled weight changes, infections, or a change in family status, the client care plan must be reviewed at least monthly by the interdisciplinary team. Evidence of the review of the client care plan with the client and the interdisciplinary team to evaluate the client's progress or lack of progress toward the goals of the care plan, and interventions taken when progress toward stabilization or the goals are not achieved, must be documented and included in the client record.

(7) For a stable client, the client care plan must be reviewed and updated as indicated by any change in the client's medical, nutritional, or psychosocial condition or at least every six months. The long-term program must be revised as needed and reviewed annually. Evidence of the review of the client care plan with the client and the interdisciplinary team to evaluate the client's progress or lack of progress toward the goals of the care plan, and interventions taken when the goals are not achieved, must be documented and included in the client record.

(r) Medication administration. Medications must be administered only by licensed personnel.

(s) Client records. In addition to the applicable information described in §558.301(a)(9) [§97.301(a)(9)] of this chapter (relating to Client Records), records of home staff assisted dialysis clients must include the following:

- (1) a medical history and physical;
  - (2) clinical progress notes by the physician, qualified licensed nurse, qualified dietitian, and qualified social worker;
  - (3) dialysis treatment records;
  - (4) laboratory reports;
  - (5) a client care plan;
  - (6) a long-term program; and
  - (7) documentation of supervisory visits.
- (t) Water treatment.

(1) Water used for dialysis purposes must be analyzed for chemical contaminants every six months. Additional chemical analysis must be conducted if test results exceed the maximum levels of chemical contaminants listed in §3.2.2 (Maximum Level of Chemical Contaminants) of the American National Standards for Hemodialysis Systems, March 1992 Edition, published by the AAMI. Copies of the standards are indexed and filed in the Texas Health and Human Services Commission [Department of Aging and Disability Services], 701 W. 51st Street, Austin, Texas 78751[-2321], and are available for public inspection during regular working hours.

(2) Water used for dialysis must be treated as necessary to maintain a continuous water supply that is biologically and chemically compatible with acceptable dialysis techniques.

(3) Water used to prepare dialysate must meet the requirements set forth in §3.2.1 (Hemodialysis Systems) and §3.2.2 (Maximum Level of Chemical Contaminants), March 1992 Edition, published by the AAMI. Copies of the standards are indexed and filed in the Texas Health and Human Services Commission [Department of Aging and Disability Services;] 701 W. 51st Street, Austin, Texas 78751[-2321], and are available for public inspection during regular working hours.

(4) Records of test results and equipment maintenance must be maintained at the agency.

(u) Equipment testing. An agency must adopt and enforce a policy to describe how the nurse will check the machine for conductivity, temperature, and pH prior to treatment, and describe the equipment required for these tests. The equipment must be available for use prior to each treatment. This policy must reflect current standards.

(v) Preventive maintenance for equipment. An agency must develop[;] and enforce a written preventive maintenance program to ensure client care related equipment receives electrical safety inspections, if appropriate, and maintenance at least annually or more frequently if recommended by the manufacturer. The preventive maintenance may be provided by agency or contract staff qualified by training or experience in the maintenance of dialysis equipment.

(1) All equipment used by a client in home dialysis must be maintained free of defects, which could be a potential hazard to clients, the client's family, or agency personnel.

(A) Agency staff must be able to identify malfunctioning equipment and report such equipment to the appropriate agency

staff. Malfunctioning equipment must be immediately removed from use.

(B) Written evidence of all preventive maintenance and equipment repairs must be maintained.

(C) After repairs or alterations are made to any equipment, the equipment must be thoroughly tested for proper operation before returning to service.

(D) An agency must comply with the federal Food, Drug, and Cosmetic Act, 21 United States Code (USC)[;] §360i(b), concerning reporting when a medical device, as defined in 21 USC[;] §321(h), has or may have caused or contributed to the injury or death of an agency client.

(2) In the event that the water used for dialysis purposes or home dialysis equipment is found not to meet safe operating parameters, and corrections cannot be effected to ensure safe care promptly, the client must be transferred to a licensed hospital (if inpatient care is required) or licensed ESRD facility until such time as the water or equipment is found to be operating within safe parameters.

(w) Reuse or reprocessing of medical devices. Reuse or reprocessing of disposable medical devices, including but not limited to, dialyzers, end-caps, and blood lines must be in accordance with this subsection.

(1) An agency's reuse practice must comply with the American National Standard, Reuse of Hemodialyzers, 1993 Edition, published by the AAMI. An agency must adopt and enforce a policy for dialyzer reuse criteria (including any agency-set number of reuses allowed) which is included in client education materials.

(2) A transducer protector must be replaced when wetted during a dialysis treatment and must be used for one treatment only.

(3) Arterial lines may be reused only when the arterial lines are labeled to allow for reuse by the manufacturer and the manufacturer-established protocols for the specific line have been approved by the United States Food and Drug Administration.

(4) An agency must consider and address the health and safety of clients sensitive to disinfectant solution residuals.

(5) An agency must provide each client and the client's family or legal representative with information regarding the reuse practices of the agency, the opportunity to tour the reuse facility used by the agency, and the opportunity to have questions answered.

(6) An agency practicing reuse of dialyzers must:

(A) ensure that dialyzers are reprocessed via automated reprocessing equipment in a licensed ESRD facility or a centralized reprocessing facility;

(B) maintain responsibility and accountability for the entire reuse process;

(C) adopt and enforce policies to ensure that the transfer and transport of used and reprocessed dialyzers to and from the client's home does not increase contamination of the dialyzers, staff, or the environment; and

(D) ensure that HHSC [~~DADS~~] staff has access to the reprocessing facility as part of an agency inspection.

(x) Laboratory services. Provision of laboratory services must be as follows.

(1) All laboratory services ordered for the client by a physician must be performed by a laboratory which meets the applicable requirements of 42 United States Code (USC) §263a, concerning certi-

fication and certificates of waiver of a clinical laboratory (CLIA 1988) [Clinical Laboratory Improvement Amendments of 1988, 42 United States Code, §263a, Certification of Laboratories (CLIA 1988)] and in accordance with a written arrangement or agreement with the agency. CLIA 1988 applies to all agencies with laboratories that examine human specimens for the diagnosis, prevention, or treatment of any disease or impairment of, or the assessment of the health of, human beings.

(2) Copies of all laboratory reports must be maintained in the client's medical record.

(3) Hematocrit and blood glucose tests may be performed at the client's home in accordance with §558.284 [~~§97.284~~] of this chapter [~~title~~] (relating to Laboratory Services). Results of these tests must be recorded in the client's medical record and signed by the qualified licensed nurse providing the treatment. Maintenance, calibration, and quality control studies must be performed according to the equipment manufacturer's suggestions, and the results must be maintained at the agency.

(4) Blood and blood products must only be administered to dialysis clients in their homes by a licensed nurse or physician.

(y) Home dialysis supplies. Supplies for home dialysis must meet the following requirements.

(1) All drugs, biologicals, and legend medical devices must be obtained for each client pursuant to a physician's prescription in accordance with applicable rules of the Texas State Board of Pharmacy.

(2) In conjunction with the client's attending physician, the agency must ensure that there are sufficient supplies maintained in the client's home to perform the scheduled dialysis treatments and to provide a reasonable number of backup items for replacements, if needed, due to breakage, contamination, or defective products. All dialysis supplies, including medications, must be delivered directly to the client's home by a vendor of such products. However, agency personnel may transport prescription items from a vendor's place of business to the client's home for the client's convenience, so long as the item is properly labeled with the client's name and direction for use. Agency personnel may transport medical devices for reuse.

(z) Emergency procedures. The agency must adopt and enforce policies and procedures for medical emergencies and emergencies resulting from a disaster.

(1) Procedures must be individualized for each client to include the appropriate evacuation from the home and emergency telephone numbers. Emergency telephone numbers must be posted at each client's home and must include 911, if available, the number of the physician, the ambulance, the qualified RN [~~registered nurse~~] on call for home dialysis, and any other phone number deemed as an emergency number.

(2) The agency must ensure that the client and the client's family know the agency's procedures for medical emergencies and emergencies resulting from a disaster.

(3) The agency must ensure that the client and the client's family know the procedure for disconnecting the dialysis equipment.

(4) The agency must ensure that the client and the client's family know emergency call procedures.

(5) A working telephone must be available during the dialysis procedure.

(6) Depending on the kinds of medications administered, an agency must have available emergency drugs as specified by the medical director.

(7) In the event of a medical emergency or an emergency resulting from a disaster requiring transport to a hospital for care, the agency must assure the following:

(A) the receiving hospital is given advance notice of the client's arrival;

(B) the receiving hospital is given a description of the client's health status; and

(C) the selection of personnel, vehicle, and equipment are appropriate to effect a safe transfer.

§558.406. *Standards for Agencies Providing Psychoactive Services.*

An agency that provides skilled nursing psychoactive treatments must comply with the requirements of this section.

(1) An agency must adopt and enforce a written policy relating to the provision of psychoactive treatments consistent with this section.

(2) Skilled nursing psychoactive treatments must be under the direction of a physician. Psychoactive treatments may only be provided by a physician or an RN [a registered nurse].

(3) An RN [A registered nurse] providing skilled nursing psychoactive treatments must have one of the following qualifications:

(A) a master's degree in psychiatric or mental health nursing;

(B) a bachelor's degree in nursing with one year of full-time experience in an active treatment unit in a mental health facility or outpatient clinic;

(C) a diploma or associate degree with two years of full-time experience in an active treatment unit in a mental health facility or outpatient clinic; or

(D) for an RN [a registered nurse] for Medicare certified agencies, as allowed by the fiscal intermediary for Texas contracting with the United States Department of Health and Human Services (USDHHS) CMS [Centers for Medicare & Medicaid Services (CMS)].

(4) An agency must have written documentation that an RN [a registered nurse] providing skilled nursing psychoactive treatments is qualified under paragraph (3) of this section [subsection].

(5) The initial health assessment of a client receiving skilled nursing psychoactive treatments must include:

(A) mental status including psychological and behavioral status;

(B) sensory and motor function;

(C) cranial nerve function;

(D) language function; and

(E) any other criteria established by an agency's policy.

§558.407. *Standards for Agencies Providing Home Intravenous Therapy.*

An agency furnishing intravenous therapy directly or under arrangement must comply with the following standards of care.

(1) A physician's order must be written specifically for intravenous therapy.

(2) Intravenous therapy must be provided by a licensed nurse.

(3) To ensure [insure] that prescribed care is administered safely, a licensed nurse must have the knowledge and documented competency to interpret and implement the written order.

(4) Written policies and procedures regarding the agency's provision of intravenous therapy must include, but are not limited to, addressing initiation, medication administration, monitoring, and discontinuation. Responsibilities of the licensed nurse must be clearly delineated in written policies and procedures.

(5) An RN [A registered nurse] must be available 24 hours a day.

(6) The client and caregiver must be assessed for the ability to safely administer the prescribed intravenous therapy, as per agency written criteria.

(7) If the client or caregiver is willing and able to safely administer the prescribed intravenous therapy, the agency must offer to teach the client or caregiver such administration. The teaching process is based on the client and caregiver needs and may include written instructions, verbal explanations, demonstrations, evaluation and documentation of competency, proficiency in performing intravenous therapy, scope of physical activities, and safe disposal of equipment.

(8) Actions must be implemented prior to and during all intravenous therapy to minimize the risk of anaphylaxis or other adverse reactions, as stated in the agency's written policy.

(9) An ongoing assessment of client and caregiver compliance in performing intravenous therapy related procedures must be done at periodic intervals.

(10) Care coordination must be provided [~~in order~~] to ensure [assure] continuity of care.

(11) The client and caregiver must be provided with 24-hour access to appropriate health care professionals employed by or having a contract with the agency.

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

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



## SUBCHAPTER E. LICENSURE SURVEYS

### DIVISION 1. GENERAL

**26 TAC §§558.501, 558.503, 558.505, 558.507**

#### STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; and Texas Health and Safety Code §§142.012, 142.010, and 142.006(b), which respectively authorize the Executive Commission of HHSC to adopt rules in accordance with those sections that

are necessary to implement Chapter 142 and set minimum standards for home and community support services agencies licensed under that Chapter, set reasonable license fees for such agencies, and establish a system for staggered three-year license expiration dates.

The amendments implement Texas Government Code §531.0055 and Texas Health and Safety Code §§142.012, 142.010(a), 142.006(b) and 142.0095, and Texas Health and Safety Code Chapter 142, Subchapter C.

*§558.501. Survey and Investigation Frequency.*

(a) At a minimum, HHSC [DADS] conducts a survey:

(1) after an agency submits a written request for an initial survey in accordance with §558.521 [§97.521] of this subchapter (relating to Requirements for an Initial Survey); and

(2) within 18 months after conducting an initial survey and at least every 36 months thereafter.

(b) HHSC [DADS] may conduct a survey or investigation to determine an agency's compliance with:

(1) this chapter or the Statute [statute] in the provision of licensed home health services, licensed and certified home health services, hospice services, or personal assistance services; and

(2) federal requirements in the provision of licensed and certified home health services or licensed and certified hospice services.

(c) HHSC [DADS] may conduct a survey for the renewal of a license or the issuance of a branch office or ADS [alternate delivery site] license.

*§558.503. Exemption From a Survey.*

Except for the investigation of complaints, an agency is exempt from additional surveys by HHSC [DADS] if the agency maintains accreditation status for the [applicable] services for which the agency seeks exemption and applicable to the agency's category of license from an accreditation organization with current HHSC approval. As of the effective date of this rule, accreditation organizations with current HHSC approval on its HCSSA licensure website are the Joint Commission, Community Health Accreditation Partner, and Accreditation Commission for Health Care, Inc. [from JCAHO or CHAP.]

*§558.505. Notice of a Survey.*

HHSC [DADS] does not announce or give prior notice of a survey to an agency [of a survey].

*§558.507. Agency Cooperation with a Survey.*

(a) By applying for or holding a license, an agency consents to entry and survey by a HHSC [DADS] representative to verify compliance with the Statute [statute] or this chapter.

(b) An agency must provide the surveyor access to all agency records required by HHSC [DADS] to be maintained by or on behalf of the agency.

(c) If a surveyor requests an agency record that is stored at a location other than the survey site, the agency must provide the record to the surveyor within eight working hours after the request.

(d) An agency must provide the surveyor with copies of agency records upon request.

(e) During a survey, agency staff must not:

(1) make a false statement of a material fact about a matter under investigation by HHSC that a person knows, or should know, is false [of a material fact about a matter under investigation by DADS];

(2) willfully interfere with the work of a HHSC [DADS] representative;

(3) willfully interfere with a HHSC [DADS] representative in preserving evidence of a violation; or

(4) refuse to allow a HHSC [DADS] representative to inspect a book, record, or file required to be maintained by or on behalf of an agency.

(f) An agency must provide a HHSC [DADS] representative with a reasonable and safe workspace [and a safe workspace], free from hazards, at which to conduct a survey at a parent office, branch office, or ADS [alternate delivery site].

(g) If there is a disagreement between the agency and a HHSC [DADS] representative, the program manager or designee in the designated survey office determines what is reasonable and safe. After consulting with the program manager or designee and obtaining the program manager's agreement, the HHSC [DADS] representative will notify the agency administrator or designee if the requirement in subsection (f) of this section is not met. Within two working hours of this notice the agency must:

(1) provide a HHSC [DADS] representative with a different workspace at the agency that meets the requirement in subsection (f) of this section; or

(2) correct the unmet requirement in such a way as to allow the representative to reasonably and safely conduct the survey.

(h) If an agency willfully refuses to comply with subsection (g) of this section, thereby interfering with the work of the HHSC [DADS] representative, the representative will terminate the survey and recommend enforcement action as described in subsection (i) of this section.

(i) HHSC [DADS] may assess an administrative penalty without an opportunity to correct for a violation of provisions in this section, or may take other enforcement action to deny, revoke, or suspend a license, if an agency does not cooperate with a survey.

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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## DIVISION 2. THE SURVEY PROCESS

### 26 TAC §§558.521, 558.523, 558.525, 558.527

#### STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; and Texas Health and Safety Code §§142.012, 142.010, and 142.006(b), which respectively authorize the Executive Commission of HHSC to adopt rules in accordance with those sections that

are necessary to implement Chapter 142 and set minimum standards for home and community support services agencies licensed under that Chapter, set reasonable license fees for such agencies, and establish a system for staggered three-year license expiration dates.

The amendments implement Texas Government Code §531.0055 and Texas Health and Safety Code §§142.012, 142.010(a), 142.006(b) and 142.0095, and Texas Health and Safety Code Chapter 142, Subchapter C.

*§558.521. Requirements for an Initial Survey.*

(a) No later than six months after the effective date of an agency's initial license, an agency must:

(1) admit and provide services to clients as described in subsection (b) of this section; and

(2) except as provided in subsection (f) of this section, submit a written request for an initial licensure survey to the designated survey office, as described in subsection (c) of this section.

(b) Before submitting a written request to HHSC [DADS] for an initial licensure survey, an agency must admit clients and provide services as described in this subsection. The categories of service on an initial license may include licensed home health services (LHHS), LHHS with home dialysis designation, hospice services, and personal assistance services (PAS).

(1) When an initial license includes only one category of service, an agency must admit and provide services to at least one client.

(2) When an initial license includes the LHHS and the PAS categories, an agency must admit and provide LHHS to at least one client.

(3) When an initial license includes the LHHS and the LHHS with home dialysis designation categories, with or without the PAS category, an agency must admit and provide LHHS with home dialysis designation to at least one client.

(4) When an initial license includes the hospice services and the PAS categories, an agency must admit and provide hospice services to at least one client.

(5) When an initial license includes the LHHS and the hospice services categories, with or without the PAS category, an agency must admit and provide LHHS services to at least one client and admit and provide hospice services to at least one client.

(6) When an initial license includes the LHHS, the LHHS with home dialysis designation, and the hospice services categories, with or without the PAS category, an agency must admit and provide LHHS with home dialysis designation to at least one client. The agency must also admit and provide hospice services to at least one client.

(c) The agency's written request for an initial survey must be submitted to the designated survey office using HHSC [DADS] Form 2020 Notification of Readiness for Initial Survey. The written request must include the name, date of admission, and the category of service provided to each client admitted for services to demonstrate that the agency has admitted clients and provided services as described in subsection (b) of this section.

(d) An agency must have the following information available and ready for review by a surveyor upon the surveyor's arrival at the agency:

(1) a list of clients who are receiving services or who have received services from the agency for each category of service licensed.

The list must comply with the requirements of §558.293 [§97.293] of this chapter (relating to Client List and Services);

(2) the client records for each client admitted during the licensing period before the initial survey;

(3) all agency policies as required by this chapter; and

(4) all personnel records of agency employees.

(e) HHSC [DADS] may propose to deny an application to renew, or revoke or suspend, an initial license for the reasons specified in §558.15(c) [§97.15(e)] of this chapter (relating to Issuance of an Initial License).

(f) An agency is not required to request an initial survey in accordance with subsection (a)(2) of this section if the agency is exempt from the survey as specified in §558.503 [§97.503] of this subchapter (relating to Exemption From a Survey). To demonstrate that it is exempt, the agency must send the accreditation documentation from the accreditation organization [JCAHO or CHAP] to the HHSC [DADS] designated survey office no later than six months after the effective date of its license.

(g) If an agency receives written notice of accreditation from the accreditation organization [JCAHO or CHAP] after the agency submits a written request to HHSC [DADS] for an initial licensure survey, the agency may demonstrate that it is exempt from the survey by sending the accreditation documentation to the HHSC [DADS] designated survey office before HHSC [DADS] arrives at the agency to conduct an initial survey.

*§558.523. Personnel Requirements for a Survey.*

(a) For an initial survey, the administrator or alternate administrator must be present at the entrance conference, available in person or by telephone during the survey, and present in person at the exit conference.

(b) For a survey other than an initial survey, the administrator or alternate administrator must be available in person or by telephone during the entrance conference and the survey[,] and must be present in person at the exit conference.

(c) The supervising nurse or alternate supervising nurse must be available in person or by telephone, if necessary, to provide information unique to the duties and functions of the position during the survey.

(d) If a required individual is unavailable during the survey process and is not at the agency when the surveyor arrives, the surveyor makes reasonable attempts to contact the individual.

(e) If a surveyor arrives during regular business hours and the agency is closed, an administrator, alternate administrator, or a designated agency representative must provide the surveyor entry to the agency within two hours after the surveyor's arrival at the agency. The administrator must designate in writing the agency representatives who may grant entry to a surveyor. The agency must comply with notice requirements described in §558.210 [§97.210] of this chapter (relating to Agency Operating Hours).

(f) If the surveyor is unable to contact a required individual or the agency fails to comply with subsection (e) of this section, the surveyor may recommend enforcement action against the agency.

(g) If compliance with this section would cause an interruption in client care being provided by the administrator, the alternate administrator, the supervising nurse, or the alternate supervising nurse, the administrator must contact its backup service provider to ensure continued client care.

§558.525. *Survey Procedures.*

(a) Before beginning a survey, a surveyor holds an entrance conference, as specified in §558.523 [§97.523] of this division [subchapter] (relating to Personnel Requirements for a Survey), to explain the purpose of the survey and the survey process and provides an opportunity to ask questions.

(b) During a survey, a surveyor:

(1) conducts at least three home visits to determine an agency's compliance with licensing requirements;

(2) reviews any agency records that the surveyor believes are necessary to determine an agency's compliance with licensing requirements; and

(3) evaluates an agency's compliance with each standard.

(c) An agency accredited by an accreditation organization [CHAP or JCAHO] must have the documentation of accreditation available at the time of a survey.

(d) HHSC [DADS] keeps agency records confidential, except as allowed by Texas Health and Safety Code[.] §142.009(d).

(e) A surveyor may remove original agency records from an agency only with the consent of the agency, as provided in Texas Health and Safety Code[.] §142.009(e).

§558.527. *Post-Survey Procedures.*

(a) After a survey is completed, the surveyor holds an exit conference with the administrator or alternate administrator to inform the agency of the preliminary findings.

(b) An agency may make an audio recording of the exit conference only if the agency:

(1) records two tapes simultaneously;

(2) allows the surveyor to review the tapes; and

(3) gives the surveyor the tape of the surveyor's choice before leaving the agency.

(c) An agency may make a video recording of the exit conference only if the surveyor agrees to allow it and if the agency:

(1) records two tapes simultaneously;

(2) allows the surveyor to review the tapes; and

(3) gives the surveyor the tape of the surveyor's choice before leaving the agency.

(d) An agency may submit additional written documentation and facts after the exit conference only if the agency describes the additional documentation and facts to the surveyor during the exit conference.

(1) The agency must submit the additional written documentation and facts to the designated survey office within two working days after the end of the exit conference.

(2) If an agency properly submits additional written documentation, the surveyor may add the documentation to the record of the survey.

(e) If HHSC [DADS] identifies additional violations or deficiencies after the exit conference, HHSC [DADS] holds an additional face-to-face exit conference with the agency regarding the additional violations or deficiencies.

(f) HHSC [DADS] provides official written notification of the survey findings to the agency within 10 working days after the exit conference.

(g) The official written notification of the survey findings includes a statement of violations, condition-level deficiencies, or both, cited by HHSC [DADS] against the agency as a result of the survey, and instructions for submitting an acceptable plan of correction, and for requesting IDR.

(1) If the official written notification of the survey findings declares that an agency is in violation of the Statute [statute] or this chapter, an agency must follow HHSC [DADS] instructions included with the statement of violations for submitting an acceptable plan of correction.

(2) An acceptable plan of correction includes the corrective measures and time frame with which the agency must comply to ensure correction of a violation. If an agency fails to correct each violation by the date on the plan of correction, HHSC [DADS] may take enforcement action against the agency. An agency must correct a violation in accordance with the following time frames:

(A) A Severity Level B violation that results in serious harm to or death of a client or constitutes a serious threat to the health or safety of a client, must be addressed upon receipt of the official written notice of the violations and corrected within two days.

(B) A Severity Level B violation that substantially limits the agency's capacity to provide care must be corrected within seven days after receipt of the official written notice of the violations.

(C) A Severity Level A violation that has or had minor or no health or safety significance must be corrected within 20 days after receipt of the official written notice of the violations.

(D) A violation that is not designated as Severity Level A or Severity Level B must be corrected within 60 days after the date the violation was cited.

(3) An agency must submit an acceptable plan of correction for each violation or deficiency no later than 10 days after its receipt of the official written notification of the survey findings.

(4) If HHSC [DADS] finds the plan of correction unacceptable, HHSC [DADS] gives the agency written notice and provides the agency one additional opportunity to submit an acceptable plan of correction. An agency must submit a revised plan of correction no later than 30 days after the agency's receipt of HHSC [DADS] written notice of an unacceptable plan of correction.

(h) An acceptable plan of correction does not preclude HHSC [DADS] from taking enforcement action against an agency.

(i) An agency must submit a plan of correction in response to an official written notification of survey findings that declares a violation or deficiency even if the agency disagrees with the survey findings.

(j) If an agency disagrees with the survey findings citing a violation or condition-level deficiency, the agency may request IDR to refute the violation or deficiency.

(1) HHSC [DADS] does not grant an agency's request for IDR if:

(A) HHSC [DADS] cited the violation or deficiency at the agency's immediately preceding survey; and

(B) HHSC [DADS] cited the violation or deficiency again, with no new findings.

(2) To request IDR, an agency must:

(A) mail or fax a complete and accurate IDR request form to the address or fax number listed on the form, which must be



postmarked or faxed within 10 days after the date of receipt of the official written notification of the survey findings;

(B) mail or fax a rebuttal letter and supporting documentation to the address or fax number listed on the IDR request form and ensure receipt by the HHSC [DADS] Survey and Certification Enforcement Unit within seven days after the postmark or fax date of the IDR request form; and

(C) mail or fax a copy of the IDR request form, rebuttal letter, and supporting documentation to the designated survey office within the same time frames each is submitted to the HHSC [DADS] Survey and Certification Enforcement Unit.

(3) An agency may not submit information after the deadlines established in paragraph (2)(A) and (B) of this subsection unless HHSC [DADS] requests additional information. The agency's response to HHSC [DADS] request for information must be received within three working days after the request is made.

(4) An agency waives its right to IDR if the agency fails to submit the required information to the HHSC [DADS] Survey and Certification Enforcement Unit within the required time frames.

(5) An agency must present sufficient information to the HHSC [DADS] Survey and Certification Enforcement Unit to support the agency's desired IDR outcome.

(6) The rebuttal letter and supporting documentation must include:

(A) identification of the disputed deficiencies or violations;

(B) the reason the deficiencies or violations are disputed;

(C) the desired outcome for each disputed deficiency or violation; and

(D) copies of client records, policies and procedures, and other documentation and information that directly demonstrate that the condition-level deficiency or violation should not have been cited.

(7) The written decision issued by HHSC [DADS] after the completion of its review is the final decision from IDR.

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 F. ENFORCEMENT

### 26 TAC §§558.601 - 558.604

*(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 26 TAC §558.602 are not included in the print version of the Texas Register. The figures are available in the on-line version of the December 18, 2020, issue of the Texas Register.)*

#### STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; and Texas Health and Safety Code §§142.012, 142.010, and 142.006(b), which respectively authorize the Executive Commission of HHSC to adopt rules in accordance with those sections that are necessary to implement Chapter 142 and set minimum standards for home and community support services agencies licensed under that Chapter, set reasonable license fees for such agencies, and establish a system for staggered three-year license expiration dates.

The amendments implement Texas Government Code §531.0055 and Texas Health and Safety Code §§142.012, 142.010(a), 142.006(b) and 142.0095, and Texas Health and Safety Code Chapter 142, Subchapter C.

#### §558.601. Enforcement Actions.

(a) Enforcement actions. HHSC [DADS] may take the following enforcement actions against an agency:

- (1) license suspension;
- (2) immediate license suspension;
- (3) license revocation;
- (4) immediate license revocation;
- (5) administrative penalties; and
- (6) denial of license application.

(b) Denial of license application. HHSC [DADS] may deny a license application for the reasons set out in §558.21 [§97.21] of this chapter (relating to Denial of an Application or a License).

(c) Suspension or revocation.

(1) HHSC [DADS] may suspend or revoke an agency's license if the license holder, the controlling person, the affiliate, the administrator, or the alternate administrator:

- (A) fails to comply with this chapter;
- (B) fails to comply with the Statute [statute]; or

(C) violates Texas Occupations Code[;] §102.001 (relating to Soliciting Patients; Offense) and §102.006 (relating to Failure to Disclose; Offense).

(2) HHSC [DADS] may suspend or revoke an agency's license to provide licensed and certified home health services if the agency fails to maintain its certification qualifying the agency as a certified agency, as referenced in Texas Health and Safety Code[;] §142.011(c).

(d) Administrative penalties.

(1) HHSC [DADS] may assess an administrative penalty against an agency in accordance with §558.602 [§97.602] of this subchapter [chapter] (relating to Administrative Penalties).

(2) HHSC [DADS] may consider the assessment of past administrative penalties when considering another enforcement action against an agency.

(e) Immediate licensure suspension or revocation. HHSC [DADS] may immediately suspend or revoke an agency's license when the health and safety of persons are threatened.

(1) If HHSC [DADS] issues an order for immediate suspension or revocation of the agency's license, HHSC [DADS] provides immediate notice to the controlling person, administrator, or alternate administrator of the agency by fax and either by certified mail with return receipt requested or hand-delivery. The notice includes:

- (A) the action taken;
- (B) legal grounds for the action;
- (C) the procedure governing appeal of the action; and
- (D) the effective date of the order.

(2) An order for immediate suspension or revocation goes into effect immediately.

(3) An agency is entitled to a formal administrative hearing not later than seven days after the effective date of the order for immediate suspension or revocation.

(4) If an agency requests a formal administrative hearing, the hearing is held in accordance with the Texas Government Code[<sup>7</sup>] Chapter 2001, and with the formal hearing procedures in 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act) and 40 TAC Chapter 91 [of this title] (relating to Hearings Under the Administrative Procedure Act).

(f) Opportunity to show compliance.

(1) Before revocation or suspension of an agency's license or denial of an application for the renewal of an agency's license, HHSC [DADS] gives the license holder:

(A) a notice by personal service or by registered or certified mail of the facts or conduct alleged to warrant the proposed action, with a copy sent to the agency; and

(B) an opportunity to show compliance with all requirements of law for the retention of the license by sending HHSC [DADS] Regulatory Services office a written request. The request must:

(i) be postmarked within 10 days after the date of HHSC [DADS] notice and be received in HHSC [DADS] Regulatory Services office within 10 days after the date of the postmark; and

(ii) contain specific documentation refuting HHSC [DADS] allegations.

(2) HHSC [DADS] limits its review to the documentation submitted by the license holder and information HHSC [DADS] used as the basis for its proposed action. An agency may not attend HHSC [DADS] meeting to review the opportunity to show compliance. HHSC [DADS] gives a license holder a written affirmation or reversal of the proposed action.

(3) After an opportunity to show compliance, HHSC [DADS] sends a license holder a written notice that:

(A) informs the license holder of HHSC [DADS] decision; and

(B) provides the agency with an opportunity to appeal HHSC [DADS] decision through a formal hearing process.

(g) Notice of denial of application for license or renewal of a license, suspension or revocation of license. HHSC [DADS] sends an applicant or license holder notice by fax and either by certified mail with return receipt requested or hand-delivery of HHSC [DADS] denial

of an application for an initial license or renewal of a license, suspension of a license or revocation of a license.

(h) Formal appeal. An applicant or license holder has the right to make a formal appeal after receipt of HHSC [DADS] notification of denial of an application for an initial license or renewal of a license and suspension or revocation of a license.

(1) An agency must request a formal administrative hearing within 20 days of receipt of HHSC [DADS] notice of denial of an application for an initial license or renewal of a license, suspension of a license, or revocation of a license. To make a formal appeal, the applicant or agency must comply with the formal hearing procedures in 1 TAC Chapter 357, Subchapter I and 40 TAC Chapter 91 [of this title].

(2) HHSC [DADS] presumes receipt of HHSC [DADS] notice to occur on the 10th [tenth] day after the notice is mailed to the last known address, unless another date is reflected on the return receipt.

(3) If an agency does not meet the deadline for requesting a formal hearing, the agency has lost its opportunity for a formal hearing, and HHSC [DADS] takes the proposed action.

(4) A formal administrative hearing is held in accordance with Government Code, Chapter 2001, and the formal hearing procedures in 1 TAC Chapter 357, Subchapter I and 40 TAC Chapter 91 [of this title].

(5) Except for the denial of an application for an initial license, if an agency appeals, the license remains valid until all appeals are final, unless the license expires without a timely application for renewal submitted to HHSC [DADS]. The agency must continue to submit a renewal application in accordance with §558.17 [§97.17] of this chapter (relating to Application Procedures for a Renewal License) until the action to revoke, suspend, or deny renewal of the license is completed. However, HHSC [DADS] does not renew the license until it determines the reason for the proposed action no longer exists.

(6) If an agency appeals, the enforcement action will take effect when all appeals are final, and the proposed enforcement action is upheld. If the agency wins the appeal, the proposed action does not happen.

(7) If HHSC [DADS] suspends a license, the suspension remains in effect until HHSC [DADS] determines that the reason for suspension no longer exists. A suspension may last no longer than the term of the license. HHSC [DADS] conducts a survey of the agency before making a determination to recommend cancellation of a suspension.

(8) If HHSC [DADS] revokes or does not renew a license and one year has passed following the effective date of revocation or denial of licensure renewal, a person may reapply for a license by complying with the requirements and procedures in §558.13 [§97.13] of this chapter (relating to Obtaining [Application Procedures for] an Initial License). HHSC [DADS] does not issue a license if the reason for revocation or nonrenewal continues to exist.

(i) Agency dissolution. Upon suspension, revocation, or non-renewal of a license, the license holder must:

(1) return the original license to HHSC [DADS]; and

(2) implement its written plan required in §558.291 [§97.291] of this chapter (relating to Agency Dissolution).

§558.602. *Administrative Penalties.*

(a) Assessing penalties. HHSC [DADS] may assess an administrative penalty against a person who violates:

- (1) the Statute [statute];
- (2) a provision in this chapter for which a penalty may be assessed; or
- (3) Texas Occupations Code[.] §102.001 (relating to Soliciting Patients; Offense) or §102.006 (relating to Failure to Disclose; Offense), if related to the provision of home health, hospice, or personal assistance services.

(b) Criteria for assessing penalties. HHSC [DADS] assesses administrative penalties in accordance with the schedule of appropriate and graduated penalties established in this section.

(1) The schedule of appropriate and graduated penalties for each violation is based on the following criteria:

- (A) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation and the hazard of the violation to the health or safety of clients;
- (B) the history of previous violations by a person or a controlling person with respect to that person;
- (C) whether the affected agency identified the violation as part of its internal quality assurance process and made a good faith, substantial effort to correct the violation in a timely manner;
- (D) the amount necessary to deter future violations;
- (E) efforts made to correct the violation; and
- (F) any other matters that justice may require.

(2) In determining which violation warrants a penalty, HHSC [DADS] considers:

- (A) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation and the hazard of the violation to the health or safety of clients; and
- (B) whether the affected agency identified the violation as part of its internal quality assurance program and made a good faith, substantial effort to correct the violation in a timely manner.

(c) Opportunity to correct. Except as provided in subsections (e) and (f) of this section, HHSC [DADS] provides an agency with an opportunity to correct a violation in accordance with the time frames established in §558.527(g)(2) [~~§97.527(g)(2)~~] of this chapter (relating to Post-Survey Procedures) before assessing an administrative penalty if a plan of correction has been implemented.

(d) Minor violations.

(1) HHSC [DADS] may not assess an administrative penalty for a minor violation unless the violation is of a continuing nature or is not corrected in accordance with an accepted plan of correction.

(2) HHSC [DADS] may assess an administrative penalty for a subsequent occurrence of a minor violation when cited within three years from the date the agency first received written notice of the violation.

(3) HHSC [DADS] does not assess an administrative penalty for a subsequent occurrence of a minor violation when cited more than three years from the date the agency first received written notice of the violation.

(e) No opportunity to correct. HHSC [DADS] may assess an administrative penalty without providing an agency with an opportunity to correct a violation if HHSC [DADS] determines that the violation:

- (1) results in serious harm to or death of a client;
- (2) constitutes a serious threat to the health or safety of a client;
- (3) substantially limits the agency's capacity to provide care;
- (4) involves the provisions of Texas Human Resources Code[.] Chapter 102, Rights of the Elderly;
- (5) is a violation in which a person:

(A) makes a false statement, that the person knows or should know is false of a material fact:

(i) on an application for issuance or renewal of a license or in an attachment to the application; or

(ii) with respect to a matter under investigation by HHSC [DADS];

(B) refuses to allow a representative of HHSC [DADS] to inspect a book, record, or file required to be maintained by an agency;

(C) willfully interferes with the work of a representative of HHSC [DADS] or the enforcement of this chapter;

(D) willfully interferes with a representative of HHSC [DADS] preserving evidence of a violation of this chapter or a rule, standard, or order adopted, or license issued under this chapter;

(E) fails to pay a penalty assessed by HHSC [DADS] under this chapter within 10 days after the date the assessment of the penalty becomes final; or

(F) fails to submit:

(i) a plan of correction within 10 days after the date the person receives a statement of licensing violations; or

(ii) an acceptable plan of correction within 30 days after the date the person receives notification from HHSC [DADS] that the previously submitted plan of correction is not acceptable.

(f) Violations relating to Advance Directives. As provided in Texas Health and Safety Code[.] §142.0145, HHSC [DADS] assesses an administrative penalty of \$500 for a violation of §558.283 [~~§97.283~~] of this chapter (relating to Advance Directives) without providing an agency with an opportunity to correct the violation.

(g) Penalty calculation and assessment.

(1) Each day that a violation occurs before the date on which the person receives written notice of the violation is considered one violation.

(2) Each day that a violation occurs after the date on which an agency receives written notice of the violation constitutes a separate violation.

(h) Schedule of appropriate and graduated penalties.

(1) If two or more rules listed in paragraphs (2) and (3) of this subsection relate to the same or similar matter, one administrative penalty may be assessed at the higher severity level violation.

(2) Severity Level A violations.

(A) The penalty range for a Severity Level A violation is \$100 - \$250 per violation.

(B) A Severity Level A violation is a violation that has or has had minor or no client health or safety significance.

(C) HHSC [DADS] assesses a penalty for a Severity Level A violation only if the violation is of a continuing nature or was not corrected in accordance with an accepted plan of correction.

(D) HHSC [DADS] may assess a separate Severity Level A administrative penalty for each of the rules listed in the following table.

Figure: 26 TAC §558.602(h)(2)(D)

[Figure: 26 TAC §97.602(h)(2)(D)]

(3) Severity Level B violations.

(A) The penalty range for a Severity Level B violation is \$500-\$1,000 per violation.

(B) A Severity Level B violation is a violation that:

- (i) results in serious harm to or death of a client;
- (ii) constitutes an actual serious threat to the health or safety of a client; or
- (iii) substantially limits the agency's capacity to provide care.

(C) The penalty for a Severity Level B violation that:

- (i) results in serious harm to or death of a client is \$1,000;
- (ii) constitutes an actual serious threat to the health or safety of a client is \$500 - \$1,000; and
- (iii) substantially limits the agency's capacity to provide care is \$500 - \$750.

(D) As provided in subsection (e) of this section, a Severity Level B violation is a violation for which HHSC [DADS] may assess an administrative penalty without providing an agency with an opportunity to correct the violation.

(E) HHSC [DADS] may assess a separate Severity Level B administrative penalty for each of the rules listed in the following table.

Figure: 26 TAC §558.602(h)(3)(E)

[Figure: 26 TAC §97.602(h)(3)(E)]

(i) Violations for which HHSC [DADS] may assess an administrative penalty of \$500.

(1) HHSC [DADS] may assess an administrative penalty of \$500 for each of the violations listed in subsection (e)(4) and (5) of this section, without providing an agency with an opportunity to correct the violation.

(2) A separate penalty may be assessed for each of these violations.

(j) Proposal of administrative penalties.

(1) If HHSC [DADS] assesses an administrative penalty, HHSC [DADS] provides a written notice of violation letter to an agency. The notice includes:

- (A) a [brief] summary of the violation;
- (B) the amount of the proposed penalty; and

(C) a statement of the agency's right to a formal administrative hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(2) An agency may accept HHSC [DADS] determination within 20 days after the date on which the agency receives the notice of

violation letter, including the proposed penalty, or may make a written request for a formal administrative hearing on the determination.

(A) If an agency notified of a violation accepts HHSC [DADS] determination, the HHSC executive [DADS] commissioner or the HHSC executive [DADS] commissioner's designee issues an order approving the determination and ordering that the agency pay the proposed penalty.

(B) If an agency notified of a violation does not accept HHSC [DADS] determination, the agency must submit to the Health and Human Services Commission a written request for a formal administrative hearing on the determination and must not pay the proposed penalty. Remittance of the penalty to HHSC [DADS] is deemed acceptance by the agency of HHSC [DADS] determination, is final, and waives the agency's right to a formal administrative hearing.

(C) If an agency notified of a violation fails to respond to the notice of violation letter within the required time frame, the HHSC executive [DADS] commissioner or the HHSC executive [DADS] commissioner's designee issues an order approving the determination and ordering that the agency pay the proposed penalty.

(D) If an agency requests a formal administrative hearing, the hearing is held in accordance with the Statute [statute,] §142.0172, §142.0173, and the formal hearing procedures in 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act), and 40 TAC Chapter 91 [of this title] (relating to Hearings Under the Administrative Procedure Act).

§558.603. *Court Action.*

(a) If a person operates an agency without a license issued under this chapter, the person is liable for a civil penalty of not less than \$1,000 or more than \$2,500 for each day of violation.

(b) If a person violates the licensing requirements of the Statute [statute], HHSC [DADS] may petition the district court to restrain the person from continuing the violation.

§558.604. *Surrender or Expiration of a License.*

(a) After a survey in which a surveyor cited deficiencies, an agency may surrender its license or allow its license to expire to avoid enforcement action by HHSC [DADS].

(b) If an agency surrenders its license before the expiration date, the agency must return its original license and provide the following information to HHSC [DADS]:

- (1) the effective date of closure;
- (2) the location of client records;
- (3) the name and address of the client record custodian;
- (4) a statement signed and dated by the license holder agreeing to the surrender of the license; and
- (5) the disposition of active clients at the time of closure.

(c) If an agency surrenders its license or allows its license to expire, HHSC [DADS] denies an application for license by the agency, its license holder, and its affiliate for one year after the date of the surrender or expiration.

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. HOME HEALTH AIDES

### 26 TAC §558.701

#### STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; and Texas Health and Safety Code §§142.012, 142.010, and 142.006(b), which respectively authorize the Executive Commission of HHSC to adopt rules in accordance with those sections that are necessary to implement Chapter 142 and set minimum standards for home and community support services agencies licensed under that Chapter, set reasonable license fees for such agencies, and establish a system for staggered three-year license expiration dates.

The amendment implements Texas Government Code §531.0055 and Texas Health and Safety Code §§142.012, 142.010(a), 142.006(b) and 142.0095, and Texas Health and Safety Code Chapter 142, Subchapter C.

#### §558.701. *Home Health Aides.*

(a) A home health aide may be used by an agency providing licensed home health services if the aide meets one of the following requirements:

- (1) a minimum of one year of full-time experience in direct client care in an institutional setting (hospital or nursing facility);
  - (2) one year of full-time experience within the last five years in direct client care in an agency setting;
  - (3) satisfactorily completed a training and competency evaluation program that complies with the requirements of this section;
  - (4) satisfactorily completed a competency evaluation program that complies with the requirements of this section;
  - (5) submitted to the agency documentation from the director of programs or the dean of a school of nursing that states that the individual is a nursing student who has demonstrated competency in providing basic nursing skills in accordance with the school's curriculum; or
  - (6) listed [be] on the HHSC [Texas Department of Human Services' (DHS's)] nurse aide registry (NAR) with no finding against the aide relating to client abuse or neglect or misappropriation of client property.
- (b) A home health aide must have provided home health services within the previous 24 months to qualify under subsection (a)(3) or (4) of this section.
- (c) Assignment, delegation, and supervision of services provided by home health aides must be performed in accordance with rules in this chapter governing the agency's license category.
- (d) The training portion of a training and competency evaluation program for home health aides must be conducted by or under the general supervision of an RN who possesses a minimum of two years

of nursing experience, at least one year of which must be in the provision of home health care. The training program may contain other aspects of learning, but must contain the following:

- (1) a minimum of 75 hours as follows:
  - (A) an appropriate number of hours of classroom instruction; and
  - (B) a minimum of 16 hours of clinical experience, which will include in-home training and must be conducted in a home, [a] hospital, [a] nursing home, or [a] laboratory;
- (2) completion of at least 16 hours of classroom training before a home health aide begins clinical experience working directly with clients under the supervision of qualified instructors;
- (3) if LVN [~~icensed vocational nurse (LVN)~~] instructors are used for the training portion of the program, the following qualifications and supervisory requirements apply:
  - (A) an LVN may provide the home health aide classroom training under the supervision of an RN who has two years of nursing experience, at least one year of which must be in the provision of home health care;
  - (B) LVNs, as well as RNs, may supervise home health aide candidates in the course of the clinical experience; and
  - (C) an RN must maintain overall responsibility for the training and supervision of all home health aide training students; and
- (4) an assessment that the student knows how to read and write English and carry out directions.
- (e) The classroom instruction and clinical experience content of the training portion of a training and competency evaluation program must include, but is not limited to:
  - (1) communication skills;
  - (2) observation, reporting, and documentation of a client's status and the care or service furnished;
  - (3) reading and recording temperature, pulse, and respiration;
  - (4) basic infection control procedures and instruction on universal precautions;
  - (5) basic elements of body functioning and changes in body function that must be reported to an aide's supervisor;
  - (6) maintenance of a clean, safe, and healthy environment;
  - (7) recognizing emergencies and knowledge of emergency procedures;
  - (8) the physical, emotional, and developmental needs of and ways to work with the populations served by the agency including the need for respect for the client and his or her privacy and property;
  - (9) appropriate and safe techniques in personal hygiene and grooming that include:
    - (A) bed bath;
    - (B) sponge, tub, or shower bath;
    - (C) shampoo, sink, tub, or bed;
    - (D) nail and skin care;
    - (E) oral hygiene; and
    - (F) toileting and elimination;

- (10) safe transfer techniques and ambulation;
- (11) normal range of motion and positioning;
- (12) adequate nutrition and fluid intake;

(13) any other task the agency may choose to have the home health aide perform in accordance with §558.298 [~~§97.298~~] of this chapter (relating to Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel and Tasks Not Requiring Delegation); and

- (14) the rights of the elderly.

(f) This section addresses the requirements for the competency evaluation program or the competency evaluation portion of a training and competency evaluation program.

(1) The competency evaluation must be performed by an RN.

(2) The competency evaluation must address each of the subjects listed in subsection (e)(2) - (13) of this section.

(3) Each of the areas described in subsection (e)(3) and (9) - (11) of this section must be evaluated by observation of the home health aide's performance of the task with a client or person.

(4) Each of the areas described in subsection (e)(2), (4) - (8), (12), and (13) of this section may be evaluated through written examination, oral examination, or by observation of a home health aide with a client.

(5) A home health aide is not considered to have successfully completed a competency evaluation if the aide has an unsatisfactory rating in more than one of the areas described in subsection (e)(2) - (13) of this section.

(6) If an aide receives an unsatisfactory rating, the aide must not perform that task without direct supervision by an RN or LVN<sub>2</sub> until the aide receives training in the task for which he or she was evaluated as unsatisfactory and successfully completes a subsequent competency evaluation with a satisfactory rating on the task.

(7) If an individual fails to complete the competency evaluation satisfactorily, the individual must be advised of the areas in which he or she is inadequate.

(g) If a person, who is not an agency licensed under this section, desires to implement a home health aide training and competency evaluation program or a competency evaluation program, the person must meet the requirements of this section in the same manner as set forth for an agency.

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

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Karen Ray

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## SUBCHAPTER H. STANDARDS SPECIFIC TO AGENCIES LICENSED TO PROVIDE HOSPICE SERVICES

### DIVISION 1. HOSPICE GENERAL PROVISIONS

#### 26 TAC §558.801

##### STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; and Texas Health and Safety Code §§142.012, 142.010, and 142.006(b), which respectively authorize the Executive Commission of HHSC to adopt rules in accordance with those sections that are necessary to implement Chapter 142 and set minimum standards for home and community support services agencies licensed under that Chapter, set reasonable license fees for such agencies, and establish a system for staggered three-year license expiration dates.

The amendment implements Texas Government Code §531.0055 and Texas Health and Safety Code §§142.012, 142.010(a), 142.006(b) and 142.0095, and Texas Health and Safety Code Chapter 142, Subchapter C.

*§558.801. Subchapter H Applicability.*

(a) This subchapter applies to an agency licensed with the hospice services category. An agency licensed to provide hospice services must adopt and enforce written policies in accordance with this subchapter.

(b) A hospice that provides inpatient care directly in its own inpatient unit must comply with the additional standards in Division 7 of this subchapter (relating to Hospice Inpatient Units).

(c) A hospice that provides hospice care to a resident of a skilled nursing facility, nursing facility, or an intermediate care facility for individuals with an intellectual disability or related conditions, must comply with the additional standards in Division 8 of this subchapter (relating to Hospices that Provide Hospice Care to Residents of a Skilled Nursing Facility, Nursing Facility, or Intermediate Care Facility for Individuals with an Intellectual Disability or Related Conditions).

(d) A Medicare-certified hospice agency must comply with the Medicare Conditions of Participation in 42 CFR[5] Part 418, Hospice Care.

(e) A person who is not licensed to provide hospice services may not use the word "hospice" in a title or description of a facility, organization, program, service provider, or services or use any other words, letters, abbreviations, or insignia indicating or implying that the person holds a license to provide hospice services.

(f) For the purposes of this subchapter, the term "attending practitioner:" [":"]

(1) includes a physician or an advanced practice nurse identified by a hospice client at the time he or she elects to receive hospice services as having the most significant role in the determination and delivery of the client's medical care; and

(2) is synonymous with "attending physician," as defined in 42 CFR §418.3.

(g) For the purposes of this subchapter, election of hospice care occurs on the effective date included in a client's hospice election statement. A hospice election statement must include:

- (1) identification of the hospice that will provide care to the client;
- (2) the client's or the client's legal representative's acknowledgment that he or she has been given a full understanding of the palliative rather than curative nature of hospice care, as it relates to the client's terminal illness, as well as the potential availability of supportive palliative care options outside a hospice setting;
- (3) acknowledgement by Medicare beneficiaries that certain Medicare services, as described in 42 CFR §418.24(d), are waived by the hospice election;
- (4) the effective date of the election of hospice care, which may be later but not earlier than the date of the client's or the client's legal representative's signature and may be the first day of hospice care or a later date; and
- (5) the signature of the client or legal representative.

(h) For the purposes of this subchapter, the term "comprehensive assessment" means a thorough evaluation of a client's physical, psychosocial, emotional, and spiritual status related to the terminal illness and related conditions. This includes a thorough evaluation of the caregiver's and family's willingness and capability to care for the client.

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

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## DIVISION 2. INITIAL AND COMPREHENSIVE ASSESSMENT OF A HOSPICE

### 26 TAC §558.810, §558.811

#### STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; and Texas Health and Safety Code §§142.012, 142.010, and 142.006(b), which respectively authorize the Executive Commission of HHSC to adopt rules in accordance with those sections that are necessary to implement Chapter 142 and set minimum standards for home and community support services agencies licensed under that Chapter, set reasonable license fees for such agencies, and establish a system for staggered three-year license expiration dates.

The amendments implement Texas Government Code §531.0055 and Texas Health and Safety Code §§142.012,

142.010(a), 142.006(b) and 142.0095, and Texas Health and Safety Code Chapter 142, Subchapter C.

#### §558.810. Hospice Initial Assessment.

(a) A hospice RN [registered nurse (RN)] must complete an initial assessment of a client where hospice services will be delivered within 48 hours after the election of hospice care, unless the client's physician, the client, or the client's legal representative requests that the initial assessment be completed in less than 48 hours.

(b) The initial assessment must assess a client's immediate physical, psychosocial, and emotional status related to the terminal illness and related conditions. The information gathered must be used by the hospice to begin the plan of care and to provide care and services to treat a client's and a client's family's immediate care and support needs.

#### §558.811. Hospice Comprehensive Assessment.

(a) The hospice must conduct and document a client-specific comprehensive assessment that identifies a client's need for hospice care and services. The comprehensive assessment must:

(1) identify the client's physical, psychosocial, emotional, and spiritual needs related to the terminal illness that must be addressed in order to promote the client's well-being, comfort, and dignity throughout the dying process;

(2) include all areas of hospice care related to the palliation and management of the client's terminal illness and related conditions;

(3) accurately reflect the client's health status at the time of the comprehensive assessment and include information to establish and monitor a plan of care; and

(4) identify the caregiver's and family's willingness and capability to care for the client.

(b) The hospice interdisciplinary team, in consultation with the client's attending practitioner, if any, must complete the comprehensive assessment within five days after the election of hospice care.

(c) The comprehensive assessment must take into consideration the following factors:

(1) the nature of the condition causing admission, including the presence or lack of objective data and the client's subjective complaints;

(2) complications and risk factors that could affect care planning;

(3) the client's functional status, including the client's ability to understand and participate in the client's own care;

(4) the imminence of the client's death;

(5) the severity of the client's symptoms;

(6) a review of all [øf] the client's prescription and over-the-counter drugs, herbal remedies, and other alternative treatments that could affect drug therapy, to identify the following:

(A) the effectiveness of drug therapy;

(B) drug side effects;

(C) actual or potential drug interactions;

(D) duplicate drug therapy; and

(E) drug therapy currently associated with laboratory monitoring;

(7) an initial bereavement assessment of the needs of the client's family and other persons that:

(A) focuses on the social, spiritual, and cultural factors that may impact their ability to cope with the client's death; and

(B) gathers information that must be incorporated into the plan of care and considered in the bereavement plan of care; and

(8) the need for the hospice to refer the client or the client family member to appropriate health professionals for further evaluation.

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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### DIVISION 3. HOSPICE INTERDISCIPLINARY TEAM, CARE PLANNING, AND COORDINATION OF SERVICES

#### 26 TAC §§558.820, 558.821, 558.823

#### STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; and Texas Health and Safety Code §§142.012, 142.010, and 142.006(b), which respectively authorize the Executive Commission of HHSC to adopt rules in accordance with those sections that are necessary to implement Chapter 142 and set minimum standards for home and community support services agencies licensed under that Chapter, set reasonable license fees for such agencies, and establish a system for staggered three-year license expiration dates.

The amendments implement Texas Government Code §531.0055 and Texas Health and Safety Code §§142.012, 142.010(a), 142.006(b) and 142.0095, and Texas Health and Safety Code Chapter 142, Subchapter C.

#### §558.820. *Hospice Interdisciplinary Team.*

(a) A hospice must designate an interdisciplinary team (IDT) composed of persons who work together to meet the physical, medical, psychosocial, emotional, and spiritual needs of a hospice client and family facing terminal illness and bereavement. The IDT members must provide the care and services offered by the hospice and all [of] the members of the IDT must supervise the care and services the hospice provides.

(b) An IDT must include persons who are qualified and competent to practice in the following professional roles:

(1) a physician who is an employee or under contract with the hospice, who may also be the hospice medical director or physician designee;

(2) an RN [a registered nurse (RN)];

(3) a social worker; and

(4) a pastoral or other counselor.

(c) The hospice must designate an RN who is a member of the client's IDT to provide coordination of care and to ensure continuous assessment of the client's and family's needs and implementation of the interdisciplinary plan of care.

(d) A hospice may have more than one IDT. If the hospice has more than one IDT, the hospice must identify the IDT specifically designated to establish policies governing the day-to-day provision of hospice care and services.

#### §558.821. *Hospice Plan of Care.*

(a) A hospice must designate an interdisciplinary team (IDT) to prepare a written plan of care for a client in consultation with the client's attending practitioner, if any, the client or the client's legal representative, and the primary caregiver, if any of them so desire.

(b) The IDT must develop an individualized written plan of care for each client. The plan of care must reflect client and family goals and interventions based on the problems identified in the initial, comprehensive, and updated comprehensive assessments.

(c) The hospice must provide care and services to a client and the client's family in accordance with an individualized written plan of care established by the hospice IDT.

(d) The client's plan of care must include all services necessary for the palliation and management of the terminal illness and related conditions. The plan of care must include:

(1) interventions to manage pain and symptoms;

(2) a detailed statement of the scope and frequency of services necessary to meet the specific client and family needs;

(3) measurable outcomes anticipated from implementing and coordinating the plan of care;

(4) drugs and treatments necessary to meet the needs of the client;

(5) medical supplies and equipment necessary to meet the needs of the client; and

(6) the IDT's documentation, in the client record, of the client's or the client's legal representative's level of understanding, involvement, and agreement with the plan of care, in accordance with the hospice's policies.

(e) The hospice must ensure that the client and the client's primary caregiver receives education and training provided by hospice staff as appropriate to the client's and the client's primary caregiver's responsibilities for providing the care and services specified in the client's plan of care.

#### §558.823. *Coordination of Services by the Hospice.*

In addition to the requirements in §558.288 [§97.288] of this chapter (relating to Coordination of Services), a hospice must develop and maintain a system of communication and integration in accordance with its written policy on coordination of services. The policy must:

(1) ensure that the interdisciplinary team maintains responsibility for directing, coordinating, and supervising the care and services provided to a client;

(2) provide for and ensure the ongoing sharing of information between all hospice personnel providing care and services in all settings, whether the care and services are provided directly or under contract; and



(3) provide for an ongoing sharing of information with other non-hospice health care providers furnishing services unrelated to the terminal illness and related conditions.

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## DIVISION 4. HOSPICE CORE SERVICES

### 26 TAC §§558.830, 558.832, 558.834

#### STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; and Texas Health and Safety Code §§142.012, 142.010, and 142.006(b), which respectively authorize the Executive Commission of HHSC to adopt rules in accordance with those sections that are necessary to implement Chapter 142 and set minimum standards for home and community support services agencies licensed under that Chapter, set reasonable license fees for such agencies, and establish a system for staggered three-year license expiration dates.

The amendments implement Texas Government Code §531.0055 and Texas Health and Safety Code §§142.012, 142.010(a), 142.006(b) and 142.0095, and Texas Health and Safety Code Chapter 142, Subchapter C.

#### §558.830. *Provision of Hospice Core Services.*

(a) A hospice must routinely provide substantially all core services directly by hospice employees in a manner consistent with accepted standards of practice. A hospice must provide the following core services:

- (1) physician services;
- (2) nursing services;
- (3) medical social services; and
- (4) counseling services.

(b) A hospice may contract for physician services as specified in §558.831 [§97.834] of this division (relating to Hospice Physician Services).

(c) A hospice may use contracted staff if necessary to supplement hospice employees to meet the needs of clients under extraordinary or other non-routine circumstances. A Medicare-certified hospice may also enter into a written contract with another Medicare-certified hospice to provide core services if necessary to supplement hospice employees to meet the needs of a client. The contracting hospice must maintain professional management responsibility for the services provided in accordance with §558.854 [§97.854] of this subchapter (re-

lating to Hospice Professional Management Responsibility). Circumstances under which the hospice may enter into a written contract for the provision of core services include:

- (1) unanticipated periods of high client loads;
- (2) staffing shortages due to illness or other short-term temporary staffing situations that could interrupt client care; and
- (3) temporary travel of a client outside of the hospice's service area.

#### §558.832. *Hospice Nursing Services.*

(a) A hospice must provide nursing services by or under the supervision of an RN [a registered nurse (RN)]. An RN must ensure that the nursing needs of a client are met as identified in the client's initial assessment, comprehensive assessment, and updated assessments.

(b) An advanced practice nurse providing nursing services to a client and acting within the nurse's scope of practice may write orders for the client in accordance with a hospice's written policies and applicable State [state] law, including the Texas Occupations Code[;] Chapter 157, Authority of Physician to Delegate Certain Medical Acts; Texas Occupations Code[;] Chapter 301, Nurses; and Texas Health and Safety Code[;] Chapter 481, Texas Controlled Substances Act, and Chapter 483, Dangerous Drugs.

(c) A hospice may provide highly specialized nursing services under contract if the hospice provides such nursing services to a client so infrequently that providing them by a hospice employee would be impracticable and prohibitively expensive. A hospice may determine that a nursing service, such as complex wound care, infusion specialties, and pediatric nursing, is highly specialized by the nature of the service and the level of nursing skill required to be proficient in the service.

#### §558.834. *Hospice Counseling Services.*

(a) Counseling services must be available to a client and family to assist the client and family in minimizing the stress and problems that arise from the terminal illness, related conditions, and the dying process.

(b) Counseling services must include bereavement, dietary, and spiritual counseling.

(1) Bereavement counseling. Bereavement counseling means emotional, psychosocial, and spiritual support and services provided before and after the death of the client to assist with issues related to grief, loss, and adjustment. A hospice must have an organized program for the provision of bereavement services furnished under the supervision of a qualified professional with experience or education in grief or loss counseling. A hospice must:

(A) develop a bereavement plan of care that notes the kind of bereavement services to be offered to the client's family and other persons and the frequency of service delivery;

(B) make bereavement services available to a client's family and other persons in the bereavement plan of care for up to one year following the death of the client;

(C) extend bereavement counseling to residents of a skilled nursing facility, a nursing facility, or an intermediate care facility for individuals with an intellectual disability or related conditions when appropriate and as identified in the bereavement plan of care; and

(D) ensure that bereavement services reflect the needs of the bereaved.

(2) Dietary counseling. Dietary counseling means education and interventions provided to a client and family regarding appropriate nutritional intake as a hospice client's condition progresses. Dietary counseling, when identified in the plan of care, must be performed by a qualified person. A qualified person includes a dietitian, nutritionist, or RN [registered nurse]. A person that provides dietary counseling must be appropriately trained and qualified to address and assure that the specific dietary needs of a client are met.

(3) Spiritual counseling. A hospice must provide spiritual counseling that meets the client's and the client's family's spiritual needs in accordance with their acceptance of this service and in a manner consistent with their beliefs and desires. A hospice must:

(A) provide an assessment of the client's and family's spiritual needs;

(B) make all reasonable efforts to the best of the hospice's ability to facilitate visits by local clergy, a pastoral counselor, or other persons who can support a client's spiritual needs; and

(C) advise the client and family of the availability of spiritual counseling services.

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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Chief Counsel

Health and Human Services Commission

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



## DIVISION 5. HOSPICE NON-CORE SERVICES

### 26 TAC §§558.842 - 558.845

#### STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; and Texas Health and Safety Code §§142.012, 142.010, and 142.006(b), which respectively authorize the Executive Commission of HHSC to adopt rules in accordance with those sections that are necessary to implement Chapter 142 and set minimum standards for home and community support services agencies licensed under that Chapter, set reasonable license fees for such agencies, and establish a system for staggered three-year license expiration dates.

The amendments implement Texas Government Code §531.0055 and Texas Health and Safety Code §§142.012, 142.010(a), 142.006(b) and 142.0095, and Texas Health and Safety Code Chapter 142, Subchapter C.

#### §558.842. Hospice Aide Services.

(a) Hospice aide services must be provided by a hospice aide who meets the training and competency evaluation requirements, or the competency evaluation requirements specified in §558.843 [§97.843] of this division [subchapter] (relating to Hospice Aide Qualifications).

(b) A client's hospice aide services must be:

(1) ordered by the designated interdisciplinary team (IDT);

(2) included in the client's plan of care;

(3) performed by a hospice aide in accordance with State [state] law and applicable rules, including 22 TAC[; Part 44;] Chapter 224 (relating to Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel for Clients with Acute Conditions or in Acute Care Environments), and 22 TAC[; Part 44;] Chapter 225 (relating to RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegation in Independent Living Environments For Clients with Stable and Predictable Conditions); and

(4) consistent with a hospice aide's documented training and competency skills.

(c) An RN [A registered nurse (RN)] who is a member of a client's designated IDT must assign a hospice aide to a specific client. An RN who is responsible for the supervision of a hospice aide, as specified in subsection (d) of this section, must prepare written client-care instructions for the hospice aide. The duties of a hospice aide include:

(1) providing hands-on personal care;

(2) performing simple procedures as an extension of therapy or nursing services;

(3) assisting with ambulation or exercises;

(4) assisting with self-administered medication;

(5) reporting changes in a client's medical, nursing, rehabilitative, and social needs to an RN as the changes relate to the client's plan of care and the hospice's quality assessment and improvement activities; and

(6) completing client record documentation in compliance with the hospice's policies and procedures.

(d) An RN must make an on-site visit to a client's home to supervise the hospice aide services at least every 14 days to assess the quality of care and services provided by the hospice aide and to ensure that services ordered by the hospice IDT meet the client's needs. The hospice aide does not have to be present during this visit.

(1) If the RN notes an area of concern in the care provided by the aide, the RN must make an on-site visit to the location where the client is receiving care to observe and assess the hospice aide while the aide performs care.

(2) If, during the on-site visit to observe the hospice aide, the RN confirms an area of concern in the aide's skills, the hospice must ensure that the aide completes a competency evaluation in accordance with §558.843 [§97.843] of this division [subchapter].

(e) An RN must make an annual on-site visit to the location where a hospice client is receiving care to observe and assess each hospice aide while the aide performs care. During this on-site visit, the RN must assess the aide's ability to demonstrate initial and continued satisfactory performance in meeting outcome criteria including:

(1) following the client's plan of care for completion of tasks assigned to the hospice aide by an RN;

(2) creating successful interpersonal relationships with the client and the client's family;

(3) demonstrating competency with assigned tasks;

(4) complying with infection control policies and procedures; and

- (5) reporting changes in the client's condition.

§558.843. *Hospice Aide Qualifications.*

(a) A hospice must use a qualified hospice aide to provide hospice aide services. A qualified hospice aide is a person who has successfully completed:

(1) a training program and competency evaluation program that complies with the requirements in subsections (c) and (d) of this section; or

(2) a competency evaluation program that complies with the requirements in subsection (d) of this section.

(b) A person who has not provided home health or hospice aide services for compensation in an agency during the most recent continuous period of 24 consecutive months must successfully complete the programs described in subsection (a)(1) of this section or the program described in subsection (a)(2) of this section before providing hospice aide services.

(c) A hospice aide training program must address each of the subject areas listed in paragraph (1) of this subsection through classroom and supervised practical training totaling at least 75 hours. At least 16 hours must be devoted to supervised practical training. At least 16 hours of classroom training must be completed before the supervised practical training begins.

(1) Subject areas that must be addressed in a hospice aide training program include:

(A) communication skills, including the ability to read, write, and verbally report clinical information to clients, caregivers, and other hospice staff;

(B) observation, reporting, and documentation of a client's status and the care or service provided;

(C) reading and recording temperature, pulse, and respiration;

(D) basic infection control procedures;

(E) basic elements of body functioning and changes in body function that must be reported to an aide's supervisor;

(F) maintenance of a clean, safe, and healthy environment;

(G) recognizing emergencies and the knowledge of emergency procedures and their application;

(H) the physical, emotional, and developmental needs of and ways to work with the populations served by the hospice, including the need for respect for a client and his or her privacy and property;

(I) appropriate and safe techniques for performing personal hygiene and grooming tasks, including:

(i) bed bath;

(ii) sponge, tub, and shower bath;

(iii) hair shampoo in sink, tub, and bed;

(iv) nail and skin care;

(v) oral hygiene; and

(vi) toileting and elimination;

(J) safe transfer techniques and ambulation;

(K) normal range of motion and positioning;

(L) adequate nutrition and fluid intake; and

(M) other tasks that the hospice may choose to have an aide perform. The hospice must train hospice aides, as needed, for skills not listed in subparagraph (I) of this paragraph.

(2) The classroom training of hospice aides and the supervision of hospice aides during supervised practical training must be conducted by or under the general supervision of an RN who possesses a minimum of two years of nursing experience, at least one of which must be in the provision of home health or hospice care. Other persons, such as a physical therapist, occupational therapist, medical social worker, and speech-language pathologist may be used to provide instruction under the supervision of a qualified RN who maintains overall responsibility for the training.

(3) An agency must maintain documentation that demonstrates that its hospice aide training program meets the requirements in this subsection. Documentation must include a description of how additional skills, beyond the basic skills listed in paragraph (1) of this subsection, are taught and tested if the agency requires a hospice aide to perform more complex tasks.

(d) A hospice aide competency evaluation program must address each of the subject areas listed in paragraphs (2) and (3) of this subsection.

(1) An RN, in consultation with the other persons described in subsection (c)(2) of this section, must perform the competency evaluation.

(2) The RN must observe and evaluate the hospice aide's performance of tasks with a client in the following areas:

(A) communication skills, including the ability to read, write, and verbally report clinical information to clients, caregivers, and other hospice staff;

(B) reading and recording temperature, pulse, and respiration;

(C) appropriate and safe techniques for performing personal hygiene and grooming tasks, including:

(i) bed bath;

(ii) sponge, tub, and shower bath;

(iii) hair shampoo in sink, tub, and bed;

(iv) nail and skin care;

(v) oral hygiene; and

(vi) toileting and elimination;

(D) safe transfer techniques and ambulation; and

(E) normal range of motion and positioning.

(3) The RN must evaluate a hospice aide's performance of each of the tasks listed in this paragraph by requiring the aide to submit to a written examination, an oral examination, or by observing the hospice aide's performance with a client. The tasks must include:

(A) observing, reporting, and documenting client status and the care or service provided;

(B) basic infection control procedures;

(C) basic elements of body functioning and changes in body function that must be reported to an aide's supervisor;

(D) maintaining a clean, safe, and healthy environment;

(E) recognizing emergencies and knowing emergency procedures and their application;

(F) the physical, emotional, and developmental needs of and ways to work with the populations served by the hospice, including the need for respect for a client and his or her privacy and property;

(G) adequate nutrition and fluid intake; and

(H) other tasks the hospice may choose to have the hospice aide perform. The hospice must evaluate the competency of a hospice aide, as needed, for skills not listed in paragraph (2)(C) of this subsection.

(4) A hospice aide has not successfully completed a competency evaluation program if the aide has an unsatisfactory rating in more than one subject area listed in paragraphs (2) and (3) of this subsection.

(5) If a hospice aide receives an unsatisfactory rating in any of the subject areas listed in paragraphs (2) and (3) of this subsection, the aide must not perform that task without direct supervision by an RN until after:

(A) the aide receives training in the task for which the aide was evaluated as unsatisfactory; and

(B) successfully completes a subsequent competency evaluation with a satisfactory rating on the task.

(6) An agency must maintain documentation that its hospice aide competency evaluation program meets the requirements in this subsection. The agency's documentation of a hospice aide's competency evaluation must demonstrate the aide's competency to provide services to a client that exceed the basic skills taught and tested before the aide is assigned to care for a client who requires more complex services.

(c) A hospice aide must receive at least 12 hours of in-service training during each 12-month period. The agency may provide the 12 hours of in-service training during the 12-month [12 month] calendar year, or within 12 months after a hospice aide's employment or contract anniversary date.

(1) The in-service training must be supervised by an RN.

(2) An agency may provide hospice aide in-service training supervised by an RN while the aide is providing care to a client. The RN must document the exact new skill or theory taught in the client's residence and the duration of the training. The in-service training provided in a client's residence must not be a repetition of a hospice aide's competency in a basic skill.

(3) An agency must maintain documentation that demonstrates the agency meets the hospice aide in-service training requirements in this subsection.

(f) An agency that hires or contracts to use a hospice aide who completes a training program and competency evaluation program, or a competency evaluation program provided by another agency or a person who is not licensed as an agency must ensure that the programs or program completed comply with the requirements in subsection (c) and (d) of this section.

(g) A Medicare-certified hospice agency must also comply with 42 CFR §418.76(b) and 42 CFR §418.76(f).

#### *§558.844. Hospice Homemaker Services.*

(a) Homemaker services must be provided by a qualified hospice homemaker as described in §558.845 [§97.845] of this division [subchapter] (relating to Hospice Homemaker Qualifications).

(b) A member of a client's designated interdisciplinary team (IDT) must coordinate and supervise the homemaker services provided

and prepare written instructions for the duties a hospice homemaker performs.

(c) Hospice homemaker services may include assistance in maintaining a safe and healthy environment and services to enable the client and the client's family to carry out the hospice treatment plan. Hospice homemaker services do not include providing personal care or any hands-on services.

(d) A hospice homemaker must report all concerns about a client or the client's family to the member of the IDT responsible for coordinating the hospice homemaker services.

#### *§558.845. Hospice Homemaker Qualifications.*

(a) A hospice must use a qualified hospice homemaker to provide hospice homemaker services. A qualified hospice homemaker is a person who:

(1) successfully completes an agency's hospice orientation and training as specified in subsection (b) of this section; or

(2) is a qualified hospice aide as described in §558.843 [§97.843] of this division [subchapter] (relating to Hospice Aide Qualifications).

(b) The orientation for a hospice homemaker must address the needs and concerns of a client and a client's family who are coping with a terminal illness. The training for a hospice homemaker must include:

(1) assisting in maintaining a safe and healthy environment for a client and the client's family; and

(2) providing homemaker services to help the client and the client's family to carry out the treatment plan.

(c) If there is a direct conflict between the requirements of this chapter and federal regulations, the requirements that are more stringent apply to a Medicare-certified hospice agency.

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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Chief Counsel

Health and Human Services Commission

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



## **DIVISION 6. HOSPICE ORGANIZATION AND ADMINISTRATION OF SERVICES**

### **26 TAC §§558.852 - 558.857, 558.859 - 558.863**

#### **STATUTORY AUTHORITY**

The amendments and new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; and Texas Health and Safety Code §§142.012, 142.010, and 142.006(b), which respectively authorize the Executive Commission of HHSC to adopt rules in accordance with those sections that are necessary to implement Chapter 142 and set minimum

standards for home and community support services agencies licensed under that Chapter, set reasonable license fees for such agencies, and establish a system for staggered three-year license expiration dates.

The amendments and new sections implement Texas Government Code §531.0055 and Texas Health and Safety Code §§142.012, 142.010(a), 142.006(b) and 142.0095, and Texas Health and Safety Code Chapter 142, Subchapter C.

*§558.852. Hospice Governing Body and Administrator.*

(a) The hospice must have a governing body that assumes full legal authority and responsibility for the management of the hospice, the provision of all hospice services, its fiscal operations, and continuous quality assessment and performance improvement.

(b) The governing body must appoint an administrator who:

(1) meets the qualifications and conditions specified in §558.244(a)(1) and (2) [§97.244(a)(1) and (2)] of this chapter (relating to Administrator Qualifications and Conditions and Supervising Nurse Qualifications); and

(2) reports to the governing body or persons serving as the governing body.

*§558.853. Hospice Infection Control Program.*

(a) In addition to the requirements in §558.285 [§97.285] of this chapter (relating to Infection Control), a hospice must maintain an effective infection control program that protects clients, families, visitors, and hospice personnel by preventing and controlling infections and communicable diseases.

(b) A hospice must follow accepted standards of practice to prevent the transmission of infections and communicable diseases, including the use of standard precautions.

(c) A hospice must maintain a coordinated agency-wide program for the surveillance, identification, prevention, control, and investigation of infectious and communicable diseases that is an integral part of the hospice's quality assessment and performance improvement program. The infection control program must include:

(1) a method of identifying infectious and communicable disease problems; and

(2) a plan for implementing the appropriate actions that are expected to result in improvement and disease prevention.

(d) A hospice must provide infection control education to employees, volunteers, contract staff, clients, and family members and other caregivers.

*§558.854. Hospice Professional Management Responsibility.*

(a) A hospice that has a written contract with another agency, person, or organization to furnish services must retain administrative and financial management and oversight of staff and services for all contracted services to ensure the provision of quality care.

(b) In addition to the requirements in §558.289 [§97.289] of this chapter (relating to Independent Contractors and Arranged Services), a hospice's written contracts must require that all services are:

(1) authorized by the hospice;

(2) furnished in a safe and effective manner by qualified personnel; and

(3) delivered in accordance with a client's plan of care.

*§558.855. Criminal Background Checks.*

(a) In addition to the requirements in §558.247 [§97.247] of this chapter (relating to Verification of Employability and Use of Un-

licensed Persons), a hospice must conduct a criminal history check on all hospice employees and volunteers with direct client contact or access to client records to verify each employee's or volunteer's criminal history report does not include a conviction that bars employment under Texas Health and Safety Code[;] §250.006, or a conviction that the hospice determines is a contraindication to employment.

(b) In addition to the requirements in §558.289 [§97.289] of this chapter (relating to Independent Contractors and Arranged Services), hospice contracts to provide inpatient care must require that all contracted entities conduct a criminal history check on contracted staff who have direct client contact or access to client records to verify each contract staff's criminal history report does not include a conviction that bars employment under Texas Health and Safety Code[;] §250.006.

*§558.856. Hospice Alternate Delivery Sites.*

(a) If a hospice operates an ADS, the hospice must comply with this section.

(b) A Medicare-certified hospice agency must have an ADS approved by CMS before providing Medicare-reimbursed hospice services to Medicare clients from the ADS.

(c) An ADS must be part of the hospice and must share administration, supervision, and services with the parent agency.

(d) In addition to the requirements in §558.242 [§97.242] of this chapter (relating to Organizational Structure and Lines of Authority), the lines of authority and professional and administrative control must be clearly delineated in the hospice's organizational structure and in practice and must be traced to the parent agency.

(e) The hospice must continually monitor and manage all services provided by its ADS to ensure that services are delivered in a safe and effective manner and to ensure that a client and the client's family receives the necessary care and services outlined in the plan of care.

*§558.857. Hospice Staff Training.*

In addition to the requirements in §558.245 [§97.245] of this chapter (relating to Staffing Policies), a hospice must:

(1) provide orientation about the hospice philosophy, and about supportive palliative care, to all employees and contracted staff who have client and family contact;

(2) provide an initial orientation for an employee that addresses the employee's specific job duties;

(3) assess the skills and competence of all persons furnishing care, including volunteers furnishing services, and, as necessary, provide in-service training and education programs where required;

(4) have written policies and procedures describing its methods for assessing competency; and

(5) maintain a written description of the in-service training provided during the previous 12 months.

*§558.859. Hospice Discharge or Transfer of Care.*

(a) If a hospice transfers the care of a client to another facility or agency, the hospice must provide a copy of the hospice discharge summary and, if requested, a copy of the client's record to the receiving facility or agency.

(b) If a client revokes the election of hospice care[;] or is discharged by the hospice for any reason listed in subsection (d) of this section, the hospice must provide a copy of the hospice discharge summary and, if requested, a copy of the client's record to the client's attending practitioner.

(c) A hospice discharge summary must include:

(1) a summary of the client's stay, including treatments, symptoms, and pain management;

(2) the client's current plan of care;

(3) the client's latest physician orders; and

(4) any other documentation needed to assist in post-discharge continuity of care or that is requested by the attending practitioner or receiving facility or agency.

(d) In addition to the requirements in §558.295 [§97.295] of this chapter (relating to Client Transfer or Discharge Notification Requirements), a hospice may discharge a client if:

(1) the client moves out of the hospice's service area or transfers to another hospice;

(2) the hospice determines that the client is no longer terminally ill; or

(3) the hospice determines, under a policy set by the hospice for [the purpose of] addressing discharge for cause, that the behavior of the client or other person in the client's home is disruptive, abusive, or uncooperative to the extent that delivery of care to the client or the ability of the hospice to operate effectively is seriously impaired.

(e) Before a hospice seeks to discharge a client for cause, the hospice must:

(1) advise the client that a discharge for cause is being considered;

(2) make a reasonable effort to resolve the problems presented by the client's behavior or situation;

(3) document in the client's record the problems and efforts made by the hospice to resolve the problems; and

(4) ascertain that the client's proposed discharge is not due to the client's use of necessary hospice services.

(f) Before discharging a client for any reason listed in subsection (d) of this section, the hospice must obtain a written physician's discharge order from the hospice medical director. If the client has an attending practitioner involved in the client's care, the attending practitioner should be consulted before discharge and the practitioner's review and decision should be included in the discharge note.

(g) A hospice must have a discharge planning process that addresses the possibility that a client's condition might stabilize or otherwise change such that the client cannot continue to be certified as terminally ill. A client's discharge planning must include any necessary family counseling, client education or other services before the hospice discharges the client based on a decision by the hospice medical director or physician designee that the client is no longer terminally ill.

§558.860. Provision of [Drugs, Biologicals,] Medical Supplies[,] and Durable Medical Equipment by a Hospice.

(a) While a client is under hospice care, a hospice must provide medical supplies and appliances as well as [ ] durable medical equipment [ ] and drugs and biologicals related to the palliation and management of the terminal illness and related conditions, as identified in the hospice plan of care.

[(b) A hospice must ensure that the interdisciplinary team (IDT) confers with a person with education and training in drug management, as defined in hospice policies and procedures and state law, who is an employee of or under contract with the hospice to ensure that drugs and biologicals meet a client's needs. The hospice must be able to demonstrate that the person has specific education and

training in drug management. Persons with education and training in drug management include:]

[(1) a licensed pharmacist, a physician who is board certified in palliative medicine, or a registered nurse (RN) who is certified in palliative care; or]

[(2) a physician, an RN, or an advanced practice nurse who completes a specific hospice or palliative care drug management course.]

[(e) A hospice that provides inpatient care directly in its own inpatient unit must provide pharmaceutical services under the direction of a qualified licensed pharmacist who is an employee of or under contract with the hospice. The services provided by the pharmacist must include evaluation of a client's response to medication therapy, identification of potential adverse drug reactions, and recommended appropriate corrective action.]

[(d) Only a physician or an advanced practice nurse, in accordance with the plan of care, may order drugs for a client.]

[(e) If the drug order is verbal or given by or through electronic transmission:]

[(1) it must be given only to a licensed nurse, pharmacist, or physician; and]

[(2) the person receiving the order must record and sign it immediately and have the prescribing person sign it in accordance with the agency's policies and applicable state and federal regulations.]

[(f) A hospice must obtain drugs and biologicals from community or institutional pharmacists or stock drugs and biologicals itself. A hospice that dispenses, stores, and transports drugs must do so in accordance with federal, state and local laws and regulations, as well as the hospice's own policies and procedures. A hospice that operates its own pharmacy must comply with the Texas Occupations Code, Subtitle J, relating to Pharmacy and Pharmacists.]

[(g) A hospice that provides inpatient care directly in its own inpatient unit must:]

[(1) have a written policy in place that promotes dispensing accuracy; and]

[(2) maintain current and accurate records of the receipt and disposition of all controlled drugs.]

[(h) The IDT, as part of the review of the plan of care, must determine the ability of the client or the client's family to safely administer drugs and biologicals to the client in his or her home.]

[(i) Clients receiving care in a hospice inpatient unit may only be administered medications by the following persons:]

[(1) a licensed nurse, physician, or other health care professional in accordance with their scope of practice and state law;]

[(2) a home health medication aide; and]

[(3) a client, upon approval by the IDT.]

[(j) Drugs and biologicals must be labeled in accordance with currently accepted professional practice and must include appropriate usage and cautionary instructions, as well as an expiration date, if applicable.]

[(k) A hospice must have written policies and procedures for the management and disposal of controlled drugs in a client's home. The policies and procedures must address the safe use and disposal of controlled drugs in a client's home, including:]

[(1) at the time when controlled drugs are first ordered;]

- {(2) when controlled drugs are discontinued;}
- {(3) when a new controlled drug is ordered;}
- {(4) when the client dies; and}
- {(5) the manner for disposing and documenting disposal of controlled drugs in the client's home.}

{(f) At the time when controlled drugs are first ordered for use in a client's home, the hospice must:}

{(1) provide a copy of the hospice's written policies and procedures on the management and disposal of controlled drugs in a client's home to the client or client representative and family;}

{(2) discuss the hospice policies and procedures for managing the safe use and disposal of controlled drugs with the client or legally authorized representative and the family in a language and manner that they understand to ensure that these parties are educated regarding the safe use and disposal of controlled drugs in the client's home; and}

{(3) document in the client record that the hospice provided and discussed its written policies and procedures for managing the safe use and disposal of controlled drugs in the client's home.}

{(m) A hospice that provides inpatient care directly in its own inpatient unit must dispose of controlled drugs in compliance with the hospice's policy and in accordance with state and federal requirements, including the Texas Health and Safety Code, Chapter 481, Texas Controlled Substances Act. The hospice must maintain current and accurate records of the receipt and disposition of all controlled drugs.}

{(n) A hospice that provides inpatient care directly in its own inpatient unit must comply with the following additional requirements:}

{(1) All drugs and biologicals must be stored in secure areas. All controlled drugs listed in Schedules II, III, IV, and V of the Comprehensive Drug Abuse Prevention and Control Act of 1976 must be stored in locked compartments within such secure storage areas. Only personnel authorized to administer controlled drugs as noted in subsection (i) of this section may have access to the locked compartments.}

{(2) Discrepancies in the acquisition, storage, dispensing, administration, disposal, or return of controlled drugs must be investigated immediately by the pharmacist and hospice administrator and reported to the Director of Controlled Substances Registration in accordance with 37 TAC Chapter 13 (relating to Controlled Substances). A hospice must maintain a written account of its investigation and make it available to state and federal officials if requested.}

(b) [(o)] A hospice must ensure that manufacturer recommendations for performing routine and preventive maintenance on durable medical equipment are followed. The equipment must be safe, and work as intended for use in the client's environment. Where a manufacturer recommendation for a piece of equipment does not exist, the hospice must ensure that repair and routine maintenance policies are developed. The hospice may use persons under contract to ensure the maintenance and repair of durable medical equipment.

(c) [(p)] A hospice must ensure that a client, where appropriate, as well as the family or other caregivers, receive instruction in the safe use of durable medical equipment and supplies. The hospice may use persons under contract to ensure client and family instruction. The client, family, or caregiver must be able to demonstrate the appropriate use of durable medical equipment to the satisfaction of the hospice staff.

(d) [(q)] A hospice may only contract for durable medical equipment services with a durable medical equipment supplier that meets the Medicare standards for durable medical equipment, prosthetics, orthotics, and supplies suppliers [Durable Medical Equipment, Prosthetics, Orthotics and Supplies Supplier Quality and Accreditation Standards] at 42 CFR §424.57.

§558.861. Management of Drugs and Biologicals and Disposal of Controlled Substance Prescription Drugs in a Client's Home or Community Setting.

(a) While a client is under hospice care, a hospice must provide drugs and biologicals related to the palliation and management of the terminal illness and related conditions, as identified in the hospice plan of care.

(b) A hospice must ensure that the interdisciplinary team (IDT) confers with a person with education and training in drug management, as defined in hospice policies and procedures and State law, who is an employee of or under contract with the hospice to ensure that drugs and biologicals meet a client's needs. The hospice must be able to demonstrate that the person has specific education and training in drug management. Persons with education and training in drug management include:

(1) a licensed pharmacist, a physician who is board certified in hospice and palliative medicine, or an RN who is certified in palliative nursing; or

(2) a physician, an RN, or an advanced practice nurse who completes a specific drug management course for hospice or palliation.

(c) Only a physician or an advanced practice nurse, in accordance with the plan of care, may order drugs for a client.

(d) If the drug order is verbal or given by or through electronic transmission:

(1) it must be given only to a licensed nurse, pharmacist, or physician; and

(2) the person receiving the order must record and sign it immediately and have the prescribing person sign it in accordance with the agency's policies and applicable State and federal regulations.

(e) A hospice must obtain drugs and biologicals from community or institutional pharmacists or stock drugs and biologicals itself. A hospice that dispenses, stores, and transports drugs must do so in accordance with federal, State, and local laws and regulations, as well as the hospice's own policies and procedures. A hospice that operates its own pharmacy must comply with the Texas Occupations Code, Subtitle J, and applicable pharmacy and pharmacists' regulations adopted by the Texas Board of Pharmacy under that subtitle.

(f) The IDT, as part of the review of the plan of care, must determine the ability of the client or the client's family to safely administer drugs and biologicals to the client in the client's home.

(g) Drugs and biologicals must be labeled in accordance with currently accepted professional practice and must include appropriate usage and cautionary instructions, as well as an expiration date, if applicable.

(h) A hospice must have written policies and procedures for the safe use and storage of drugs and biologicals in a client's home.

(i) A hospice must have written policies and procedures that address management of controlled substance prescription drugs in a client's home, including:

(1) at the time when controlled substance prescription drugs are first ordered;

(2) when controlled substance prescription drugs are discontinued;

(3) when a new controlled substance prescription drug is ordered; and

(4) when the client dies.

(j) At the time when controlled substance prescription drugs are first ordered for use in a client's home, the hospice must:

(1) provide a copy of the hospice's written policies and procedures on the management of controlled substance prescription drugs in a client's home to the client or client representative and family;

(2) discuss the hospice policies and procedures for managing the safe use of controlled substance prescription drugs with the client or LAR and the family in a language and manner that they understand, to ensure that these parties are educated regarding the safe use, storage, and disposal of controlled substance prescription drugs in the client's home; and

(3) document in the client record that the hospice provided and discussed its written policies and procedures for managing the safe use and storage of controlled substance prescription drugs in the client's home, as described in subsection (m) of this section.

(k) A hospice must have a written policy describing whether the agency will dispose of a client's unused controlled substance prescription drugs on the client's death or in other circumstances in which disposal is appropriate, as described in subsection (m) of this section.

(l) If a hospice agency's policy under subsection (k) of this section provides that the agency will dispose of a client's unused controlled substance prescription drugs as described in that subsection, the written policies and procedures which the hospice must implement and enforce, must:

(1) identify disposal methods that are consistent with recommendations by the United States Food and Drug Administration and the laws of the State of Texas;

(2) permit disposal described in subsection (k) of this section only by a hospice employee or contractor who is a health care practitioner licensed to perform medical or nursing services who meets the conditions of this section;

(3) require each health care practitioner responsible for disposal of an unused controlled substance of a client under this section to receive training regarding the secure and responsible disposal of controlled substance prescription drugs in accordance with paragraph (1) of this subsection and in a manner that discourages abuse, misuse, or diversion;

(4) require that hospice agency staff:

(A) provide a copy of the disposal policies and procedures to a licensed facility in which the client is residing or receiving short-term in-patient hospice services;

(B) provide a copy of the disposal policies and procedures to the client and the client's family;

(C) discuss the policies and procedures with the patient and the client's family in a language and manner the client and client's family understand;

(D) document in the client's clinical record that the policies and procedures were provided and discussed as required by subsections (b) and (c) of this section; and

(E) document the client's agreement to the disposal of the client's unused controlled substance prescription drugs under cir-

cumstances described in subsection (m) of this section by a qualified health practitioner employed or contracted by the agency; and

(5) otherwise comply with state, federal, and local laws applicable to the disposal of drugs and biologicals in a facility.

(m) A health care practitioner qualified under subsection (l) of this section may confiscate and dispose of a client's unused controlled substance prescription drug if:

(1) the client has died;

(2) the drug has expired; or

(3) the client's physician has given written instructions that the patient should no longer use the drug.

(n) A hospice agency may not dispose of controlled prescription drugs not prescribed to the client.

(o) A health care practitioner qualified under subsection (l) of this section, confiscating the controlled substance prescription drug, must dispose of the drug in a manner consistent with recommendations of the United States Food and Drug Administration and the laws of the State of Texas.

(p) A health care practitioner qualified under subsection (l) of this section must dispose of a client's unused controlled substance prescription drugs as described in this section only at the location at which practitioner confiscated the drug.

(q) A health care practitioner disposal of a client's unused controlled substance prescription drugs as described in this section must be witnessed by another person 18 years of age or older. The witness does not have to be a hospice employee.

(r) After disposing of the client's unused controlled substance prescription drug, the health care practitioner shall document in the client's record:

(1) the name of the drug;

(2) the dosage of the drug the client was receiving;

(3) the route of controlled substance prescription drug administration;

(4) the quantity of the controlled substance prescription drug originally dispensed and the quantity of the drug remaining;

(5) the time, date, and manner of disposal; and

(6) name and relationship of the witness to the client.

(s) A health care practitioner shall document in the client's file if a family member of the client prevented the confiscation and disposal of a controlled substance prescription drug authorized under this section.

(t) A health care practitioner shall document in the client's file if an employee of a licensed facility where the client is receiving in-patient hospice services prevented the confiscation and disposal of a controlled substance prescription drug otherwise authorized under this section.

§558.862. Management of Drugs and Biologicals and Disposal of Controlled Substance Prescription Drugs in an Inpatient Hospice Unit.

(a) The requirements stated in §558.861(a)-(g) of this division (relating to Management of Drugs and Biologicals and Disposal of Controlled Substance Prescription Drugs in a Client's Home or Community Setting) also apply to a hospice that provides inpatient care directly in its own inpatient unit.



(b) A hospice that provides inpatient care directly in its own inpatient unit must provide pharmaceutical services under the direction of a qualified licensed pharmacist who is an employee of or under contract with the hospice. The services provided by the pharmacist must include evaluation of a client's response to medication therapy, identification of potential adverse drug reactions, and recommended appropriate corrective action.

(c) A hospice that provides inpatient care directly in its own inpatient unit must:

(1) have a written policy in place that promotes dispensing accuracy; and

(2) maintain current and accurate records of the receipt and disposition of all controlled drugs.

(d) Clients receiving care in a hospice inpatient unit may only be administered medications by the following persons:

(1) a licensed nurse, physician, or other health care professional in accordance with their scope of practice and State law;

(2) a home health medication aide; or

(3) a client, upon approval by the interdisciplinary team.

(e) A hospice that provides inpatient care directly in its own inpatient unit must comply with the following additional requirements.

(1) All drugs and biologicals must be stored in secure areas. All controlled drugs listed in Schedules II, III, IV, and V, established under 21 United States Code §812, must be stored in locked compartments within such secure storage areas. Only personnel authorized to administer controlled drugs as noted in subsection (i) of this section may have access to the locked compartments.

(2) Discrepancies in the acquisition, storage, dispensing, administration, disposal, or return of controlled drugs must be investigated immediately by the pharmacist and hospice administrator and reported, without limitation, to the United States Department of Justice, Drug Enforcement Administration, Diversion Control Division. A hospice must maintain a written account of its investigation and make it available to State and federal officials if requested.

(f) A hospice that provides inpatient care directly in its own inpatient unit must dispose of controlled drugs in compliance with the hospice's policy and in accordance with State and federal requirements, including Texas Health and Safety Code Chapter 481. The hospice must maintain current and accurate records of the receipt and disposition of all controlled drugs.

§558.863. Hospice Short-term Inpatient Care.

(a) A hospice must make inpatient care available when needed for pain control, symptom management, and respite purposes.

(b) A hospice must ensure that inpatient care for pain control and symptom management is provided in either:

(1) a hospice inpatient unit that meets the additional standards in Division 7 of this subchapter (relating to Hospice Inpatient Units) and the Medicare Conditions of Participation for providing inpatient care directly as specified in 42 CFR §418.110; or

(2) a Medicare-certified hospital or skilled nursing facility that also meets:

(A) the licensing standards specified in §558.870(b)(1) and (2) of this subchapter (relating to Staffing in a Hospice Inpatient Unit) regarding 24-hour nursing services, and in §558.871(d)(1)-(4) of

this subchapter (relating to Physical Environment in a Hospice Inpatient Unit); and

(B) the federal Medicare standards specified in 42 CFR §418.110(b) and (c) regarding 24-hour nursing services and patient areas.

(c) A hospice must ensure that inpatient care for respite purposes is provided either by:

(1) a facility specified in subsection (b)(1) or (2) of this section; or

(2) a Medicare-certified or Medicaid-certified nursing facility that also meets the licensing standards specified in §558.871(d)(1)-(4) of this subchapter regarding client areas and the federal Medicare standards specified in 42 CFR §418.110(e) regarding patient areas.

(d) A facility providing respite care must provide 24-hour nursing services that meet the nursing needs of all clients and are furnished in accordance with each client's plan of care. Each client must receive all nursing services as prescribed and must be kept comfortable, clean, well-groomed, and protected from accident, injury, and infection.

(e) In addition to the requirements in §558.289(b) of this chapter (relating to Independent Contractors and Arranged Services), if a hospice has an agreement with a facility to provide for inpatient care, there must be a written contract coordinated by the hospice that specifies that:

(1) the hospice supplies the facility with a copy of the client's plan of care and specifies the inpatient services to be furnished;

(2) the facility has established client care policies consistent with those of the hospice and agrees to abide by the plan of care established by the hospice for each client and to follow the hospice agency's protocols for supporting optimal quality of life for its clients;

(3) the facility's clinical record for a hospice client includes documentation of all inpatient services furnished and events regarding care that occurred at the facility;

(4) a copy of the discharge summary be provided to the hospice at the time of discharge;

(5) a copy of the inpatient clinical record is available to the hospice at the time of discharge;

(6) the facility has identified a person within the facility who is responsible for the implementation of the provisions of the agreement;

(7) the hospice retains responsibility for ensuring that the training of personnel who will be providing the client's care in the facility has been provided and that a description of the training and the names of those giving the training are documented; and

(8) a method for verifying that the requirements in paragraphs (1) - (7) of this subsection are met.

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 November 30, 2020.

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Karen Ray  
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Earliest possible date of adoption: January 17, 2021  
For further information, please call: (512) 438-3161



## 26 TAC §558.861

### STATUTORY AUTHORITY

The repeal is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; and Texas Health and Safety Code §§142.012, 142.010, and 142.006(b), which respectively authorize the Executive Commission of HHSC to adopt rules in accordance with those sections that are necessary to implement Chapter 142 and set minimum standards for home and community support services agencies licensed under that Chapter, set reasonable license fees for such agencies, and establish a system for staggered three-year license expiration dates.

The repeal implements Texas Government Code §531.0055 and Texas Health and Safety Code §§142.012, 142.010(a), 142.006(b) and 142.0095, and Texas Health and Safety Code Chapter 142, Subchapter C.

#### *§558.861. Hospice Short-term Inpatient Care.*

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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## DIVISION 7. HOSPICE INPATIENT UNITS

### 26 TAC §558.870, §558.871

#### STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; and Texas Health and Safety Code §§142.012, 142.010, and 142.006(b), which respectively authorize the Executive Commission of HHSC to adopt rules in accordance with those sections that are necessary to implement Chapter 142 and set minimum standards for home and community support services agencies licensed under that Chapter, set reasonable license fees for such agencies, and establish a system for staggered three-year license expiration dates.

The amendments implement Texas Government Code §531.0055 and Texas Health and Safety Code §§142.012,

142.010(a), 142.006(b) and 142.0095, and Texas Health and Safety Code Chapter 142, Subchapter C.

#### *§558.870. Staffing in a Hospice Inpatient Unit.*

(a) A hospice is responsible for staffing its inpatient unit with the numbers and types of qualified, trained, and experienced staff to meet the care needs of every client in the inpatient unit to ensure that plan of care outcomes are achieved and negative outcomes are avoided.

(b) A hospice inpatient unit must provide 24-hour nursing services that meet the nursing needs of all clients and are furnished in accordance with each client's plan of care.

(1) A client must receive all nursing services as prescribed in the plan of care and must be kept comfortable, clean, well-groomed, and protected from accident, injury, and infection.

(2) If at least one client in the hospice inpatient unit is receiving general inpatient care for pain control or symptom management, then each shift must include an RN [a registered nurse] who provides direct client care.

(3) A hospice inpatient unit must have a nurse call system. The hospice must install in a client's room a system that:

(A) is equipped with an easily activated, functioning device accessible to the client; and

(B) allows the client to call for assistance from a staff person on the unit.

#### *§558.871. Physical Environment in a Hospice Inpatient Unit.*

(a) Safety Management. A hospice inpatient unit must maintain a safe physical environment free of hazards for clients, staff, and visitors.

(1) A hospice inpatient unit must address real or potential threats to the health and safety of the clients, others, and property.

(2) In addition to §558.256 [§97.256] of this chapter (relating to Emergency Preparedness Planning and Implementation), a hospice inpatient unit must have a written disaster preparedness plan that addresses the core functions of emergency management as described in subparagraphs (A) - (G) of this paragraph. The facility must maintain documentation of compliance with this paragraph.

(A) The portion of the plan on direction and control must:

(i) designate a person by position, and at least one alternate, to be in charge during implementation of an emergency response plan, with authority to execute a plan to evacuate or shelter in place;

(ii) include procedures the facility will use to maintain continuous leadership and authority in key positions;

(iii) include procedures the facility will use to activate a timely response plan based on the types of disasters identified in the risk assessment;

(iv) include procedures the facility will use to meet staffing requirements;

(v) include procedures the facility will use to warn or notify facility staff about internal and external disasters, including during off hours, weekends, and holidays;

(vi) include procedures the facility will use to maintain a current list of who the hospice will notify once warning of a disaster is received;

(vii) include procedures the facility will use to alert critical facility personnel once a disaster is identified; and

(viii) include procedures the facility will use to maintain a current 24-hour contact list for all personnel.

(B) The portion of the plan on communication must include procedures:

(i) for continued communication, including procedures during an evacuation to maintain contact with critical personnel and with all vehicles traveling in an evacuation caravan;

(ii) to maintain an accessible, current list of the phone numbers of:

(I) client family members;

(II) local shelters;

(III) prearranged receiving facilities;

(IV) the local emergency management agencies;

(V) other health care providers; and

(VI) State [state] and federal emergency management agencies;

(iii) to notify staff, clients, families of clients, families of critical staff, prearranged receiving facilities, and others of an evacuation or the plan to shelter in place;

(iv) to provide a contact number for out-of-town family members to call for information; and

(v) to [use the web-based system (Facility Information, Vacancy, and Evacuation Status), designed for facilities regulated by DADS to help each other] relocate and track clients during disasters that require mass evacuations.

(C) The portion of the plan on resource management must include procedures:

(i) to maintain contracts and agreements with vendors as needed to ensure the availability of the supplies and transportation needed to execute the plan to shelter in place or evacuate;

(ii) to develop accurate, detailed, and current checklists of essential supplies, staff, equipment, and medications;

(iii) to designate responsibility for completing the checklists during disaster operations;

(iv) for the safe and secure transportation of adequate amounts of food, water, medications, and critical supplies and equipment during an evacuation; and

(v) to maintain a supply of sufficient resources for at least seven days to shelter in place, which must include:

(I) emergency power, including backup generators and accounts for maintaining a supply of fuel;

(II) potable water in an amount based on population and location;

(III) the types and amounts of food for the number and types of clients served;

(IV) extra pharmacy stocks of common medications; and

(V) extra medical supplies and equipment, such as oxygen, linens, and any other vital equipment.

(D) The portion of the plan on sheltering in place must:

(i) be developed using information about the building's construction and Life Safety Code (LSC) systems;

(ii) describe the criteria to be used to decide whether to shelter in place versus evacuate;

(iii) include procedures to assess whether the building is strong enough to withstand the various types of possible disasters and to identify the safest areas of the building;

(iv) include procedures to secure the building against damage;

(v) include procedures for collaborating with the local emergency management agencies regarding the decision to shelter in place;

(vi) include procedures to assign each task in the sheltering plan to facility staff;

(vii) describe procedures to shelter in place that allow the facility to maintain 24-hour operations for a minimum of seven days to maintain continuity of care for the number and types of clients served; and

(viii) include procedures to provide for building security.

(E) The portion of the plan on evacuation must:

(i) include contracts with prearranged receiving facilities, including a hospice inpatient facility, skilled nursing facility, nursing facility, assisted living facility, or hospital, with at least one facility located at least 50 miles away;

(ii) include procedures to identify and follow evacuation and alternative routes for transporting clients to a receiving facility and to notify the proper authorities of the decision to evacuate;

(iii) include procedures to protect and transport client records and to match them to each client;

(iv) include procedures to maintain a checklist of items to be transported with clients, including medications and assistive devices, and how the items will be matched to each client;

(v) include staffing procedures the facility will use to ensure that staff accompanies evacuating clients when the hospice transports clients to a receiving facility;

(vi) include procedures to identify and assign staff responsibilities, including how clients will be cared for during evacuations and a backup plan for lack of sufficient staff;

(vii) include procedures facility staff will use to account for all persons in the building during the evacuation and to track all persons evacuated;

(viii) include procedures for the use, protection, and security of the identifying information the facility will use to identify evacuated clients;

(ix) include procedures facility staff will follow if a client becomes ill or dies in route when the hospice transports clients to a receiving facility;

(x) include procedures to make a hospice counselor available when staff accompanies clients during transport by the hospice to a receiving facility;

(xi) include the facility's policy on whether family of staff and clients can shelter at the hospice and evacuate with staff and clients;

(xii) include procedures to coordinate building security with the local emergency management agencies;

(xiii) include procedures facility staff will use to determine when it is safe to return to the geographical area;

(xiv) include procedures facility staff will use to determine if the building is safe for reoccupation; and

(xv) be approved by the local emergency management coordinator (EMC) at least annually and when updated.

(F) The portion of the plan on transportation must:

(i) describe how the hospice prearranges for a sufficient number of vehicles to provide suitable, safe transportation for the type and number of clients being served; and

(ii) include procedures to contact the local EMC to coordinate the facility's transportation needs in the event its prearrangements for transportation fail for reasons beyond the facility's control. [The hospice may also register its facility with 2-1-1 Texas.]

(G) The portion of the plan on training must include:

(i) procedures that specify when and how the disaster response plan is reviewed with clients and family members;

(ii) procedures to review the role and responsibility of a client able to participate with the plan;

(iii) procedures for initial and periodic training for all facility staff to carry out the plan;

(iv) the frequency for conducting disaster drills and demonstrations to ensure staff are fully trained with respect to their duties under the plan; and

(v) procedures to conduct emergency response drills at least annually either in response to an actual disaster or in a planned drill, which may be in addition to or combined with the drills required by the LSC as specified in subsection (c)(1) of this section.

(b) Physical plant and equipment. A hospice must develop procedures for controlling the reliability and quality of:

(1) the routine storage and prompt disposal of trash and medical waste;

(2) light, temperature, and ventilation and air exchanges throughout the hospice inpatient unit;

(3) emergency gas and water supply; and

(4) the scheduled and emergency maintenance and repair of all equipment.

(c) Fire protection. Except as otherwise provided in this subsection:

(1) A hospice must meet the provisions applicable to the health care occupancy chapters of the 2000 edition of the LSC of the National Fire Protection Association (NFPA). Chapter 19.3.6.3.2, exception number 2 of the 2000 edition of the LSC does not apply to hospices.

(2) In consideration of a recommendation by HHSC [DAADS], CMS may waive, for periods deemed appropriate, specific provisions of the LSC which if rigidly applied would result in unreasonable hardship for the hospice, but only if the waiver would not adversely affect the health and safety of clients.

(3) The provisions of the adopted edition of the LSC do not apply in the State of Texas [a state] if CMS finds that a fire and

safety code imposed by State [state] law adequately protects clients in hospices.

(4) Notwithstanding any provisions of the 2000 edition of the LSC to the contrary, a hospice inpatient unit may place alcohol-based hand rub dispensers in its facility if:

(A) use of alcohol-based hand rub dispensers does not conflict with any State [state] or local codes that prohibit or otherwise restrict the placement of alcohol-based hand rub dispensers in health care facilities;

(B) the dispensers are installed in a manner that minimizes leaks and spills that could lead to falls;

(C) the dispensers are installed in a manner that adequately protects against access by vulnerable populations; and

(D) the dispensers are installed in accordance with chapter 18.3.2.7 or chapter 19.3.2.7 of the 2000 edition of the LSC, as amended by NFPA Temporary Interim Amendment 00-1(101), issued by the Standards Council of the NFPA [National Fire Protection Association] on April 15, 2004.

(d) Client areas. A hospice inpatient unit must provide a home-like atmosphere and ensure that client areas are designed to preserve the dignity, comfort, and privacy of clients. A hospice inpatient unit must provide:

(1) physical space for private client and family visiting;

(2) accommodations for family members to remain with the client throughout the night;

(3) physical space for family privacy after a client's death; and

(4) the opportunity for the client to receive visitors at any hour, including infants and small children.

(e) Client rooms. A hospice must ensure that client rooms are designed and equipped for nursing care, as well as the dignity, comfort, and privacy of clients. A hospice must accommodate a client and family request for a single room whenever possible. A client's room must:

(1) be at or above grade level;

(2) contain a suitable bed and other appropriate furniture for the client;

(3) have closet space that provides security and privacy for clothing and personal belongings;

(4) accommodate no more than two clients and their family members; and

(5) provide at least 80 square feet for a client residing in a double room and at least 100 square feet for a client residing in a single room.

(f) Toilet and bathing facilities. A client room in an inpatient unit must be equipped with, or conveniently located near, toilet and bathing facilities.

(g) Plumbing facilities. A hospice inpatient unit must:

(1) always have an adequate supply of hot water [at all times]; and

(2) have plumbing fixtures with control valves that automatically regulate the temperature of the hot water used by a client.

(h) Infection control. A hospice inpatient unit must maintain an infection control program that protects clients, staff, and others by preventing and controlling infections and communicable disease in ac-

cordance with§558.853 [§97.853] of this subchapter (relating to Hospice Infection Control Program).

(i) Sanitary environment. A hospice inpatient unit must provide a sanitary environment by following accepted standards of practice, including nationally recognized infection control precautions, and avoiding sources and transmission of infections and communicable diseases.

(j) Linen. A hospice inpatient unit must always have available [at all times] a quantity of clean linen in sufficient amounts for a client's use. Linens must be handled, stored, processed, and transported in such a manner as to prevent the spread of contaminants.

(k) Meal service and menu planning. A hospice inpatient unit must furnish meals to a client that are:

(1) consistent with the client's plan of care, nutritional needs, and therapeutic diet;

(2) palatable, attractive, and served at the proper temperature; and

(3) obtained, stored, prepared, distributed, and served under sanitary conditions.

(l) Use of restraint or seclusion. A client in a hospice inpatient unit has the right to be free from restraint or seclusion, of any form, imposed as a means of coercion, discipline, convenience, or retaliation by staff. Restraint or seclusion may only be imposed to ensure the immediate physical safety of the client, a staff member, or others and must be discontinued at the earliest possible time.

(1) Restraint or seclusion may only be used when less restrictive interventions are determined to be ineffective to protect the client, a staff member, or others from harm.

(2) The type or technique of restraint or seclusion used must be the least restrictive intervention that is effective to protect the client, a staff member, or others from harm.

(3) The use of restraint or seclusion must be:

(A) in accordance with a written modification to the client's plan of care; and

(B) implemented in accordance with safe and appropriate restraint and seclusion techniques as determined by hospice policy.

(4) The use of restraint or seclusion must be in accordance with the order of a physician authorized to order restraint or seclusion by hospice policy.

(5) An order for the use of restraint or seclusion must never be written as a standing order or on an as needed basis.

(6) The medical director or physician designee must be consulted as soon as possible if the attending practitioner did not order the restraint or seclusion.

(7) An order for restraint or seclusion used for the management of violent or self-destructive behavior that jeopardizes the immediate physical safety of the client, a staff member, or others may only be renewed in accordance with the following limits for up to a total of 24 hours:

(A) four hours for adults 18 years of age or older;

(B) two hours for children and adolescents nine to 17 years of age; or

(C) one hour for children under nine years of age.

(8) After 24 hours, before writing a new order for the use of restraint or seclusion for the management of violent or self-destructive behavior, a physician authorized to order restraint or seclusion by hospice policy must see and assess the client.

(9) Each order for restraint used to ensure the physical safety of a non-violent or non-self-destructive client may be renewed as authorized by hospice policy.

(10) Restraint or seclusion must be discontinued at the earliest possible time, regardless of the length of time identified in the order.

(11) The condition of the client who is restrained or secluded must be monitored by a physician or trained staff who have completed the training criteria specified in subsection (o) of this section at an interval determined by hospice policy.

(12) Training requirements for a physician and for an attending practitioner must be specified in hospice policy. At a minimum, a physician and an attending practitioner authorized to order restraint or seclusion by hospice policy must have a working knowledge of hospice policy regarding the use of restraint or seclusion.

(13) When restraint or seclusion is used for the management of violent or self-destructive behavior that jeopardizes the immediate physical safety of the client, a staff member, or others:

(A) the client must be seen face-to-face within one hour after the initiation of the intervention by a physician or RN [registered nurse (RN)] who has been trained in accordance with the requirements specified in subsection (m) of this section; and

(B) the physician or RN must evaluate:

(i) the client's immediate situation;

(ii) the client's reaction to the intervention;

(iii) the client's medical and behavioral condition;

and

(iv) the need to continue or terminate the restraint or

seclusion.

(14) If the face-to-face evaluation specified in paragraph (13) of this subsection is conducted by a trained RN, the trained RN must consult the medical director or physician designee as soon as possible after the completion of the one-hour face-to-face evaluation.

(15) All requirements specified under this paragraph are applicable to the simultaneous use of restraint and seclusion. Simultaneous restraint and seclusion is only permitted if the client is continually monitored:

(A) face-to-face by an assigned, trained staff member;

or

(B) by trained staff using both video and audio equipment. This monitoring must be [in] close [proximity] to the client.

(16) When restraint or seclusion is used, there must be documentation in the client's record of:

(A) the one-hour face-to-face medical and behavioral evaluation if restraint or seclusion is used to manage violent or self-destructive behavior;

(B) a description of the client's behavior and the intervention used;

(C) alternatives or other less restrictive interventions attempted, if applicable;

(D) the client's condition or symptoms that warranted the use of the restraint or seclusion; and

(E) the client's response to the interventions used, including the rationale for continued use of the intervention.

(m) Restraint or seclusion staff training requirements. A client has the right to safe implementation of restraint or seclusion by trained staff.

(1) Client care staff working in the hospice inpatient unit must be trained and able to demonstrate competency in the application of restraints, implementation of seclusion, monitoring, assessment, and providing care for a client in restraint or seclusion:

(A) before performing any of the actions specified in paragraph (1) of this subsection;

(B) as part of orientation; and

(C) subsequently on a periodic basis consistent with hospice policy.

(2) A hospice must require appropriate staff to have education, training, and demonstrated knowledge based on the specific needs of the client population in:

(A) techniques to identify staff and client behaviors, events, and environmental factors that may trigger circumstances that require the use of a restraint or seclusion;

(B) the use of nonphysical intervention skills;

(C) choosing the least restrictive intervention based on an individualized assessment of the client's medical or behavioral status or condition;

(D) the safe application and use of all types of restraint or seclusion used in the hospice, including training in how to recognize and respond to signs of physical and psychological distress (for example, positional asphyxia);

(E) clinical identification of specific behavioral changes that indicate that restraint or seclusion is no longer necessary;

(F) monitoring the physical and psychological well-being of a client who is restrained or secluded, including but not limited to respiratory and circulatory status, skin integrity, vital signs, and any special requirements specified by hospice policy associated with the one-hour face-to-face evaluation; and

(G) the use of first-aid techniques and certification in the use of cardiopulmonary resuscitation, including required periodic recertification.

(3) Persons providing staff training must be qualified as evidenced by education, training, and experience in techniques used to address a client's behaviors.

(4) A hospice must document in the staff personnel records that the training and demonstration of competency were successfully completed.

(n) Death reporting requirements. A hospice must report deaths associated with the use of seclusion or restraint in its inpatient unit.

(1) The hospice must report:

(A) an unexpected death that occurs while a client is in restraint or seclusion;

(B) an unexpected death that occurs within 24 hours after the client has been removed from restraint or seclusion; and

(C) a death known to the hospice that occurs within one week after restraint or seclusion where it is reasonable to assume that use of restraint or placement in seclusion contributed directly or indirectly to the client's death. The term "reasonable to assume" in this context includes but is not limited to death related to restrictions of movement for prolonged periods of time, or death related to chest compression, restriction of breathing, or asphyxiation.

(2) The hospice must report a death described in paragraph (1) of this subsection to HHSC [DADS] by telephone at 1-800-458-9858 within 24 hours after knowledge of a client's death.

(3) The hospice must complete Provider Investigation Report For Home and Community Support Services Agency (HHSC [DADS] Form 3613) and send it to HHSC [DADS] Complaint Intake Unit within 10 days after reporting the death to HHSC [DADS] by telephone.

(4) Hospice personnel must document in the client's record the date and time the death was reported to HHSC [DADS].

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 November 30, 2020.

TRD-202005051

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: January 17, 2021

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



## DIVISION 8. HOSPICES THAT PROVIDE HOSPICE CARE TO RESIDENTS OF A SKILLED NURSING FACILITY, NURSING FACILITY, OR INTERMEDIATE CARE FACILITY FOR INDIVIDUALS WITH AN INTELLECTUAL DISABILITY OR RELATED CONDITIONS

### 26 TAC §558.880

#### STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; and Texas Health and Safety Code §§142.012, 142.010, and 142.006(b), which respectively authorize the Executive Commission of HHSC to adopt rules in accordance with those sections that are necessary to implement Chapter 142 and set minimum standards for home and community support services agencies licensed under that Chapter, set reasonable license fees for such agencies, and establish a system for staggered three-year license expiration dates.

The amendment implements Texas Government Code §531.0055 and Texas Health and Safety Code §§142.012, 142.010(a), 142.006(b) and 142.0095, and Texas Health and Safety Code Chapter 142, Subchapter C.

*§558.880. Providing Hospice Care to a Resident of a Skilled Nursing Facility, Nursing Facility, or Intermediate Care Facility for Individuals with an Intellectual Disability or Related Conditions.*

(a) Professional management. A hospice must assume responsibility for professional management of the hospice services it provides to a resident of a skilled nursing facility (SNF), nursing facility (NF), or an intermediate care facility for individuals with an intellectual disability or related conditions (ICF/IID), in accordance with the hospice plan of care. The hospice must make arrangements, as necessary for hospice-related inpatient care in a participating Medicare or Medicaid facility, in accordance with §558.850 [§97.850] of this subchapter (relating to Organization and Administration of Hospice Services) and §558.863 [§97.861] of this subchapter (relating to Hospice Short-term Inpatient Care).

(b) Written contract. A hospice and SNF, NF, or ICF/IID must have a written contract that allows the hospice to provide services in the facility. The contract must be signed by an authorized representative of the hospice and the SNF, NF, or ICF/IID before hospice services are provided. In addition to the requirements in §558.289 [§97.289(b)] of this chapter (relating to Independent Contractors and Arranged Services), the written contract must include:

(1) the way ~~[manner in which]~~ the SNF, NF, or ICF/IID and the hospice are to communicate with each other and document such communications to ensure that the needs of a client are addressed and met 24 hours a day;

(2) a provision that the SNF, NF, or ICF/IID immediately notifies the hospice of:

(A) a significant change in the client's physical, mental, social, or emotional status;

(B) clinical complications that suggest a need to alter the plan of care;

(C) the need to transfer the client from the SNF, NF, or ICF/IID; or

(D) the death of a client;

(3) a provision stating that if the SNF, NF, or ICF/IID transfers the client from the facility that the hospice arranges ~~[makes arrangements]~~ for, and remains responsible for, any necessary continuous care or inpatient care related to the terminal illness and related conditions;

(4) a provision stating that the hospice assumes responsibility for determining the appropriate course of hospice care, including the determination to change the level of services provided;

(5) an agreement that the SNF, NF, or ICF/IID is responsible for furnishing 24-hour room and board care, meeting the personal care and nursing needs that would have been provided by the primary caregiver at home at the same level of care provided before the client elected hospice care;

(6) an agreement that the hospice is responsible for providing services at the same level and to the same extent as those services would be provided if the SNF, NF, or ICF/IID resident were in his or her own home;

(7) a delineation of the hospice's responsibilities, which include providing medical direction and management of the client; nursing; counseling, including spiritual, dietary and bereavement counseling; social work; medical supplies, durable medical equipment, and drugs necessary for the palliation of pain and symptoms associated with the terminal illness and related conditions; and all other hospice ser-

vices that are necessary for the care of the resident's terminal illness and related conditions;

(8) a provision that the hospice may use the SNF, NF, or ICF/IID nursing personnel where permitted by State [state] law and as specified by the SNF, NF, or ICF/IID to assist in the administration of prescribed therapies included in the plan of care, only to the extent that the hospice would routinely use the services of a hospice client's family in implementing the plan of care;

(9) a provision stating that the hospice must report an alleged violation involving mistreatment, neglect, or verbal, mental, sexual, and physical abuse, including injuries of unknown source, and misappropriation of client property by non-hospice personnel to the SNF, NF, or ICF/IID administrator within 24 hours after the hospice becomes aware of the alleged violation; ~~[and]~~

(10) a delineation of the responsibilities of the hospice and the SNF, NF, or ICF/IID to provide bereavement services to SNF, NF, or ICF/IID staff; ~~and~~ ~~[.]~~

(11) a provision regarding management and disposal, in compliance with applicable law, of drugs, including controlled substance prescription drugs and biologicals.

(c) Hospice plan of care. In accordance with §558.821 [§97.821] of this subchapter (relating to Hospice Plan of Care), a written hospice plan of care must be established and maintained in consultation with SNF, NF, or ICF/IID representatives. Hospice care must be provided in accordance with the hospice plan of care.

(1) A hospice plan of care must identify the care and services needed to care for the client and specifically identify which provider is responsible for performing the respective functions that have been agreed upon and included in the hospice plan of care.

(2) A hospice plan of care must reflect the participation of the hospice, representatives of the SNF, NF, or ICF/IID, and the client and family to the extent possible.

(3) Any changes in the hospice plan of care must be discussed with the client or the client's LAR ~~[legally authorized representative]~~, and SNF, NF, or ICF/IID representatives, and must be approved by the hospice before implementation.

(d) Coordination of services. In addition to the requirements in §558.288 [§97.288] of this chapter (relating to Coordination of Services) and §558.823 [§97.823] of this subchapter (relating to Coordination of Services by the Hospice), a hospice must:

(1) designate a member of each interdisciplinary team (IDT) that is responsible for a client who is a resident of a SNF, NF, or ICF/IID who is responsible for:

(A) providing overall coordination of the hospice care of the SNF, NF, or ICF/IID resident with SNF, NF, or ICF/IID representatives; and

(B) communicating with SNF, NF, or ICF/IID representatives and other health care providers participating in the provision of care for the terminal illness and related conditions and other conditions to ensure quality of care for the client and family; and

(2) ensure that the hospice IDT communicates with the SNF, NF, or ICF/IID medical director, the client's attending practitioner, and other physicians participating in the provision of care to the client as needed to coordinate hospice care with medical care provided by other physicians; and

(3) provide the SNF, NF, or ICF/IID with:

- (A) the most recent hospice plan of care specific to the client;
- (B) the hospice election form and any advance directives specific to the client;
- (C) physician certification and recertification of the terminal illness specific to the client;
- (D) names and contact information for hospice personnel involved in hospice care of the client;
- (E) instructions on how to access the hospice's 24-hour on-call system;
- (F) hospice medication information specific to the client; and
- (G) hospice physician and, if any, attending practitioner orders specific to the client.

(e) Orientation and training of staff. Hospice personnel must ensure [assure] that SNF, NF or ICF/IID staff who provide care to the hospice's clients have been oriented and trained in the hospice philosophy, including the hospice's policies and procedures regarding methods of comfort, pain control, and symptom management, as well as principles about death and dying, how a person may respond to death, the hospice's client rights, the hospice's forms, and the hospice's record keeping requirements.

(f) Management and disposal of drugs and biologicals. The policies and procedures of the hospice may not impede the SNF, NF, or ICF/IID from adhering to state, federal, and local law applicable to the disposal of drugs and biologicals in a facility.

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 November 30, 2020.

TRD-202005052

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: January 17, 2021

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



## CHAPTER 564. TREATMENT FACILITIES FOR INDIVIDUALS WITH SUBSTANCE-RELATED DISORDERS

### SUBCHAPTER B. LICENSING REQUIREMENTS

#### 26 TAC §564.28

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes new §564.28, concerning Balance Billing.

#### BACKGROUND AND PURPOSE

The proposal is necessary to comply with Senate Bill (S.B.) 1264, 86th Legislature, Regular Session, 2019, which requires HHSC to adopt rules relating to consumer protections against certain medical and health care billing by out-of-network

licensed health care facilities, including abortion facilities, ambulatory surgical centers, birthing centers, chemical dependency treatment facilities, crisis stabilization units, end stage renal disease facilities, freestanding emergency medical care facilities, general and special hospitals, narcotic treatment programs, private psychiatric hospitals, and special care facilities.

#### SECTION-BY-SECTION SUMMARY

The proposed new §564.28 adds language prohibiting a chemical dependency treatment facility from violating a law that prohibits balance billing and requires the chemical dependency treatment facility to comply with S.B. 1264 and related Texas Department of Insurance rules. This change is consistent with the provision in S.B. 1264 requiring HHSC to adopt rules relating to consumer protections against certain medical and health care billing by out-of-network licensed health care facilities.

#### FISCAL NOTE

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

#### GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because there is no requirement to alter current business practices.

#### LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

#### COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule is necessary to protect the health, safety, and welfare of the residents of Texas; does not impose a cost on regulated persons; and is necessary to implement legislation.

#### PUBLIC BENEFIT AND COSTS

David Kostroun, HHSC Deputy Executive Commissioner of Regulatory Services, has determined that for each year of the first five years the rule is in effect, the public will benefit



from increased consumer protections against certain medical and health care billing by out-of-network licensed health care facilities, including abortion facilities, ambulatory surgical centers, birthing centers, chemical dependency treatment facilities, crisis stabilization units, end stage renal disease facilities, free-standing emergency medical care facilities, general and special hospitals, narcotic treatment programs, private psychiatric hospitals, and special care facilities.

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

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4900 North Lamar Boulevard, Austin, Texas 78751; or emailed to HCR\_PRT@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If 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 20R045" in the subject line.

#### STATUTORY AUTHORITY

The new rule is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by the health and human services system; Texas Health and Safety Code §464.009, which authorizes the Executive Commissioner to adopt rules governing organization and structure, policies and procedures, staffing requirements, services, client rights, records, physical plant requirements, and standards for licensed chemical dependency treatment facilities; and Texas Insurance Code §752.0003, which authorizes regulatory agencies to take action against facilities and providers that violate a balance billing prohibition.

The new rule implements Texas Government Code §531.0055, Texas Health and Safety Code Chapter 464, and Texas Insurance Code Chapter 752.

#### §564.28. Balance Billing.

(a) A facility may not violate a law that prohibits the facility from billing a patient who is an insured, participant, or enrollee in a managed care plan an amount greater than an applicable copayment, coinsurance, and deductible under the insured's, participant's, or enrollee's managed care plan or that imposes a requirement related to that prohibition.

(b) A facility shall comply with Senate Bill 1264, 86th Legislature, Regular Session, 2019, and with related Texas Department of Insurance rules at 28 TAC Chapter 21, Subchapter OO, §§21.4901 -

21.4904 (relating to Disclosures by Out-of-Network Providers) to the extent this subchapter applies to the facility.

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 December 2, 2020.

TRD-202005207

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: January 17, 2021

For further information, please call: (512) 834-4591



## CHAPTER 744. MINIMUM STANDARDS FOR SCHOOL-AGE AND BEFORE OR AFTER-SCHOOL PROGRAMS

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §§744.201, 744.305, 744.307, 744.701, 744.801, 744.2575, and 744.2577; and new §§744.203, 744.205, 744.207, 744.309, and 744.311 in Title 26, Texas Administrative Code, Chapter 744, Minimum Standards for School-Age and Before and After-School Programs.

### BACKGROUND AND PURPOSE

The purpose of this proposal is to implement the portions of Senate Bill (S.B.) 568, 86th Legislature, Regular Session, 2019, that amended Chapter 42, Human Resources Code (HRC) to require HHSC Child Care Regulation (CCR) to expand liability insurance requirements and alter reporting requirements for certain incidents and deficiencies.

### SECTION-BY-SECTION SUMMARY

The proposed amendment to §744.201 (1) updates grammar and language for better readability and understanding; (2) replaces an abbreviation with the name of an agency; (3) replaces a citation with a requirement for an operation to comply with proposed new liability rules; and (4) corrects the name of the agency.

Proposed new §744.203 includes the statutory requirement that a child-care operation have liability insurance of at least \$300,000 for each occurrence of negligence that covers injury to a child, unless there is an acceptable reason not to have the insurance. The child-care operation must also submit proof of coverage to Licensing each year.

Proposed new §744.205 lists the statutory exceptions for the liability insurance referred to in proposed new §744.203. The rule also includes the requirement that a child-care operation provide written notification to Licensing if the child-care operation is unable to carry or stops carrying the insurance because of one of the exceptions.

Proposed new §744.207 requires a child-care operation to provide written parental notification if the operation cannot carry the required liability insurance, and the notification must be made (1) before admitting a child; or (2) within 14 days of the liability insurance coverage ending, if the child-care operation previously

carried the liability insurance and subsequently stopped carrying it. The proposed rule also allows a child-care operation to use the form on the Licensing provider website to notify parents.

The proposed amendment to §744.305 (1) specifies that a child-care operation must notify Licensing of an injury to a child that requires medical treatment; (2) adds a requirement for a child-care operation to notify Licensing if a child in care sustains an injury that requires hospitalization or shows signs or symptoms of an illness that requires hospitalization; (3) removes an abbreviation; (4) updates grammar and punctuation throughout the rule for better readability and understanding; and (5) renumbers the rules accordingly.

The proposed amendment to §744.307 (1) adds a requirement for a child-care operation to immediately notify the parent if there is an allegation that the child has been abused, neglected, or exploited; (2) updates language and grammar throughout the rule for better readability and understanding; (3) updates the parental notification requirement regarding injuries to require a child-care operation to notify the parent if the child is injured and requires medical treatment or hospitalization; and (4) adds a requirement for a child-care operation to notify a parent if a child shows signs or symptoms of an illness that requires hospitalization.

Proposed new §744.309 requires a child-care operation to notify the parent of each child attending the child-care operation when Licensing determines the operation has a deficiency in the standard related to the abuse, neglect, or exploitation of a child.

Proposed new §744.311 outlines how a child-care operation is required to notify parents of a deficiency in the standard related to the abuse, neglect, or exploitation of a child in care as required by proposed new §744.309. The proposed rule requires a child-care operation to notify parents in writing within five days of receiving notification of the deficiency and use a prescribed Licensing form for the notification.

The proposed amendment to §744.701 (1) updates the rule title for better readability and understanding; (2) updates grammar for better readability and understanding; (3) adds a form number for the Licensing Incident/Illness Report Form; (4) updates the rule to require a child-care operation to use the Licensing Incident/Illness Report or similar form to document (A) child injuries that require medical treatment or hospitalization; (B) child illnesses that require hospitalization; and (C) incidents of a child in care or employee contracting a communicable disease deemed notifiable by the Texas Department of State Health Services; and (4) renumbers the rule accordingly.

The proposed amendment to §744.801 (1) adds a requirement for a child-care operation to maintain proof that the operation has notified parents in writing that the child-care operation does not carry liability insurance, if applicable; (2) removes an abbreviation; (3) updates a citation; and (4) adds a requirement for a child-care operation to maintain proof that the operation has notified parents in writing of deficiencies in abuse, neglect, or exploitation.

The proposed amendment to §744.2575 (1) updates the rule title for better readability and understanding; (2) clarifies how a child-care operation must respond when a child in care becomes ill but does not require immediate treatment by a health-care professional or hospitalization; and (3) adds requirements regarding how a child-care operation must respond when a child becomes ill while in care and requires immediate treatment by a health-care professional or hospitalization.

The proposed amendment to §744.2577 (1) updates the rule title and language to remove previous requirements involving illnesses, as those requirements are now included in proposed §744.2575; and (2) replaces the word "attention" with "treatment" as it applies to a health-care professional addressing injuries sustained in care.

#### FISCAL NOTE

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

#### GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The rules do not impose any additional costs on small businesses, micro-businesses, or rural communities required to comply with the rules.

#### 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 (1) are necessary to protect the health, safety, and welfare of the residents of Texas; (2) do not impose a cost on regulated persons; and (3) are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

#### PUBLIC BENEFIT AND COSTS

Jean Shaw, Associate Commissioner for Child Care Regulation, has determined that for each year of the first five years the rules are in effect, the public benefit will be compliance with statutory requirements and increased communication and transparency in child-care operations that will allow parents to make a more informed choice when choosing and maintaining a relationship with a child-care operation.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons required to comply with the proposed rules because the

proposal does not implement any new costs or fees on persons required to comply with this rule.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed to Aimee Belden by email at [Aimee.Belden@hhsc.state.tx.us](mailto:Aimee.Belden@hhsc.state.tx.us).

Written comments on the proposal may be submitted to Aimee Belden, Rules Writer, Child Care Regulation, Texas Health and Human Services Commission, E-550, P.O. Box 149030, Austin, Texas 78714-9030; or by email to [CCLRules@hhsc.state.tx.us](mailto:CCLRules@hhsc.state.tx.us).

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be post-marked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 20R026" in the subject line.

## SUBCHAPTER B. ADMINISTRATION AND COMMUNICATION

### DIVISION 1. PERMIT HOLDER RESPONSIBILITIES

#### 26 TAC §§744.201, 744.203, 744.205, 744.207

#### STATUTORY AUTHORITY

The amendments and new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies.

The amendments and new sections affect Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

*§744.201. What are my responsibilities as the permit holder?*

You are responsible for ~~the following~~:

- (1) Developing and implementing your operational policies, which must comply with or exceed the minimum standards specified in this subchapter;
- (2) Developing written personnel policies, including job descriptions, job responsibilities, and requirements;
- (3) Making provisions for training that comply with Division 4, Subchapter D of this chapter (relating to Professional Development);
- (4) Designating an operation director, program director, or site director, as applicable, who meets minimum standard qualifications as specified in Subchapter D of this chapter;
- (5) Reporting and ensuring your employees and volunteers report suspected abuse, neglect, or exploitation directly to the Texas Department of Family and Protective Services [DFPS] and may not

delegate this responsibility, as required by ~~the~~ Texas Family Code §261.101;

(6) Ensuring all information related to background checks is kept confidential, as required by the Human Resources Code §40.005(d) and (e);

(7) Ensuring parents ~~can~~ have the opportunity to visit the operation any time during your hours of operation to observe their child, program activities, the building, the premises, and the equipment without having to secure prior approval;

(8) ~~Complying with the~~ Maintaining liability insurance requirements in this division~~;~~ as required by the Human Resources Code §42.049, if we license you to care for 13 or more children;

(9) Complying with the child-care licensing law found in Chapter 42 of the Human Resources Code, the applicable minimum standards, and other applicable rules in the Texas Administrative Code;

(10) Reporting to Licensing ~~DFPS~~ any Department of Justice substantiated complaints related to Title III of the Americans with Disabilities Act, which applies to commercial public accommodations; and

(11) Ensuring the total number of children in care at the operation or away from the operation, such as during a field trip, never exceeds the licensed capacity of the operation.

*§744.203. What are the liability insurance requirements?*

Unless you have an acceptable reason not to have the insurance, you must:

(1) Have liability insurance coverage:

(A) Of at least \$300,000 for each occurrence of negligence; and

(B) That covers injury to a child that occurs while the child is in your care, regardless of whether the injury occurs on or off the premises of your operation; and

(2) Provide proof of coverage to Licensing each year by the anniversary date of the issuance of your permit.

*§744.205. What are acceptable reasons not to have liability insurance?*

(a) You do not have to have liability insurance that meets the requirements of §744.203 of this division (relating to What are the liability insurance requirements?) if you cannot carry insurance because:

(1) Of financial reasons;

(2) You are unable to locate an underwriter who is willing to issue a policy to the operation; or

(3) You have already exhausted the limits of a policy that met the requirements.

(b) If you cannot carry liability insurance or stop carrying the insurance because of a reason listed in subsection (a) of this section, you must send written notification to Licensing by the anniversary date of the issuance of your permit. Your notification must include the reason that you cannot carry the insurance.

*§744.207. When must I notify parents that I do not carry liability insurance?*

(a) If you do not carry liability insurance that meets the requirements of §744.203 of this division (relating to What are the liability insurance requirements?), then you must notify the parent of each child in your care in writing that you do not carry liability insurance before you admit the child into your care.

(b) If you previously carried the liability insurance and subsequently stop carrying the liability insurance, then you must notify the parent of each child in your care in writing that you do not carry the insurance, within 14 days after you stop carrying it.

(c) You may use Form 2962, Verification of Liability Insurance, located on the Licensing provider website, to notify parents. Regardless of whether you use this form, you must be able to demonstrate that you provided written notice to the parents of each child in your care, as required in §744.801(5) of this chapter (relating to What records must I keep at my operation?).

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 December 2, 2020.

TRD-202005118

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: January 17, 2021

For further information, please call: (512) 438-3269



## DIVISION 2. REQUIRED NOTIFICATIONS

### 26 TAC §§744.305, 744.307, 744.309, 744.311

#### STATUTORY AUTHORITY

The amendments and new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies.

The amendments and new sections affect Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

#### *§744.305. What other situations require notification to Licensing?*

(a) You must notify us as soon as possible, but no later than two days after:

(1) Any occurrence that renders all or part of your operation unsafe or unsanitary for a child;

(2) Injury to a child in your care that requires medical treatment by a health-care professional or hospitalization;

(3) A child in your care shows signs or symptoms of an illness that requires hospitalization;

(4) [(3)] You become aware that an employee or child in your care contracts an illness deemed notifiable by the Department of State Health Services [(DSHS)], as specified in 25 TAC Chapter 97, Subchapter A (relating to Control of Communicable Diseases);

(5) [(4)] A person for whom [which] you are required to request a background check, under Chapter 745, Subchapter F of this title (relating to Background Checks), is arrested or charged with a crime;

(6) [(5)] The occurrence of any other situation that [which] places a child at risk, such as forgetting a child in an operation vehicle or on the playground or not preventing a child from wandering away from the operation unsupervised; and

(7) [(6)] A new individual becomes a controlling person at your operation, or an individual that was previously a controlling person ceases to be a controlling person at your operation.

(b) You must notify us immediately if a child dies while in your care.

#### *§744.307. What emergency or medical situations must I notify parents about?*

(a) You must notify the parent of a child immediately if there is an allegation that the child has been abused, neglected, or exploited, as defined in Texas Family Code §261.001, while in your care.

(b) [(a)] After you ensure the safety of the child, you must notify the parent of the child immediately after the [a] child:

(1) Is injured and the injury requires medical treatment [attention] by a health-care professional or hospitalization;

(2) Shows signs or symptoms of an illness that requires hospitalization;

[(2) Has a sign or symptom requiring exclusion from the operation as specified in Subchapter K of this chapter (relating to Health Practices);]

(3) Has been involved in any situation that placed the child at risk. For example, a caregiver forgetting the [a] child in an operation vehicle or on the playground or failing to prevent the [not preventing a] child from wandering away from the operation unsupervised; or

(4) Has been involved in any situation that renders the operation unsafe, such as a fire, flood, or damage to the operation as a result of severe weather.

(c) [(b)] You must notify the parent of less serious injuries when the parent picks the child up from the operation. Less serious injuries include [, but are not limited to,] minor cuts, scratches, and contusions requiring first-aid treatment by employees.

(d) [(c)] You must provide written notice to the parent of each child attending [notify all parents of children in] the operation [in writing and] within 48 hours of becoming aware that a child in your care or an employee has contracted a communicable disease deemed notifiable by the Department of State Health Services, as specified in 25 TAC Chapter 97, Subchapter A (relating to Control of Communicable Diseases).

(e) [(d)] You must provide written notice to the parent of each child in a group within 48 hours [to the parents of all children in a group] when there is an outbreak of lice or other infestation in the group. You must either post this notice in a prominent and publicly accessible place where parents can easily view it or send an individual note to each parent.

#### *§744.309. What are the notification requirements when Licensing finds my operation deficient in the standard related to the abuse, neglect, or exploitation of a child?*

You must notify the parent of each child attending your child-care operation of a deficiency in the abuse, neglect, or exploitation standard in §744.1201(4) of this chapter (relating to What general responsibilities do my employees have?).

#### *§744.311. How must I notify parents of an abuse, neglect, or exploitation deficiency?*

Within five days after you receive notification of a deficiency described in §744.309 of this division (relating to What are the notification requirements when Licensing finds my operation deficient in the standard related to the abuse, neglect, or exploitation of a child?), you must use Form 7266, Notification of Abuse/Neglect/Exploitation Deficiency, located on the Licensing provider website, to notify the parents of each

child attending your child-care operation at the time of the notification, including a child who may not have been in care on the day of the actual incident.

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 C. RECORD KEEPING

### DIVISION 2. RECORDS OF ACCIDENTS AND INCIDENTS

#### 26 TAC §744.701

##### STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies.

The amendment affects Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

*§744.701. What [Must I keep a] written records must I keep [record] of accidents and incidents that occur at my operation?*

You must record the following information on [use] the [a] Licensing Incident/Illness Report Form 7239 or another [other] form that contains [containing] at least the same information[, to record information regarding]:

(1) An injury to a child in care [Injuries or illness] that required medical treatment [attention] by a health-care professional or hospitalization [while the child is in care; and];

(2) An illness that required the hospitalization of a child in care;

(3) An incident of a child in care or employee contracting a communicable disease deemed notifiable by the Texas Department of State Health Services as specified in 25 TAC Chapter 97, Subchapter A (relating to Control of Communicable Diseases); and

(4) [(2)] Any other situation that placed a child at risk, such as forgetting a child in an operation's vehicle or not preventing a child from wandering away from the operation unsupervised.

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### DIVISION 3. RECORDS THAT MUST BE KEPT ON FILE AT THE OPERATION

#### 26 TAC §744.801

##### STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies.

The amendment affects Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

*§744.801. What records must I keep at my operation?*

You must maintain and make the following records available for our review, upon request, during your hours of operation. Paragraphs (13), (14), and (15) of this section are optional, but if provided will allow Licensing to avoid duplicating the evaluation of standards that have been evaluated by another state agency within the past year:

(1) Children's records, as specified in Division 1 of this subchapter (relating to Records of Children);

(2) Personnel and training records according to Division 4 of this subchapter (relating to Personnel Records);

(3) Licensing Director's Certificate;

(4) Attendance records or time sheets listing all days and hours worked for each employee;

(5) Proof of current [Verification of] liability insurance coverage or, if applicable, that you have provided written notice to the parent of each child that you do not carry the insurance [or notice of unavailability, if applicable];

(6) Medication records, if applicable;

(7) Playground maintenance checklists;

(8) Pet vaccination records, if applicable;

(9) Safety documentation for emergency drills, fire extinguishers, and smoke detectors;

(10) Most recent fire inspection report, including any written approval from the fire marshal to provide care above or below ground level, if applicable;

(11) Most recent sanitation inspection report, if applicable;

(12) Most recent gas inspection report, if applicable;

(13) Most recent Texas Department of State Health Services[] immunization compliance review form, if applicable;

(14) Most recent Texas Department of Agriculture Child and Adult Care Food Program [(CACFP)] report, if applicable;

(15) Most recent local workforce board Child-Care Services contractor inspection report, if applicable;

(16) Record of pest extermination, if applicable; [and]

(17) A daily tracking system for when a child's care begins and ends, as specified in §744.627 of this subchapter [title] (relating to Must I have a system for signing children in and out of my care?); and

(18) Proof that you have notified parents in writing of deficiencies in abuse, neglect, or exploitation, as specified in §744.309 of this chapter (relating to What are the notification requirements when Licensing finds my operation deficient in the standard related to the abuse, neglect, or exploitation of a child?) and in §744.311 of this chapter (relating to How must I notify parents of an abuse, neglect, or exploitation deficiency?).

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## SUBCHAPTER K. HEALTH PRACTICES

### DIVISION 3. ILLNESS AND INJURY

#### 26 TAC §744.2575, §744.2577

#### STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies.

The amendments affect Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

*§744.2575. How must caregivers respond when [What if] a child becomes ill [while in care]?*

(a) If a child becomes ill while in your care but does not require immediate treatment by a health-care professional or hospitalization, you must:

- (1) Contact the parent to pick up the child;
- (2) Care for the child apart from other children;
- (3) Give appropriate attention and supervision until the parent picks the child up; and
- (4) Give extra attention to hand washing and sanitation if the child has diarrhea or vomiting.

(b) If a child becomes ill while in your care and requires immediate treatment by a health-care professional or hospitalization, you must:

- (1) Contact emergency medical services (or take the child to the nearest emergency room after you have ensured the supervision of other children in the group);
- (2) Give the child first-aid treatment or CPR when needed;
- (3) Contact the child's parent;

(4) Contact the physician or other health-care professional identified in the child's record; and

(5) Ensure the supervision of other children in the group.

*§744.2577. How must [should] caregivers respond when a child is injured and [to an illness or injury that] requires [the] immediate treatment by [attention of] a health-care professional?*

For an [illness or] injury that requires [the] immediate treatment by [attention of] a health-care professional, you must:

(1) Contact emergency medical services (or take the child to the nearest emergency room after you have ensured the supervision of other children in the group);

(2) Give the child first-aid treatment or CPR when needed;

(3) Contact the child's parent;

(4) Contact the physician or other health-care professional identified in the child's record; and

(5) Ensure supervision of other children in the group.

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## CHAPTER 745. LICENSING

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §§745.11, 745.21, 745.101, 745.115, 745.117, 745.119, 745.125, 745.127, 745.129, 745.131, 745.135, 745.141, 745.143, 745.211, 745.215, 745.241, 745.243, 745.249, 745.251, 745.273, 745.275, 745.323, 745.325, 745.341, 745.345, 745.347, 745.349, 745.351, 745.353, 745.371, 745.373, 745.375, 745.379, 745.385, 745.403, 745.429, 745.431, 745.433, 745.435, 745.437, 745.461, 745.464, 745.467, 745.471, 745.473, 745.475, 745.477, 745.481, 745.483, 745.8600, 745.8601, 745.8603, 745.8605, 745.8607, 745.8609, 745.8611, 745.8613, 745.8631, 745.8633, 745.8637, 745.8641, 745.8643, 745.8649, 745.8650, 745.8651, 745.8652, 745.8654, 745.8659, 745.8661, 745.8681, 745.8685, 745.8687, 745.8711, 745.8713, and 745.8715; new §§745.253, 745.255, 745.301, 745.321, 745.339, 745.340, 745.343, 745.344, 745.355, 745.436, 745.478, 745.485, 745.487, 745.489, 745.8635, 745.8653, 745.8655, 745.8656, 745.8657, 745.8683, and 745.8714; and the repeal of §§745.253, 745.279, 745.301, 745.321, 745.343, 745.383, 745.407, 745.485, 745.8635, 745.8639, 745.8653, 745.8655, 745.8657, and 745.8683 in Title 26, Texas Administrative Code (TAC), Chapter 745, Licensing.

#### BACKGROUND AND PURPOSE

Certain bills from the 86th Legislature, Regular Session, 2019, amended Chapter 42, Texas Human Resources Code (HRC).

The purpose of this proposal is to implement those amendments as they apply to TAC Chapters 745 and 748.

Senate Bill (S.B.) 568 amended (1) HRC §42.049 to (A) extend liability insurance requirements to registered and licensed child-care homes; and (B) add a requirement that all operation types provide timely notice to the parents of each child in care if an operation does not carry the required insurance; (2) HRC §42.050 and §42.052 to create a more robust process for evaluating renewal applications; (3) HRC §42.072 to add "refusal to renew a permit" as a type of adverse action that will affect a person's ability to apply for a permit for a period of five years; and (4) HRC §42.078 to provide additional bases for issuing an administrative penalty and the recommended amounts for those penalties.

S.B. 569 (1) created HRC §42.0495 to establish liability insurance requirements for listed family homes, including a requirement that a home provide timely notice to the parents of each child in care if a home does not carry the required insurance; and (2) amended HRC §42.046 to add a safe sleep training requirement for listed family home applicants.

S.B. 781 (1) amended HRC §42.071 to eliminate "evaluation" as a type of enforcement action that Child Care Regulation (CCR) can take against an operation, and amended a multitude of other sections to eliminate the mention of "evaluation" in HRC Chapter 42; (2) amended HRC §42.072 to prohibit CCR from issuing a permit to an applicant for five years from when the applicant voluntarily closes or relinquishes a permit after receiving notice that CCR was taking a certain type of enforcement action; and (3) created Chapter 42, Subchapter H, which contains requirements for a General Residential Operation (GRO) that will provide treatment services to children with emotional disorders, including: (A) a requirement that an application must include an operational plan; (B) guidelines for how CCR must evaluate or deny a permit; and (C) a public hearing for a renewal permit upon request by the Commissioner's Court located in the same county as the GRO.

House Bill (H.B.) 3390 amended an exemption in HRC §42.041 that applies to a child or sibling group that is placed by the Department of Family and Protective Services.

H.B. 4090 amended HRC §42.048 to state that a change in location for a school-age program operating exclusively during the summer or any other time school is not in session does not automatically revoke the program's license or certification.

These legislative changes impact Subchapters A, C, D, and L of Chapter 745. CCR is also updating these subchapters with non-legislative changes to (1) update names of entities and titles; (2) update citations, including changing all of the figures from Title 40 to Title 26; (3) delete outdated definitions and rules; (4) add definitions for clarity throughout the chapter; (5) update rules to be consistent with current statutes and policy; (6) amend rules so the language is consistent throughout the chapter; and (7) clarify the rules by making them more readable and easier to understand.

#### SECTION-BY-SECTION SUMMARY

The proposed amendment to §745.11 updates the meaning of "Licensing" to be the Child Care Regulation department of HHSC.

The proposed amendment to §745.21 (1) updates the citations in the definitions for "abuse," "child day care," "consanguinity,"

"controlling person," "designated perpetrator," "exploitation," "licensed administrator," "minimum standards," "neglect," "residential child care," "State Office of Administrative Hearings," and "sustained perpetrator"; (2) adds new definitions and updates other definitions to be more consistent with the current application process and the wording in this chapter, including the definitions for "business entity," "child-placing agency," "governing body," "governmental entity," "operation," "owner," and "permit holder"; (3) updates the definition for "caregiver" to be consistent with other Licensing chapters; (4) updates the definition for "deficiency": (A) for consistency throughout the chapter; and (B) by deleting a condition of evaluation or suspension from the definition, because S.B. 781 deletes evaluation as a type of enforcement action and conditions are not appropriate for a suspension; (5) deletes the definition for "governing body designee" and replaces it with an updated definition for "designee" that is more consistent with the current application process; (6) deletes the definitions for "division" and "kindergarten-age" because they are no longer necessary; (7) updates the definitions for "finding," "full license," "full permit," "initial license," "pre-kindergarten age child," "regulation," and "report" for consistency throughout the chapter; (8) adds a new definition for "school-age child" that is used several times throughout the chapter; (9) updates the definition for "employee," "household member," "parent," "permit," and many of the other definitions already addressed above to be more readable and easier to understand; and (10) updates the numbering of the definitions accordingly.

The proposed amendment to §745.101 (1) deletes the definition for "kindergarten-age" as no longer necessary because that term is not used in this subchapter; (2) deletes the definition for "pre-kindergarten age child" as no longer necessary because it has been moved to proposed amended §745.21(35) and updated to be more readable and easier to understand; (3) adds a definition for "three-consecutive weeks" that applies to a short term exemption at §745.117(2); and (4) updates the numbering of the definitions accordingly.

The proposed amendment to §745.115 (1) updates the title number of the figure; (2) updates the names of entities; and (3) renumbers the exemptions accordingly.

The proposed amendment to §745.117 (1) updates the title number of the figure; and (2) updates the religious program exemption to be more consistent with the statutory exemption at Human Resources Code (HRC) §42.041(b)(4).

The proposed amendment to §745.119 (1) updates the title number of the figure; and (2) updates the private educational facility exemption to be more consistent with the statutory exemption at HRC §42.041(b)(11) and to improve readability and understanding.

The proposed amendment to §745.125 updates a citation and updates the rule to improve readability and understanding.

The proposed amendment to §745.127 (1) updates the rule to improve readability and understanding; and (2) clarifies that a current list of members must be provided to Licensing every six months.

The proposed amendment to §745.129 (1) updates the title number of the figure; and (2) implements H.B. 3390 by updating the statutory exemption for a child or sibling group placed by the Department of Family and Protective Services.

The proposed amendment to §745.131 (1) updates the rule to improve readability and understanding; and (2) corrects a citation.

The proposed amendment to §745.135 (1) updates the rule to improve readability and understanding; (2) clarifies when Licensing may file suit for a civil penalty and injunctive relief; (3) clarifies that there are criminal penalties for operating without a permit.

The proposed amendment to §745.141 updates the rule so the wording is consistent throughout the chapter.

The proposed amendment to §745.143 corrects a citation.

The proposed amendment to §745.211 (1) updates the rule to improve readability and understanding; (2) clarifies that a pre-application interview is not required for an application for a listing or a compliance certificate; and (3) updates the application process to be consistent with current policy by requiring an inspection of the operation, except for a listed family home, to determine whether it is in compliance with minimum standards.

The proposed amendment to §745.215 clarifies that the group meeting or class portion of the pre-application meeting is no longer known as "orientation" and may be conducted online or through a virtual meeting.

The proposed amendment to §745.241 requires a GRO that provides, or will provide, treatment services to children with emotional disorders to submit a new application when requesting to amend their permit to increase capacity or to begin providing treatment services to children with emotional disorders. This amendment is consistent with Licensing's interpretation of S.B. 781.

The proposed amendment to §745.243 (1) updates the title number of the figure; (2) updates the title of each form and the form number, as applicable, for each application; (3) updates the wording for completed background checks to be consistent for each application; (4) implements S.B. 568 and S.B. 569 by adding or updating the application insurance requirements and citations, except for applications for compliance certificates or certifications; (5) implements S.B. 569 by requiring an applicant for a listed family home to provide proof of safe sleeping training; (6) updates the wording for an application fee to be consistent for each application; (7) for an application for a registration, updates the wording for pediatric CPR, pediatric first-aid with rescue breathing and choking, and pre-application interview; (8) updates citations throughout; (9) adds a requirement for certain operations to complete a pre-application interview within one year prior to the date of application; and (10) for an application for a license to operate a residential child-care operation: (A) adds a requirement to submit a completed designation form; and (B) implements S.B. 781 by requiring an applicant for a GRO that will provide treatment services to children with emotional disorders to submit a GRO Additional Operation Plan.

The proposed amendments to §745.249 and §745.251 incorporate portions of the proposed repeal of §745.253 and implement S.B. 568 and S.B. 569 by updating the liability insurance requirements to: (1) clarify that in addition to other licensed operations, the insurance requirement now also applies to a licensed child-care home, registered child-care home, and listed family home; (2) clarify that the insurance must cover an injury of a child that occurs on or off the premises of the operation; (3) clarify that proof of coverage must be provided to Licensing each year by the anniversary date of the issuance of a permit; (4) clarify that if an operation cannot carry the insurance, then the operation

must submit with the application a statement that the operation cannot carry the insurance and the acceptable reason the operation cannot carry the insurance; and (5) update the rules to improve the readability and understanding. These requirements do not apply to a listed family home that only provides care to related children and is receiving a child care subsidy from the Texas Workforce Commission.

Proposed new §745.253 incorporates portions of the proposed repeal of §745.253 and implements S.B. 568 and S.B. 569 by requiring an operation that does not carry the required liability insurance to notify a child's parent in writing that the operation does not carry the insurance before admitting a child into care.

The proposed repeal of §745.253 deletes the rule as no longer necessary, because the content of the rule has been added to proposed amended §745.251 and proposed new §745.253.

Proposed new §745.255 implements S.B. 569 by requiring an applicant for a permit to operate a listed family home to complete one hour of safe sleeping training.

The proposed amendment to §745.273 (1) updates subsection (a) to better conform the rule to updated §745.241; (2) updates citations; and (3) implements S.B. 781 by clarifying that a GRO that intends to provide treatment services to children with emotional disorders is not exempt from the public notice and hearing requirements.

The proposed amendment to §745.275 (1) updates the title number of the figure; (2) implements S.B. 781 by clarifying that a description of the population served is not required in a public notice when the operation will be providing trafficking victim services; (3) implements S.B. 781 by clarifying that public notice of a hearing cannot be published until Licensing approves the GRO's Additional Operation Plan and either accepts the application or evaluates the request to amend; and (4) adds subsection (b) to allow remote public hearings in areas of the state that are subject to an active declaration of a state of disaster under Texas Government Code, Chapter 418.

The proposed repeal of §745.279 deletes the rule as no longer necessary, because the content of the rule has been added to proposed in new §745.339 and §745.340.

Proposed new §745.301 (1) includes the content from proposed repealed §745.301 with updates to simplify the structure of the rule for better readability and understanding; and (2) to be consistent with current policy, adds two notification options for Licensing after review of an application, including that there is good cause to delay the determination on the application and that the applicant is ineligible for a permit.

The proposed repeal of §745.301 deletes the rule as no longer necessary, because the content has been updated and moved to proposed new §745.301.

The title of Division 6 of Subchapter D has been renamed to be more specific. The title is now Time Frames for Issuing or Denying a Permit.

Proposed new §745.321 incorporates the proposed repeal of §745.321 and more specifically states the timeframes Licensing has to issue or deny a permit: (1) for all permits other than a compliance certificate, two months after accepting an application, unless there is good cause to exceed the timeframe; and (2) for a compliance certificate, 30 after accepting an application, unless there is good cause to exceed the timeframe.



The proposed repeal of §745.321 deletes the rule as no longer necessary, because the content of the rule has been added to proposed new §745.321 with more specific wording.

The proposed amendment to §745.323 updates the titles of the individuals mentioned in the rule.

The proposed amendment to §745.325 (1) broadens the time-frame for filing a complaint regarding the time Licensing is taking to issue or deny a permit from 30 days after Licensing's time limit expires to before we issue or deny the operation a permit; and (2) updates the titles of individuals and the name of the agency mentioned in the rule.

Proposed new §745.339 (1) incorporates the proposed repeal of §745.279(a); (2) clarifies that when determining whether to issue or deny a permit, Licensing will also consider the on-site inspection, which is currently required by policy; (3) clarifies additional requirements Licensing will consider when a public hearing is required; and (4) implements S.B. 781 by adding requirements for Licensing to consider when issuing or amending a permit for a GRO that will provide treatment services to children with emotional disorders, including: (A) the Additional Operation Plan; (B) evidence of community support or opposition; and (C) the impact statement from the school district.

Proposed new §745.340 (1) incorporates the proposed repeal of §745.279(b); and (2) implements S.B. 781 by clarifying that Licensing may deny a permit to an applicant for a GRO that provides treatment services to children with emotional disorders if there is a significant impact to the local school district.

The proposed amendment to §745.341 (1) updates the rule to improve readability and understanding; (2) deletes certification as an operation that we issue a full permit to in order to comply with Licensing's interpretation of requirements for these operations under HRC, Chapter 42; (3) updates subsection (b) by adding two new citations, which also makes the section more consistent with other rules in the division; and (4) establishes that an applicant for a certification must go through the same requirements as an applicant for a full license, including an initial certification before being issued a full certification, if appropriate. Finally, the rule clarifies that the rules in this division relating to an initial license also apply to an initial certification.

Proposed new §745.343 establishes the difference between an initial license and a full license.

The proposed repeal of §745.343 deletes the rule as no longer necessary, because the content has been clarified and added to proposed new §745.343 and §745.344.

Proposed new §745.344 states that a full permit will remain valid if: (1) renewal requirements are met; (2) the permit is not automatically suspended or revoked; (3) the permit is not suspended, revoked, or not renewed; and (4) the operation does not voluntarily relinquish the permit or close.

The proposed amendment to §745.345 updates the rule to make it consistent with current policy by clarifying that Licensing issues an initial license when the operation is in compliance with applicable minimum standards, rules, and statutes, but Licensing has not been able to evaluate the operation's ability to comply with all minimum standards, rules, and statutes relating to children in care because the operation: (1) is not currently providing care to children; or (2) has been operating without a license.

The proposed amendment to §745.347 renumbers the subsections and updates the rule to improve readability and understanding.

The proposed amendment to §745.349 updates the rule to be more specific, including adding a specific citation.

The proposed amendment to §745.351 updates citations and improves readability and understanding.

The proposed amendment to §745.353 updates the rule to improve readability and understanding and updates a title.

Proposed new §745.355 clarifies that Licensing may issue a full license instead of an initial license if it is unnecessary to evaluate an operation's ability to comply with minimum standards, rules, and statutes, including when (1) there is a change in ownership, but minimal changes to the operation; (2) there is a change in location, but the new location complies with minimum standards; or (3) recent compliance was demonstrated, but the operation had to withdraw and submit a new application.

The proposed amendment to §745.371 updates the rule to be consistent with the new minimum standards for listed family homes required by S.B. 569. A registration or listing must be in the name of the primary caregiver.

The proposed amendment to §745.373 updates the rule to improve readability and understanding.

The proposed amendment to §745.375 (1) updates the rule to improve readability and understanding; (2) updates titles; and (3) clarifies that the designee of a Licensing Director, not just the Director, may also approve a registration or listing for an agency foster home.

The proposed amendment to §745.379 (1) clarifies that an operation can only have one day care license at the same location; and (2) deletes a grandfather clause that is outdated and no longer necessary.

The proposed repeal of §745.383 deletes the rule as no longer necessary, because the content of the rule is already included in the minimum standards for licensed and registered child-care homes.

The proposed amendment to §745.385 updates the rule to improve readability and understanding.

The proposed amendment to §745.403 (1) adds "refusal to renew a permit" as a type of adverse action that will affect a person's ability to apply for a permit, to implement S.B. 568; (2) clarifies that a person is eligible to apply for a permit after the fifth anniversary of the date on which Licensing denies, revokes, or refuses to renew a permit or the operation voluntarily closes or relinquishes a permit after receiving notice that Licensing intends to or was denying, revoking, or refusing to renew a permit, which also adds the proposed repeal of §745.8605(15)(B) to this rule and implements S.B. 781; and (4) clarifies when this rule does not apply, including for automatic revocations and when your permit expires.

The proposed repeal of §745.407 deletes the rule as no longer necessary, because a revocation notice is no longer published in a newspaper, therefore, there is no reason to reimburse Licensing for the cost of publishing.

The proposed amendment to §745.429 makes the use of the term "compliance certificate" more consistent throughout the subchapters.

The proposed amendment to §745.431 (1) makes the use of the term "listing" more consistent throughout the subchapters; (2) clarifies when Licensing must be notified upon relocation; and (3) deletes the requirement that notification must be on a specific Licensing form.

The proposed amendment to §745.433 (1) makes the use of the term "registration" more consistent throughout the subchapters; (2) clarifies when Licensing must be notified upon relocation; and (3) deletes the requirement that notification must be on a specific Licensing form.

The proposed amendment to §745.435 (1) clarifies that this rule only applies to "licenses" and "certifications"; and (2) adds language to implement H.B. 4090 by indicating a change in location for a school-age program operating exclusively during the summer or any other time school is not in session does not automatically revoke the program's license or certification.

Proposed new §745.436 places in rule the statutory requirement that a change in the ownership of an operation with a license results in the automatic revocation of the license.

The proposed amendment to §745.437 (1) updates the wording to clarify that an automatic revocation due to a change in ownership only applies to a license; (2) updates the wording of the rule to be consistent with the new definition for "business entity" and the amended definition for "permit holder"; (3) clarifies that a change in ownership occurs if a business entity with a permit is acquired by one or more persons or business entities unless subsection (b) of the rule is applicable to the operation; and (4) updates subsection (b) to be consistent with the changes made to §745.355.

The proposed amendment to §745.461 updates the rule to improve readability and understanding.

The proposed amendment to §745.464 updates citations.

The proposed amendment to §745.467 (1) clarifies suspected abuse, neglect, or exploitation must be reported to the Texas Department of Family and Protective Services; and (2) updates citations.

The proposed amendment to §745.471 makes the use of the term "certification" more consistent throughout the subchapters.

The proposed amendment to §745.473 (1) makes the use of the term "certification" more consistent throughout the subchapters; (2) deletes two outdated subsections regarding the timing of renewal applications, and clarifies that renewal applications must be submitted every two years after the date Licensing issues a full permit; and (3) adds a new subsection (b) to clarify that an operation under enforcement action must still timely submit a renewal application.

The proposed amendment to §745.475 expands the renewal application requirements to implement S.B. 568 and S.B. 781 respectively, by requiring: (1) verification that any deficiency with an expired compliance date has been corrected, unless the deficiency is pending due process; (2) verification that all outstanding fees and administrative penalties have been paid; and (3) the application of a general residential operation that provides treatment services for children with emotional disorders to include a written response to any comments made during the hearing regarding the renewal of the operation's license, if a public hearing was required by proposed new §745.487. The amendment also

updates the renewal application requirements to require a validation on the provider website of persons who require a background check and to improve readability and understanding.

The proposed amendment to §745.477(a) implements S.B. 568 and S.B. 781 by requiring Licensing's evaluation of a renewal application to include: (1) any repeated deficiencies or pattern of deficiencies during the past two years; (2) any deficiency with an expired compliance date that has not been corrected, unless the deficiency is pending due process; (3) whether Licensing must visit the operation to determine if all relevant deficiencies have been corrected; and (4) whether a public hearing required by proposed new §745.487 must be held for a general residential operation. The proposed amendment to §745.477(b) also implements S.B. 568 and S.B. 781 by making changes regarding Licensing's notification to an operation after receipt of the renewal application by: (1) lengthening Licensing's timeframe to respond from 15 days to 30 days because of the more robust evaluation process for the renewal applications; (2) adding Licensing's refusal to renew a permit as a possible notification response; (3) clarifying that Licensing's written notification in response to an incomplete renewal application will include (A) an evaluation of any requirement from proposed amended §745.475 that was not met; (B) a list of any requirements that must be completed before Licensing can renew a permit; and (C) a statement that Licensing must hold a public hearing, if applicable. Finally, the proposed amendment (1) deletes a subsection that is no longer needed because proposed new §745.478 addresses when Licensing has good cause to exceed the timeframe for processing a renewal application; and (2) updates the rule to improve readability and understanding.

Proposed new §745.478 incorporates proposed deleted subsection §745.477(e) and allows Licensing to exceed the 30-day timeframe to process a renewal application for good cause when (1) there is a reason to exceed the timeframe for processing an application at §745.327; (2) Licensing is in the process of revoking or suspending the operation's permit; (3) the operation's permit is currently suspended; (4) Licensing recommends or imposes a voluntary plan of action or corrective action plan; (5) Licensing imposes any other appropriate action to address an issue identified at §745.8605; or (6) a public hearing is in the process of being held as required by proposed new §745.487.

The proposed amendment to §745.481 (1) updates the rule to improve readability and understanding; and (2) adds subsection (b) to clarify that if an operation's permit has not expired, then the operation may continue to operate while Licensing processes the renewal application, unless Licensing determines that the operation poses an immediate threat or danger to the health or safety of children.

The proposed amendment to §745.483 updates the rule to improve readability and understanding.

Proposed new §745.485 incorporates the proposed repeal of §745.485 and implements S.B. 568 by clarifying how an enforcement action can affect the renewal of the permit. If Licensing renews a permit for an operation already on a voluntary plan of action or corrective action plan: (1) the operation must continue to meet any requirement relating to the plan; and (2) Licensing's renewal of the permit does not affect Licensing's ability to impose a more serious enforcement action if needed. The proposed amendment also adds a table that describes how certain enforcement actions affect Licensing's ability to renew a permit.

The proposed repeal of §745.485 deletes the rule as no longer necessary, because the content has been added to proposed new §745.485.

Proposed new §745.487 implements S.B. 781 by requiring Licensing to hold a public hearing to obtain public comments regarding the renewal of a general residential operation's license if (1) the operation provides treatment services to children with emotional disorders; and (2) the commissioner's court in the county in which the operation is located submits the public hearing request to Licensing before Licensing renews the license.

Proposed new §745.489 implements S.B. 781 by providing the public hearing requirements for a hearing that must be held by proposed new §745.487: (1) a Licensing representative will facilitate the hearing; and (2) a representative of the general residential operation will attend the hearing; (3) 10 days prior to the scheduled public hearing, Licensing will send a notice of the hearing to the Commissioner's Court and the general residential operation and post the notice on Licensing's consumer website; and (4) Licensing will adopt and provide written procedures for conducting a public hearing. Proposed new §745.489 also allows remote public hearings in areas of the state that are subject to an active declaration of a state of disaster under Texas Government Code, Chapter 418.

The proposed amendment to §745.8600 updates the rule to improve readability and understanding.

The proposed amendment to §745.8601 (1) updates the rule to improve readability and understanding; (2) deletes references to "evaluation" in the rule to implement S.B. 781; and (3) deletes references to "suspension" in the rule, because there are no conditions applied to a suspension.

The proposed amendment to §745.8603 (1) updates the title number of the figure; (2) adds references to divisions that relate to the types of enforcement actions; and (3) updates the rule to improve readability and understanding.

The proposed amendment to §745.8605 (1) updates the rule to improve readability and understanding; (2) implements S.B. 568 by (A) updating the liability insurance wording and citations; and (B) adding a subsection to indicate Licensing can recommend or impose an enforcement action if any deficiency has not been corrected by the compliance date, unless the deficiency is pending due process; (3) requires an operation to cooperate with the Department of Family and Protective Services while it conducts an investigation of an allegation of abuse, neglect, or exploitation; (4) implements S.B. 781 by deleting evaluation as an enforcement action; (5) deletes the requirement for an enforcement action for applying for a permit within five years after a permit has been revoked or an operation has voluntarily closed or relinquished a permit after receiving notice of Licensing's intent to take adverse action, because this requirement has been moved to proposed amended §745.403; and (6) updates citations.

The proposed amendment to §745.8607 updates and adds factors that Licensing will consider when determining which enforcement action to recommend or impose, including: (1) whether a deficiency involved abuse or neglect or resulted in the death or near fatal injury of a child to implement S.B. 781; (2) the severity and frequency of a repetition or pattern of deficiencies; (3) the extent to which a deficiency or repetition or pattern of deficiencies can be corrected; and (4) any aggravating or mitigating factors. The proposed amendment also renumbers many of the subsections and updates the rule to improve readability and understanding.

The proposed amendment to §745.8609 (1) updates the title number of the figure; (2) deletes a reference to "evaluation" to implement S.B. 781; and (3) updates the rule to improve readability and understanding.

The proposed amendment to §745.8611 (1) updates the title number of the figure; (2) deletes "evaluation" as a type of enforcement action to implement S.B. 781; (3) deletes "Up to 120 days" as the timeframe for suspension because this is not mandatory by policy and instead allows Licensing to determine how long a suspension may last based on what is needed to resolve the danger or threat of danger to the health or safety of children; (4) moves the figure's content regarding a "Judicial Action/Temporary Restraining Order" out of the figure and into subsection (b) because the court imposes the timeframe, not Licensing; (5) updates the rule to improve readability and understanding; and (6) renumbers the subsections accordingly.

The proposed amendment to §745.8613 (1) updates the title number of the figure; and (2) updates the rule to improve readability and understanding.

The proposed amendment to §745.8631 (1) updates the title number of the figure; (2) deletes "evaluation" as a type of enforcement action or corrective action to implement S.B. 781; and (3) renumbers the subsection accordingly.

The proposed amendment to §745.8633 (1) incorporates Licensing's assessment requirements for an enforcement action from §745.8607; and (2) updates the rule to improve readability and understanding.

Proposed new §745.8635 replaces the proposed repeal of §745.8639 to better organize the rules numerically with minor updates to make the language consistent throughout the subchapters.

The proposed repeal of §745.8635 deletes the rule as no longer necessary, because "evaluation" as a type of enforcement action was deleted by S.B. 781.

The proposed amendment to §745.8637 (1) incorporates Licensing's assessment requirements for an enforcement action from §745.8607; (2) clarifies when Licensing may place an operation on probation, primarily because "evaluation" is no longer an option prior to probation, and includes when an operation: (A) refuses to participate in a voluntary plan of action; or (B) does not qualify for a voluntary plan of action; (3) updates the rule to improve readability and understanding; and (4) adds a subsection that allows Licensing to consider the compliance history of an owner that is responsible for multiple operations.

The proposed repeal of §745.8639 deletes the rule as no longer necessary, because the content of the rule is being added to proposed new §745.8635.

The proposed amendment to §745.8641 (1) deletes references to "evaluation" to implement S.B. 781; and (2) updates the rule to improve readability and understanding.

The proposed amendment to §745.8643 updates the rule to improve readability and understanding.

The proposed amendment to §745.8649 (1) updates the title number of the figure; and (2) adds "refusal to renew" a permit as an adverse action to implement S.B. 568.

The proposed amendment to §745.8650 (1) incorporates Licensing's assessment requirements for an enforcement action from

§745.8607; (2) corrects citations and a name of an entity; and (3) updates the rule to improve readability and understanding.

The proposed amendment to §745.8651 (1) incorporates Licensing's assessment requirements for an enforcement action from §745.8607; (2) corrects citations; and (3) updates the rule to improve readability and understanding.

The proposed amendment to §745.8652 (1) incorporates Licensing's assessment requirements for an enforcement action from §745.8607; (2) corrects a citation; and (3) updates the rule to improve readability and understanding.

The proposed new §745.8653 replaces the proposed repeal of §745.8653 and describes the options when a suspension period ends. At the end of the suspension period Licensing may either end the suspension or take any further enforcement action based on an assessment of whether: (1) the issues of the suspension have been resolved; (2) any new issues have been identified; and (3) any unresolved or new issue that would pose a danger to the health or safety of children in care.

The proposed repeal of §745.8653 deletes the rule as no longer necessary. The substance of the rule has been changed in proposed new §745.8653.

The proposed amendment to §745.8654 (1) incorporates Licensing's assessment requirements for an enforcement action from §745.8607; (2) corrects citations and the name of an entity; (3) clarifies that Licensing may revoke a permit if risk cannot be reduced by placing the operation on probation or suspending the operation's permit; and (4) updates the rule to improve readability and understanding.

Proposed new §745.8655(a) incorporates Licensing's assessment requirements for an enforcement action from §745.8607 and implements S.B. 568 by stating that Licensing may refuse to renew a permit for an issue identified in §745.8605 if (1) the operation is ineligible for a corrective action; (2) probation or suspension would not resolve the issue or reduce the risk at the operation; (3) a background check result or finding of abuse or neglect makes the operation ineligible for a permit; or (4) Licensing must otherwise refuse to renew the permit to address the issue identified §745.8605. The other portions of proposed new §745.8655 clarify that: (1) Licensing may refuse to renew a permit before or after the renewal period expires; (2) the basis for refusing to renew may be based on grounds that occurred before or after the renewal period expires; (3) if Licensing is refusing to renew a permit, Licensing does not also have to revoke it; (4) if Licensing is revoking a permit before or after the renewal period expires, Licensing does not also have to refuse to renew it; and (5) an operation is entitled to an administrative review and a due process hearing and may continue to operate pending the outcome of due process unless Licensing determines the operation poses an immediate threat or danger to the health or safety of children; and (6) other rules relating to permit renewals can be found in Division 12 of Subchapter D.

The proposed repeal of §745.8655 deletes the rule as no longer necessary, because the content of the rule has been added to proposed new §745.8656.

Proposed new §745.8656 replaces the repeal of §745.8655 to better organize the rules numerically and clarifies that the notice requirements do not apply to a denial.

Proposed new §745.8657 (1) includes the content from the proposed repeal of §745.8657; (2) implements S.B. 568 by adding "refuse to renew" to the list of the adverse actions that requires

Licensing to notify certain entities that an adverse action is being taken; (3) reorganizes and rewrites the content of the rule to improve readability and understanding; and (4) updates the names of entities.

The proposed repeal of §745.8657 deletes the rule as no longer necessary, because the content of the rule has been added to proposed new §745.8657 with added content and a reorganization and rewrite of the rule.

The proposed amendment to §745.8659 (1) implements S.B. 568 by adding "refusal to renew" to the list of the adverse actions that Licensing will publish on its consumer website; and (2) updates the rule to improve readability and understanding.

The proposed amendment to §745.8661 implements S.B. 568 by adding "refusal to renew" to the list of the adverse actions that require parental notification once the action is final.

The proposed amendment to §745.8681 updates the title number in the figure.

Proposed new §745.8683 (1) includes the content from the proposed repeal of §745.8683; (2) reorganizes and rewrites the content of the rule to improve readability and understanding; and (3) updates the names of entities.

The proposed repeal of §745.8683 deletes the rule as no longer necessary, because the content of the rule has been added to proposed new §745.8683 with a reorganization and rewrite of the rule.

The proposed amendment to §745.8685 (1) updates the rule to improve readability and understanding; (2) reorganizes and rewrites the content of the rule, including adding a table, to improve readability and understanding; (3) updates the rule to indicate that parents must pick up their children from a day-care operation or make other arrangements for the care of their children who are in a residential child-care operation "as soon as possible" following a court order to close the operation; and (4) updates the names of entities.

The proposed amendment to §745.8687 (1) deletes the requirement for Licensing to publish notice of a judicial action taken against an operation in a local newspaper and replaces it with a requirement to publish the notice on Licensing's consumer website; and (2) updates the rule to improve readability and understanding.

The proposed amendment to §745.8711 (1) updates the title number in the figure; and (2) corrects citations.

The proposed amendment to §745.8713 (1) makes the use of the term "administrative penalty" more consistent throughout the subchapters; (2) updates the rule to improve readability and understanding; (3) implements S.B. 568 by adding examples of high risk minimum standards, including a deficiency for: (A) the abuse, neglect, or exploitation of a child; (B) a safety hazard; (C) safe sleeping; (D) any standard establishing times for reporting information to a parent or Licensing; and (E) supervision standards, though this high risk standard already existed in HRC §42.078(a-2); and (4) moves website information regarding deficiencies that may result in an administrative penalty to a new subsection.

Proposed new §745.8714 (1) implements current HRC §42.078 by adding two tables, one each for child day care and residential care, which establish that an administrative penalty is based on the maximum number of children the operation is authorized to provide care for or the number of children under the care of a

child-placing agency, and the table lists the number of children and the maximum amount of the penalty; (2) implements S.B. 568 by a third table that establishes specific penalty amounts that Licensing must recommend for certain deficiencies; and (3) specifies whether Licensing may assess or must assess a penalty for each day the deficiency occurs.

The proposed amendment to §745.8715 updates the name of an entity and corrects a citation.

#### FISCAL NOTE

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

#### GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Trey Wood has also determined that there will not be an adverse economic effect on small businesses, micro-businesses, or rural communities, because there is no requirement to alter current business practices.

#### LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

#### COSTS TO REGULATED PERSONS

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

#### PUBLIC BENEFIT AND COSTS

Jean Shaw, Associate Commissioner for Child Care Regulation, has determined that for each year of the first five years the rules are in effect, the public benefit will be the safety of children in care, improvements in the quality of their care, compliance with statutory requirements, and more consistency in child care regulation.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules other than the costs noted under the small businesses and

micro-businesses analysis that applies to new applicants for licensed child-care homes, registered child-care homes, and listed family homes.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed to Gerry Williams by email at [Gerry.Williams@hhsc.state.tx.us](mailto:Gerry.Williams@hhsc.state.tx.us).

Written comments on the proposal may be submitted to Gerry Williams, Rules Writer, Child Care Regulation, Health and Human Services Commission, E-550, P.O. Box 149030, Austin, Texas 78714-9030; or by email to [CCLrules@hhsc.state.tx.us](mailto:CCLrules@hhsc.state.tx.us).

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 20R039" in the subject line.

## SUBCHAPTER A. PRECEDENCE AND DEFINITIONS

### DIVISION 1. DEFINITIONS FOR THE LANGUAGE USED IN THIS CHAPTER

#### 26 TAC §745.11

##### STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Department of Family and Protective Services to HHSC.

The amendment affects Texas Government Code §531.0055 and Texas Human Resources Code, §§42.041(b), 42.042, 42.046, 42.0462, 42.048, 42.049, 42.0495, 42.050, 42.052, 42.0704, 42.071, 42.072, 42.078, 42.251, 42.252, 42.253, and 42.255.

*§745.11. What words must I know to understand this chapter?*

The following words have the following meanings when used in this chapter:

(1) I, my, you, and your--An applicant or permit holder, unless otherwise stated or the context clearly indicates otherwise.

(2) We, us, our, and Licensing--The Child Care Regulation department [Licensing Division] of the Texas Health and Human Services Commission [Texas Department of Family and Protective Services (DFPS)].

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 December 1, 2020.

TRD-202005062

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: January 17, 2021

For further information, please call: (512) 438-3269



## DIVISION 2. DEFINITIONS FOR LICENSING

### 26 TAC §745.21

#### STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Department of Family and Protective Services to HHSC.

The amendment affects Texas Government Code §531.0055 and Texas Human Resources Code, §§42.041(b), 42.042, 42.046, 42.0462, 42.048, 42.049, 42.0495, 42.050, 42.052, 42.0704, 42.071, 42.072, 42.078, 42.251, 42.252, 42.253, and 42.255.

*§745.21. What do the following words and terms mean when used in this chapter?*

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

(1) Abuse--As defined in the Texas Family Code, §261.001(1) [~~§261.401(1)~~] (relating to Definitions) and Texas Administrative Code, Title 40, Chapter 707, Subchapter C, Division 5 (relating to Abuse, Neglect, and Exploitation) [~~Agency Investigation~~] and §745.8557 of this title (relating to What is abuse?).

(2) Affinity--Related by marriage as set forth in Texas [~~the~~] Government Code, §573.024 (relating to Determination of Affinity).

(3) Business entity--May be an association, corporation, nonprofit association, nonprofit corporation, nonprofit association with religious affiliation, nonprofit corporation with religious affiliation, or limited liability company.

(4) [(3)] Capacity--The maximum number of children that a permit holder may care for at one time.

(5) [(4)] Caregiver--A person who is counted in the child to caregiver ratio, whose duties include the supervision, guidance, and protection of a child [~~or children~~].

(6) [(5)] Child--A person under 18 years old.

(7) [(6)] Child-care facility--An establishment subject to regulation by Licensing that [~~which~~] provides assessment, care, training, education, custody, treatment, or supervision for a child who is not related by blood, marriage, or adoption to the owner or operator of the facility, for all or part of the 24-hour day, whether or not the establishment operates for profit or charges for its services. A child-care facility includes the people, administration, governing body, activities on or off the premises, operations, buildings, grounds, equipment, furnishings, and materials. A child-care facility does not include child-placing agencies, listed family homes, employer-based child care operations, or shelter care operations.

(8) [(7)] Child day care--As defined in §745.33 of this chapter [~~title~~] (relating to What is child day care?).

(9) [(8)] Child-placing agency (CPA)--A person, including a sole proprietor, partnership, or business or governmental entity [~~an organization~~], other than the parents of a child, who plans for the placement of or places a child in a child care [~~child-care~~] operation or adoptive home.

(10) [(9)] Children related to the caregiver--Children who are the children, grandchildren, siblings, great-grandchildren, first cousins, nieces, or nephews of the caregiver, whether by affinity or consanguinity or as the result of a relationship created by court decree.

(11) [(10)] Consanguinity--Two individuals are related to each other by consanguinity if one is a descendant of the other; or they share a common ancestor. An adopted child is [~~considered to be~~] related by consanguinity for this purpose. Consanguinity is defined in Texas [~~the~~] Government Code, §573.022 (relating to Determination of Consanguinity).

(12) [(11)] Contiguous operations--Two or more operations that touch at a point on a common border or are located in the same building.

(13) [(12)] Controlling person--As defined in §745.901 of this chapter [~~title~~] (relating to Who is a controlling person at a child-care operation?).

(14) [(13)] Deficiency--Any failure to comply with a minimum standard, rule, statute [~~law~~], specific term of your permit, or condition of your [~~evaluation~~], probation [, or suspension].

(15) [(14)] Designated perpetrator--As defined in §745.731 of this chapter [~~title~~] (relating to What are designated perpetrators and sustained perpetrators of child abuse or neglect?).

(16) Designee--The person named on the application as the designated representative of the operation who is officially authorized by the owner to speak for and act on the operations' behalf.

[(15) Division--The Licensing Division within the Texas Department of Family and Protective Services (DFPS).]

(17) [(16)] Employee--Any person employed by or that contracts with the permit holder, including [~~but not limited to~~] caregivers, drivers, kitchen personnel, maintenance and administrative personnel, and the center or program [~~center/program~~] director.

(18) [(17)] Endanger--To expose a child to a situation where physical or mental injury to a child is likely to occur.

(19) [(18)] Exploitation--As defined in [~~the~~] Texas Family Code, §261.001(3) and Texas Administrative Code, Title 40, Chapter 707, Subchapter C, Division 5 [~~§261.401(2)~~] (relating to Agency Investigation).

(20) [(19)] Finding--The conclusion of a Licensing [~~an~~] investigation or inspection indicating compliance or deficiency with one or more minimum standards, rules, or statutes [~~laws~~].

(21) [(20)] Full license--The type of full permit that is issued to an operation that requires a license. See also §745.341 of this chapter (relating to What type of permit does Licensing issue?) and §745.343 of this chapter (relating to What is the difference between an initial license and a full license?).

(22) [(21)] Full permit--A full permit includes a listing, registration, compliance certificate, or a full license. See also §745.341 and §745.343 of this chapter. [~~is valid as long as it does not expire, if applicable, and is not suspended, revoked, or voluntarily surrendered.~~] A full license is a type of full permit. Other types of full permits include

listings, registrations, certificates, and compliance certificates. An initial license is not a full permit.]

(23) [(22)] Governing body--A group of persons or officers of a business or governmental [The] entity that has [with] ultimate control over the entity [authority and responsibility for the operation].

[(23) Governing body designee--The person named on the application as the designated representative of a governing body who is officially authorized by the governing body to speak for and act on its behalf in a specified capacity.]

(24) Governmental entity--A political subdivision or state agency of Texas.

(25) [(24)] Household member--An individual, other than the caregivers [caregiver(s)], who resides in an operation.

(26) [(25)] Initial license--A time-limited license that we issue to certain applicants for [an operation in lieu of] a full license in situations described in §745.345 of this chapter (relating to When does Licensing issue an initial license?). [; so we can subsequently determine whether to issue or deny a full license to the operation.]

[(26) Kindergarten age--As defined in §745.101(1) of this title (relating to What words must I know to understand this subchapter?)-]

(27) Licensed administrator--As defined in §745.8905 of this chapter [title] (relating to What is a licensed administrator?).

(28) Minimum standards--Minimum requirements for permit holders that are enforced by Licensing to protect the health, safety, and well-being of children. The minimum standards consist of the [The] rules contained in:

(A) Chapter 742 of this title (relating to Minimum Standards for Listed Family Homes;

(B) Chapter 743 of this title (relating to Minimum Standards for Shelter Care); [;]

(C) Chapter 744 of this title (relating to Minimum Standards for School-Age and Before or After-School Programs); [;]

(D) Chapter 746 of this title (relating to Minimum Standards for Child-Care Centers); [;]

(E) Chapter 747 of this title (relating to Minimum Standards for Child-Care Homes); [;]

(F) Chapter 748 of this title (relating to Minimum Standards for General Residential Operations); [;]

(G) Chapter 749 of this title (relating to Minimum Standards for Child-Placing Agencies); [;]

(H) Chapter 750 of this title (relating to Minimum Standards for Independent Foster Homes); [;] and

(I) Subchapter D, Division 11 of this chapter (relating to Employer-Based Child Care) [; which are minimum requirements for permit holders that are enforced by DFPS to protect the health, safety and well-being of children].

(29) Neglect--As defined in the Texas Family Code, §261.001(4) and Texas Administrative Code, Title 40, Chapter 707, Subchapter C, Division 5 [§261.401(3) (relating to Agency Investigation) and §745.8559 of this title (relating to What is neglect?)].

(30) Operation (also known as a child care operation)--A sole proprietor, partnership, [person] or business or governmental entity offering a program that is [may be] subject to Licensing's regulation, including day-care operations and residential child care op-

erations. An operation includes the building and grounds where the program is offered, any person involved in providing the program, and any equipment used in providing the program. An operation includes a child-care facility, child-placing agency, listed family home, employer-based child care operation, [or] shelter care operation, or any operation that requires a permit under Chapter 42, Texas Human Resources Code.

(31) Owner--The sole proprietor, partnership, or business or governmental entity that owns an operation that is subject to regulation by Licensing.

(32) [(31)] Parent--A person who [that] has legal responsibility for or legal custody of a child, including the managing conservator or legal guardian.

(33) [(32)] Permit--A license, certification, registration, listing, compliance certificate, or any other written authorization granted by Licensing to operate a child care operation [child-care facility, child-placing agency, listed family home, employer-based child care operation, or shelter care operation]. This also includes an administrator's license.

(34) [(33)] Permit holder--The owner of the operation that is [person or entity] granted the permit.

(35) [(34)] Pre-kindergarten age child--A child who is three or four years of age before the beginning of the current school year. [As defined in §745.101(1) of this title (relating to What words must I know to understand this subchapter?)-]

(36) [(35)] Program--Activities and services provided by an operation.

(37) [(36)] Regulation--Includes the following:

(A) The development of rules, including minimum standards, as provided by statutory authority; and

(B) The enforcement of requirements that are minimum standards, [these] rules, [ and relevant] statutes, or any condition or restriction we have placed on a permit. Anyone [in relation to anyone] providing or seeking to provide care or a service that is subject to [the] regulation must comply with the applicable requirements. This includes [; including] a permit holder, an applicant for a permit, and anyone providing care or a service [doing so illegally] without the appropriate [a] permit.

(38) [(37)] Report--A communication to Licensing or the Department of Family and Protective Services (DFPS), including the Statewide Intake division of DFPS, of: [An expression of dissatisfaction or concern about an operation, made known to DFPS staff, that alleges a possible violation of minimum standards or the law and involves risk to a child/children in care-]

(A) An allegation of a deficiency in a minimum standard, rule, or statute; or

(B) Any other possible risk to a child in the care of an operation that is subject to regulation by Licensing.

(39) [(38)] Residential child care--As defined in §745.35 of this chapter [title] (relating to What is residential child care?).

(40) School-age child--A child who is five years of age or older and is enrolled in or has completed kindergarten.

(41) [(39)] State Office of Administrative Hearings (SOAH)--See §745.8831 [and §745.8833] of this chapter [title] (relating to What is a due process hearing? [and What is the purpose of a due process hearing?]).

(42) [(40)] Sustained perpetrator--See §745.731 of this chapter [title] (relating to Who [What] are designated perpetrators and sustained perpetrators of child abuse or neglect?).

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 C. OPERATIONS THAT ARE EXEMPT FROM REGULATION

### DIVISION 1. DEFINITIONS

#### 26 TAC §745.101

##### STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Department of Family and Protective Services to HHSC.

The amendment affects Texas Government Code §531.0055 and Texas Human Resources Code, §§42.041(b), 42.042, 42.046, 42.0462, 42.048, 42.049, 42.0495, 42.050, 42.052, 42.0704, 42.071, 42.072, 42.078, 42.251, 42.252, 42.253, and 42.255.

§745.101. *What words must I know to understand this subchapter?*

These words have the following meanings:

[(1) Kindergarten age--At least five years of age on September 1.]

[(2) Pre-kindergarten age--Three and four years of age.]

(1) [(3)] Nearby--A person is in the same building, across the street from, or in the same city block as the operation.

(2) Three consecutive weeks--A 21-day time period that includes the first and last days that a program operates and all of the days in between, regardless of whether the program operates on a particular day.

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## DIVISION 2. EXEMPTIONS FROM REGULATION

### 26 TAC §§745.115, 745.117, 745.119, 745.125, 745.127, 745.129, 745.131, 745.135, 745.141, 745.143

#### STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Department of Family and Protective Services to HHSC.

The amendments affect Texas Government Code §531.0055 and Texas Human Resources Code, §§42.041(b), 42.042, 42.046, 42.0462, 42.048, 42.049, 42.0495, 42.050, 42.052, 42.0704, 42.071, 42.072, 42.078, 42.251, 42.252, 42.253, and 42.255.

§745.115. *What programs regulated by other governmental entities are exempt from Licensing regulation?*

The following programs and facilities are exempt from our regulation:

Figure: 26 TAC §745.115

[Figure: 26 TAC §745.115]

§745.117. *Which programs of limited duration are exempt from Licensing regulation?*

The following programs of limited-duration are exempt from our regulation:

Figure: 26 TAC §745.117

[Figure: 26 TAC §745.117]

§745.119. *What educational facilities are exempt from Licensing regulation?*

The following educational facilities and programs are exempt from our regulation:

Figure: 26 TAC §745.119

[Figure: 26 TAC §745.119]

§745.125. *Are additional exemption criteria required for an educational facility that provides residential child care?*

Yes, if your educational facility offers residential child care, then you must meet the criteria in §745.119 of this division [title] (relating to What educational facilities are exempt from Licensing regulation?) and the following additional criteria to be exempt from our regulation:

(1) Parents must retain primary responsibility for financial support, health problems, or serious personal problems of the students; and

(2) The provision of residential child care must be solely for [the purpose of] facilitating the student's participation in the educational program and must not exist apart from the educational aspect of the facility.

§745.127. *What does an [accrediting] organization need to submit to Licensing to determine exemption from regulation for member [its] educational facilities under §745.119(4) of this division [title] (relating to What educational facilities are exempt from Licensing regulation?)?*



The organization to which an educational facility belongs [~~facilities belong~~] must send the following to us:

(1) Documentation that the organization has its own health, safety, fire, and sanitation standards that are equal to those required for licensed operations, or documentation that the organization requires members to comply with state, county, or municipal health, safety, fire, and sanitation codes;

(2) A monitoring plan to ensure that members comply with either the health, safety, fire, and sanitation standards of the organization or the health, safety, and fire codes of the state, county, or municipality. We must review the monitoring plan of the organization; and

(3) A current list of names and addresses of [~~current~~] members every six months. [~~This list must be updated when new members are accredited or educational facilities cease to be members.~~]

*§745.129. What miscellaneous programs are exempt from Licensing regulation?*

The following miscellaneous programs are exempt from our regulation: Figure: 26 TAC §745.129 [~~Figure: 26 TAC §745.129~~]

*§745.131. How does a person or entity [~~do I~~] request that Licensing determine whether a program is exempt [~~an exemption~~]?*

(a) Except for subsection (b) of this section, a person or entity [~~You~~] must submit:

(1) A [~~a~~] description of the program on a form we provide; and

(2) Additional [~~You must also submit additional~~] documentation to verify that the [~~your~~] program meets the criteria required for an exemption.

(b) An [~~If you think your~~] educational facility that may be [~~is~~] exempt under [~~the provisions of~~] §745.119(1) or (2) [~~§745.119(1), (2), or (3)~~] of this division [~~title~~] (relating to What educational facilities are exempt from Licensing regulation?); then you may contact us to determine whether the facility needs [~~you need~~] to complete an exemption form.

*§745.135. What if Licensing determines that my program does not meet the exemption criteria outlined in this subchapter?*

(a) If we determine that your program does not meet all the criteria for exemption outlined in this division, we will send you a letter stating that you must apply for a permit within certain timeframes. You will then need to [~~If your program does not meet the exemption criteria outlined in this subchapter, you must~~] take immediate steps to follow Licensing instructions to submit [~~apply for a permit~~. ~~We will give you written instructions about submitting~~] an application for a permit within the [~~certain~~] time frames outlined in the letter.

(b) [~~You will be operating illegally if you continue to operate without meeting Licensing requirements.~~] We may file suit in district court for both a civil penalty and injunctive relief if you:

(1) Fail to meet the criteria for an exemption or knowingly engage in activities that require a permit; and [~~license or registration.~~]

(2) Fail to submit an application for a permit.

(c) There are criminal penalties for operating without a permit.

*§745.141. In what circumstances may I apply for a permit even though my program is exempt?*

You may apply for a permit if you must have one for your program to receive public funding. If we issue you a permit, then you must comply

with all minimum standards, rules, and statutes[ ~~rules, and minimum standards~~] that apply to that permit.

*§745.143. If my program is exempt and does not need regulation for funding purposes, can I still obtain a permit from Licensing?*

No, if your program is exempt and we do not regulate it under §745.141 of this division [~~title~~] (relating to In what circumstances may I apply for a permit even though my program is exempt?), we will not issue you a permit.

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## SUBCHAPTER D. APPLICATION PROCESS

### DIVISION 2. STAGES OF THE APPLICATION PROCESS AND PRE-APPLICATION INTERVIEW

#### 26 TAC §745.211, §745.215

#### STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Department of Family and Protective Services to HHSC.

The amendments affect Texas Government Code §531.0055 and Texas Human Resources Code, §§42.041(b), 42.042, 42.046, 42.0462, 42.048, 42.049, 42.0495, 42.050, 42.052, 42.0704, 42.071, 42.072, 42.078, 42.251, 42.252, 42.253, and 42.255.

*§745.211. What are the different parts of the application process?*

The application process includes:

(1) The applicant completing the pre-application interview, except for an application for a:

(A) Listed family home; or

(B) Compliance Certificate;

(2) The applicant submitting [~~submission of~~] the application materials;

(3) The applicant and Licensing completing the public [~~Public~~] notice and hearing requirements for residential child-care operations;

(4) Licensing reviewing [~~Reviewing~~] the application for compliance with minimum standards, rules, and statutes;

(5) Licensing accepting [Accepting] the application as complete, or returning it if incomplete; [and]

(6) Licensing inspecting the applicant's operation and determining whether the operation is in compliance with minimum standards, rules, and statutes, except for listed family homes; and

(7) [(6)] Licensing issuing or denying [The decision to issue or deny] a permit.

§745.215. *How does Licensing conduct the pre-application interview?*

We conduct the pre-application interview in the following ways to meet the needs of both our staff and the applicant:

- (1) A group meeting or [orientation] class, which we may conduct online or through a virtual meeting;
- (2) A Licensing office interview;
- (3) An interview at the applicant's office;
- (4) An interview at the potential operation; or
- (5) A telephone interview, if we cannot handle the interview any other way.

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### DIVISION 3. SUBMITTING THE APPLICATION MATERIALS

**26 TAC §§745.241, 745.243, 745.249, 745.251, 745.253, 745.255**

#### STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Department of Family and Protective Services to HHSC.

The amendments affect Texas Government Code §531.0055 and Texas Human Resources Code, §§42.041(b), 42.042, 42.046, 42.0462, 42.048, 42.049, 42.0495, 42.050, 42.052, 42.0704, 42.071, 42.072, 42.078, 42.251, 42.252, 42.253, and 42.255.

§745.241. *Who must submit the application for a permit?*

(a) The individual or governing body planning to operate the program must return a completed application to us, unless we have determined the program is exempt from regulation.

(b) The governing body of a general residential operation must submit a new application with updated application materials required in

§745.243(6) of this division (relating to What does a completed application for a permit include?), including a completed General Residential Operations - Additional Operation Plan (Form 2960, Attachment C), if the operation:

(1) Currently provides treatment services to children with emotional disorders and is requesting to amend its permit to increase its capacity; or

(2) Does not currently provide treatment services to children with emotional disorders but is requesting to amend its permit in order to provide those services.

§745.243. *What does a completed application for a permit include?*

Application forms vary according to the type of permit. We will provide you with the required forms. Contact your local Licensing office for additional information. The following table outlines the requirements for a completed application:

Figure: 26 TAC §745.243

[Figure: 26 TAC §745.243]

§745.249. *What are the liability insurance requirements [coverage must I have] for a [my] licensed operation, registered child-care home, or listed family home?*

(a) Unless you have an acceptable reason not to have the insurance as specified in §745.251 of this division (relating to What are acceptable reasons not to have liability insurance?), a licensed operation, registered child-care home, or listed family home must:

(1) Have [You must obtain] liability insurance coverage:

(A) Of at least \$300,000 for each occurrence of negligence; and

(B) That covers [for] injury to a child that occurs while the child is in your care, regardless of whether the injury occurs [or] on or off the premises of your [the] operation or home; and [in the amount of at least \$300,000 for each occurrence of negligence. We do not require a certified operation or licensed child-care home to have liability insurance.]

(2) Provide proof of coverage to Licensing each year by the anniversary date of the issuance of your permit.

(b) A listed family home that only provides care to related children under Chapter 313 of the Texas Labor Code (relating to Requirements for Providers of Relative Child Care) does not have to meet these liability insurance requirements.

§745.251. *What are acceptable reasons not to have [for not obtaining] liability insurance?*

(a) You do not have to have liability insurance that meets the requirements of §745.249 of this division (relating to What are the liability insurance requirements for a licensed operation, registered child-care home, or listed family home?) if you cannot carry the insurance because: [Acceptable reasons are:]

(1) Of financial [Financial] reasons;

(2) You are unable to locate [Lack of availability of] an underwriter who is willing to issue a policy to the operation or home; or

(3) You have already exhausted the [Exhaustion of policy] limits of a policy that met the requirements.

(b) If you cannot carry the liability insurance because of a reason listed in subsection (a) of this section, you must submit with your application a statement that you cannot carry the insurance and the reason that you cannot carry the insurance.

§745.253. When must I notify parents that I do not carry liability insurance?

(a) If you do not carry liability insurance that meets the requirements of §745.249 of this division (relating to What are the liability insurance requirements for a licensed operation, registered child-care home, or listed family home?), then you must notify a child's parent in writing that you do not carry the insurance before you admit a child into your care.

(b) You may use Form 2962, Attachment A, Parental Notification of Lack of Required Liability Insurance, located on Licensing's provider website to notify parents. Regardless of whether you use this form, you must be able to demonstrate that you provided written notice to the parent of each child in your care.

§745.255. What safe sleeping training must a person complete when applying to operate a listed family home?

An applicant for a listed family home, including a home that will only provide care and supervision for children related to the primary caregiver, must successfully complete one hour of safe sleeping training that covers the following topics:

(1) Recognizing and preventing shaken baby syndrome and abusive head trauma;

(2) Understanding and using safe sleeping practices and preventing sudden infant death syndrome (SIDS); and

(3) Understanding early childhood brain development.

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

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## **26 TAC §745.253**

### **STATUTORY AUTHORITY**

The repeal is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Department of Family and Protective Services to HHSC.

The repeal affects Texas Government Code §531.0055 and Texas Human Resources Code, §§42.041(b), 42.042, 42.046, 42.0462, 42.048, 42.049, 42.0495, 42.050, 42.052, 42.0704, 42.071, 42.072, 42.078, 42.251, 42.252, 42.253, and 42.255.

§745.253. How does not obtaining liability insurance affect my application for a permit?

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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## **DIVISION 4. PUBLIC NOTICE AND HEARING REQUIREMENTS FOR RESIDENTIAL CHILD CARE [CHILD-CARE] OPERATIONS**

### **26 TAC §745.273, §745.275**

#### **STATUTORY AUTHORITY**

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Department of Family and Protective Services to HHSC.

The amendments affect Texas Government Code §531.0055 and Texas Human Resources Code, §§42.041(b), 42.042, 42.046, 42.0462, 42.048, 42.049, 42.0495, 42.050, 42.052, 42.0704, 42.071, 42.072, 42.078, 42.251, 42.252, 42.253, and 42.255.

§745.273. Which residential child-care operations must meet the public notice and hearing requirements?

(a) Except as specified in subsection (b) of this section, the following [all] general residential operations located in a county with a population of less than 300,000 [applying for a permit to operate or requesting to amend their license to increase capacity] must meet the public notice and hearing requirements: [if they are located in a county with a population of less than 300,000.]

(1) Any general residential operation applying for a license;

(2) Any general residential operation requesting to amend its permit to increase capacity; and

(3) A general residential operation that does not currently provide treatment services to children with emotional disorders but is requesting to amend its permit to begin providing treatment services to children with emotional disorders.

(b) A general residential operation that applies to provide services under [26 TAC] Chapter 748 of this title, Subchapter V (relating to Additional Requirements for Operations that Provide Trafficking Victim Services) is exempt from any public notice and hearing requirements in subsection (a) of this section, unless the general residential operation intends to provide or provides treatment services to children with emotional disorders.

(c) Notwithstanding the exemption provided in [this] subsection (b) of this section, if the operation never provides or ceases to provide trafficking victim services, then the operation must meet the public notice and hearing requirements. To [in order to] meet public notice and hearing requirements, the operation may need to surrender its permit or withdraw its application, as applicable, and reapply.

§745.275. *What are the specific requirements for a public notice and hearing?*

(a) The following chart lists the public notice, hearing requirements, and subsequent report you must complete:

Figure: 26 TAC §745.275(a)

[Figure: 26 TAC §745.275(a)]

(b) During an active declaration of a state of disaster under Texas Government Code, Chapter 418, public hearings concerning an operation located in an area subject to the declaration of disaster may be held in a manner that allows remote participation.

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

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## 26 TAC §745.279

### STATUTORY AUTHORITY

The repeal is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Department of Family and Protective Services to HHSC.

The repeal affects Texas Government Code §531.0055 and Texas Human Resources Code, §§42.041(b), 42.042, 42.046, 42.0462, 42.048, 42.049, 42.0495, 42.050, 42.052, 42.0704, 42.071, 42.072, 42.078, 42.251, 42.252, 42.253, and 42.255.

§745.279. *How may the results of a public hearing affect my application for a permit or a request to amend my permit?*

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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## DIVISION 5. ACCEPTING OR RETURNING THE APPLICATION

### 26 TAC §745.301

#### STATUTORY AUTHORITY

The repeal is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Department of Family and Protective Services to HHSC.

The repeal affects Texas Government Code §531.0055 and Texas Human Resources Code, §§42.041(b), 42.042, 42.046, 42.0462, 42.048, 42.049, 42.0495, 42.050, 42.052, 42.0704, 42.071, 42.072, 42.078, 42.251, 42.252, 42.253, and 42.255.

§745.301. *How long does Licensing have to review my application and let me know my application status?*

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

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### 26 TAC §745.301

#### STATUTORY AUTHORITY

The new section is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Department of Family and Protective Services to HHSC.

The new section affects Texas Government Code §531.0055 and Texas Human Resources Code, §§42.041(b), 42.042, 42.046, 42.0462, 42.048, 42.049, 42.0495, 42.050, 42.052, 42.0704, 42.071, 42.072, 42.078, 42.251, 42.252, 42.253, and 42.255.

§745.301. *How long does Licensing have to review my application and notify me of my application status?*

(a) If you are applying for:

(1) A permit other than a compliance certificate, we have 21 days after receiving your application to review the paperwork; or

(2) A compliance certificate, we have 10 days after receiving your application to review the paperwork.

(b) After the review of your application, we will notify you in writing that:

(1) There is good cause to delay the timeframe for making a determination on the application, consistent with §745.327 of this subchapter (relating to When does Licensing have good cause for exceeding its timeframes for processing my application?);

(2) You are ineligible to apply for a permit;

(3) Your application is complete and accepted for processing; or

(4) Your application is incomplete. The notification letter will:

(A) Identify any application materials that you submitted that do not show compliance with relevant minimum standards, rules, and statutes; and

(B) Explain what you must do to complete the application.

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## DIVISION 6. REVIEWING THE APPLICATION FOR COMPLIANCE WITH MINIMUM STANDARDS, RULES, AND STATUTES

### 26 TAC §745.321

#### STATUTORY AUTHORITY

The repeal is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Department of Family and Protective Services to HHSC.

The repeal affects Texas Government Code §531.0055 and Texas Human Resources Code, §§42.041(b), 42.042, 42.046, 42.0462, 42.048, 42.049, 42.0495, 42.050, 42.052, 42.0704, 42.071, 42.072, 42.078, 42.251, 42.252, 42.253, and 42.255.

*§745.321. What will Licensing do after accepting my application?*

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## DIVISION 6. TIME FRAMES FOR ISSUING OR DENYING A PERMIT [REVIEWING THE APPLICATION FOR COMPLIANCE WITH

## MINIMUM STANDARDS, RULES, AND STATUTES]

### 26 TAC §§745.321, 745.323, 745.325

#### STATUTORY AUTHORITY

The new section and amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Department of Family and Protective Services to HHSC.

The new section and amendments affect Texas Government Code §531.0055 and Texas Human Resources Code, §§42.041(b), 42.042, 42.046, 42.0462, 42.048, 42.049, 42.0495, 42.050, 42.052, 42.0704, 42.071, 42.072, 42.078, 42.251, 42.252, 42.253, and 42.255.

*§745.321. How long does Licensing have to issue or deny a permit after accepting my application?*

(a) If you are applying for a permit other than a compliance certificate, we will issue or deny you a permit no later than two months after we accept your application, unless there is good cause to exceed this timeframe.

(b) If you are applying for a compliance certificate, we will issue or deny you a certificate no later than 30 days after we accept your application, unless there is good cause to exceed this timeframe.

*§745.323. What if Licensing exceeds its timeframes for processing my application?*

You may file a complaint with the Associate [Assistant] Commissioner for Child Care Regulation [Child-Care Licensing]. The Associate [Assistant] Commissioner will resolve the dispute in a timely manner. We must reimburse you for your application fee if we do not establish good cause for exceeding the time limit.

*§745.325. How do I file a complaint regarding timeframes for processing my application?*

(a) You must send a written complaint regarding the timeframes for processing your application before we issue or deny you a permit [request within 30 days after our time limit expires].

(b) You must send your complaint [request] stating the nature of the dispute to the Associate [Assistant] Commissioner for Child Care Regulation, Texas Health and Human Services Commission, [Child-Care Licensing,] Mail Code E-550, [Texas Department of Family and Protective Services,] P.O. Box 149030, Austin, Texas 78714.

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Karen Ray

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## DIVISION 7. THE DECISION TO ISSUE OR DENY A PERMIT

**26 TAC §§745.339 - 745.341, 745.343 - 745.345, 745.347, 745.349, 745.351, 745.353, 745.355**

### STATUTORY AUTHORITY

The new sections and amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Department of Family and Protective Services to HHSC.

The new sections and amendments affect Texas Government Code §531.0055 and Texas Human Resources Code, §§42.041(b), 42.042, 42.046, 42.0462, 42.048, 42.049, 42.0495, 42.050, 42.052, 42.0704, 42.071, 42.072, 42.078, 42.251, 42.252, 42.253, and 42.255.

§745.339. What factors will we consider when evaluating an application for a permit or a request to amend a permit?

When we determine whether to issue or amend a permit, we will consider the following:

(1) The application or request to amend the permit and any information submitted with the application or request;

(2) The on-site inspection to determine compliance with minimum standards, rule, and statutes;

(3) Any information that Licensing gathers through the application or amendment process, including any written comments and written information submitted to Licensing during the process that Licensing considers to be relevant to the decision to issue or deny the permit or amendment;

(4) If a public hearing is required in §745.273 of this subchapter (relating to Which residential child-care operations must meet the public notice and hearing requirements?);

(A) Any written comments and written information provided by interested parties at a public hearing; and

(B) The Verbatim Record and summary Report of Public Comment from the Community, as required in §745.275 of this subchapter (relating to What are the specific requirements for a public notice and hearing?); and

(5) If the application or the request to amend the permit is for a general residential operation that will provide treatment services to children with emotional disorders:

(A) All parts of the Additional Operation Plan required in §745.243(6)(M) of this subchapter (relating to What does a completed application for a permit include?);

(B) Evidence of community support for, or opposition to, the proposed general residential operation, including any public comment relating to the licensing of the proposed operation; and

(C) The impact statement from the school district likely to be affected by the proposed general residential operation, including information relating to any financial impact on the district that may result from an increase in enrollment.

§745.340. For what reason may Licensing deny me a permit based on the results of a required public hearing?

If a public hearing is required in §745.273 of this subchapter, we may deny you a license or an amendment to your permit if we determine that:

(1) The community has insufficient resources to support the children that you propose to serve;

(2) Issuing the license or amending the permit would adversely affect the children you propose to serve:

(A) By increasing the ratio in the local school district of students enrolled in a special education program to students enrolled in a regular education program; or

(B) If you are providing or seeking to provide treatment services to children with emotional disorders by significantly impacting the local school district; or

(3) Issuing the license or amending the permit would have a significant adverse impact on the community and would limit opportunities for social interaction for the children that you propose to serve.

§745.341. What type of permit does [will] Licensing issue [me if I qualify for a permit after my application is accepted]?

(a) We issue a full permit to an applicant seeking to operate a listed family home, registered child-care home, shelter care operation, or employer-based child care operation if we accept the application and the operation meets all of the requirements in this chapter. [for listed family homes, registered child-care homes, employer-based child care operations, shelter care operations, and certified operations.]

(b) We issue either an initial license or a full license, as described in §745.345 of this division (relating to When does Licensing issue an initial license?) and §745.351 of this division (relating to If I have an initial license, when will I be eligible for a full license?) [ to all licensed operations].

(c) If you are applying for a certification, you must go through the same requirements as an applicant for a full license, including being issued an initial certification and, if appropriate, a subsequent full certification. The rules in this division that pertain to an initial license also apply to an initial certification.

§745.343. What is the difference between an initial license and full license?

(a) An initial license is a permit allowing you to operate pending the possible issuance of a full license.

(b) A full license is a type of full permit.

§745.344. How long is a full permit valid?

Your full permit will remain valid if:

(1) You comply with renewal requirements, as explained in Division 12 of this subchapter (relating to Permit Renewal);

(2) Your permit is not automatically suspended or revoked:

(A) For failure to pay a fee under Human Resources Code (HRC) §42.054(f);

(B) For failure to submit information for a background check for a listed family home under HRC §42.052(j); or

(C) Because the license changes location or ownership, as further explained in Division 10 of this subchapter (relating to Relocation of Operation and Change in Ownership);

(3) We do not suspend, revoke, or refuse to renew your permit; and

(4) You do not relinquish your permit and close your operation.

*§745.345. When does Licensing issue an initial license?*

We issue you an initial license instead of a full license when we accept your application, ~~and~~ determine that your operation is in compliance with applicable minimum standards, rules, and statutes, ~~[you qualify for a license,]~~ you pay the initial license fee, and one of the following situations exists:

(1) ~~We have not been able to evaluate your operation's ability to comply with all minimum standards, rules, and statutes relating to children in care because: [You have not yet operated with children in care or you have been operating without a license.]~~

(A) ~~Your operation is not currently providing care to children; or~~

(B) ~~Your operation has been operating without a license;~~

(2) Your operation has changed location and has made changes in the type of child-care services it offers;

(3) We licensed you for one type of child care, and you apply to add another type of child care to your program (an initial license is issued for the new type of child care); or

(4) Change in ownership results in changes in policy and procedure or in the staff who have direct contact with the children. (See §745.437 of this subchapter ~~[title]~~ (relating to What is a change in the ownership of an operation?)).

*§745.347. How long is an initial license valid?*

(a) An initial license is valid for six months from the date we issue it.

(b) We may renew an initial license for ~~[it]~~ up to an additional six months. You may only have an initial license for a maximum of one year.

(c) The initial license expires when we issue or deny you a full license, even if the ~~[six-month]~~ period for the initial license has not yet expired at the time the full license is issued or denied.

*§745.349. What if I am not able to care for children during the initial period?*

We cannot determine compliance with all ~~[the Licensing]~~ minimum standards unless you have children in care. If you do not have children in care during the initial license period:

(1) We may renew your initial license ~~[permit]~~, if you have not exceeded the maximum one year period;

(2) We may deny you a full license if we determine that denial is appropriate under §745.8650 of this chapter (relating to When may Licensing deny a permit?); or ~~[take remedial action, as appropriate; and/or]~~

(3) You may submit a new application form and fees.

*§745.351. If I have an initial license, when will I be eligible for a full license?*

You will be eligible for a full license when:

(1) Your initial license has been in effect for at least three months;

(2) You have met all ~~[licensing]~~ minimum standards on a continuing basis;

(3) A general residential operation that is exempt from the hearing and notice requirements at §745.273(b) ~~[§745.273(e)]~~ of this subchapter ~~[title]~~ (relating to Which residential child-care operations

must meet the public notice and hearing requirements?) begins providing trafficking victim services;

(4) The Licensing staff has made three inspections, unless supervisory approval is obtained to make fewer visits; and

(5) You have paid your full license fee in accordance with Subchapter E of this chapter (relating to Fees).

*§745.353. What can I do if Licensing denies me a permit?*

You may request an administrative review or ~~[and/or]~~ an appeal regarding the denial of a permit. The letter notifying you of the denial will include instructions and timeframes for requesting an administrative review or ~~[and/or]~~ an appeal. Also see Subchapters L and M of this chapter (relating to Enforcement ~~[Remedial]~~ Actions, and Administrative Reviews and Due Process Hearings).

*§745.355. When may Licensing issue a full license in lieu of an initial license?*

We may issue a full license instead of an initial license when we determine that it is unnecessary for us to evaluate the operation's ability to comply with minimum standards, rules, and statutes, including when:

(1) The ownership of an operation changes as follows without changing the type of child care services that the operation offers, any policy or procedures, or the staff who have direct contact with children in care:

(A) An owner changes from one type of business entity to another, and the new business entity has the same governing body as the previous owner;

(B) An owner that is a sole proprietor or partnership forms a business entity to be the new owner, and the business entity's governing body consists only of persons who were a part of the previous ownership; or

(C) A third party acquires the publicly traded stock of a business entity that will continue to own and operate the operation following acquisition;

(2) The operation changes location, and we determine that the new location complies with the minimum standards; or

(3) We were able to evaluate the operation's ability to comply with minimum standards, rules, and statutes during a recent initial license period, but circumstances required the owner to withdraw the previous application and submit a new application at the same location.

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**26 TAC §745.343**

**STATUTORY AUTHORITY**

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

adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Department of Family and Protective Services to HHSC.

The repeal affects Texas Government Code §531.0055 and Texas Human Resources Code, §§42.041(b), 42.042, 42.046, 42.0462, 42.048, 42.049, 42.0495, 42.050, 42.052, 42.0704, 42.071, 42.072, 42.078, 42.251, 42.252, 42.253, and 42.255.

§745.343. *What is the difference between an initial license and full license?*

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## DIVISION 8. DUAL AND MULTIPLE PERMITS

### 26 TAC §§745.371, 745.373, 745.375, 745.379, 745.385

#### STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Department of Family and Protective Services to HHSC.

The amendments affect Texas Government Code §531.0055 and Texas Human Resources Code, §§42.041(b), 42.042, 42.046, 42.0462, 42.048, 42.049, 42.0495, 42.050, 42.052, 42.0704, 42.071, 42.072, 42.078, 42.251, 42.252, 42.253, and 42.255.

§745.371. *Can Licensing issue more than one registration or listing for a single child-care home?*

No. We can issue only one registration or listing per single living unit. For a registered child-care [family] home or listed family home, if more than one person cares for children in a single living unit or [child-care] home, the name on the registration or listing [permit] must be the name of the primary caregiver. [For a listed family home, the name on the permit must be the name of the caregiver.]

§745.373. *May I have more than one licensed child-care home?*

(a) Except as described in subsection (b) of this section, [No,] you may not have more than one licensed child-care home, because a primary caregiver must provide care. A child-care home must operate in the caregiver's own residence.

(b) If you were licensed to operate more than one group day-care home prior to September 1, 2003, you may continue to operate two or more licensed child-care homes as long as the license remains [licenses remain] valid and you meet the following conditions:

- (1) Your facilities are at separate locations;

- (2) You maintain your operations separately; and

- (3) You do not move children back and forth between the two licensed child-care homes.

§745.375. *May I offer child day care at my agency foster home or independent foster home?*

You may [do so] only obtain a child day care permit for a registration or a listing at your agency foster home under the following conditions:

- (1) Both the Director of Residential Regional Operations or designee and the Director of Day Care Regional Operations or designee [residential child-care and child day-care divisions] approve the child day care permit for the foster home;

- (2) The total number of children in care does not exceed six, including your own children, your foster children, children receiving respite care at your foster home, and the children to whom you provide child day care; and

- (3) You meet the requirements for your registration or listing, including the payment of fees.

§745.379. *Can a single operation have more than one child day care [day-care] license at the same location?*

A single operation may not have more than one child day care license at the same location. [to be a child-care home and another license to be a child-care center if:]

- [(1) Before September 1, 2003, the operation held a license to be a group day-care home and a license to be a kindergarten/nursery school or school for grades kindergarten and above, and these licenses remain valid;]

- [(2) By August 31, 2003, you notified us that you chose to have both a licensed child-care home and licensed child-care center at the same location;]

- [(3) The licensed child-care home does not operate during the same hours as the licensed child-care center;]

- [(4) During the hours that the operation is a child-care home, it meets the minimum standards for child-care homes; and]

- [(5) During the hours that the operation is a child-care center, it meets the minimum standards for child-care centers.]

§745.385. *Can a person or governing body operate multiple operations [operate] under the same [one] permit?*

(a) A person or governing body [Multiple operations] may not operate multiple operations under the same [one] permit unless the operations [they] are:

- (1) The [Contiguous to one another, are the] same type of child care operations [child-care operation, and have the same governing body]; [or]

- (2) Contiguous or [Not contiguous, but they are the same type of child-care operation, are] nearby one another; [;] and

- (3) Operate [operate] as a single operation as evidenced by staffing, finance, and administrative supervision [effectively supporting the operations].

(b) A permit that we issued prior to September 1, 2005, that allows multiple residential child-care operations to operate under that permit remains valid regarding the addresses listed on the permit until it expires or is revoked or voluntarily relinquished.

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## 26 TAC §745.383

### STATUTORY AUTHORITY

The repeal is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Department of Family and Protective Services to HHSC.

The repeal affects Texas Government Code §531.0055 and Texas Human Resources Code, §§42.041(b), 42.042, 42.046, 42.0462, 42.048, 42.049, 42.0495, 42.050, 42.052, 42.0704, 42.071, 42.072, 42.078, 42.251, 42.252, 42.253, and 42.255.

*§745.383. Can a licensed or registered child day-care operation offer 24-hour care?*

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## DIVISION 9. REAPPLYING FOR A PERMIT

### 26 TAC §745.403

#### STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Department of Family and Protective Services to HHSC.

The amendment affects Texas Government Code §531.0055 and Texas Human Resources Code, §§42.041(b), 42.042, 42.046, 42.0462, 42.048, 42.049, 42.0495, 42.050, 42.052, 42.0704, 42.071, 42.072, 42.078, 42.251, 42.252, 42.253, and 42.255.

*§745.403. When am I eligible to apply for another permit after Licensing denies, [or] revokes, or refuses to renew my permit?*

(a) You are eligible to [If we revoke your permit or deny you a permit to operate a child care operation, you may not] apply for another

permit after [before] the fifth anniversary of the date on which any of the following adverse actions takes [denial or revocation takes] effect or you voluntarily close or relinquish your permit after receiving notice of our intent to take such an action: [-]

(1) A denial of your application under §745.8650 of this chapter (relating to When may Licensing deny a permit?);

(2) A revocation of your permit under §745.8654 of this chapter (relating to When may Licensing revoke my permit?); or

(3) A refusal to renew your permit under §745.8655 of this chapter (relating to When may Licensing refuse to renew my permit?).

(b) A denial, revocation, or refusal to renew [or denial] takes effect when:

(1) You have waived or exhausted your due process rights regarding the denial, revocation, or refusal to renew [denial]; and

(2) The denial, [Our] revocation, or refusal to renew [denial of your permit] is upheld.

(c) This rule does not apply if:

(1) Your [your] permit is automatically revoked: [solely because you have relocated your operation or changed ownership.]

(A) For failure to pay a fee under Human Resources Code (HRC) §42.054(f);

(B) For failure to submit information for a background check for a listed family home under HRC §42.052(j); or

(C) Because the license changes location or ownership, as further explained in Division 10 of this subchapter (relating to Relocation of Operation and Change in Ownership); or

(2) Your permit expires.

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### 26 TAC §745.407

#### STATUTORY AUTHORITY

The repeal is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Department of Family and Protective Services to HHSC.

The repeal affects Texas Government Code §531.0055 and Texas Human Resources Code, §§42.041(b), 42.042, 42.046, 42.0462, 42.048, 42.049, 42.0495, 42.050, 42.052, 42.0704, 42.071, 42.072, 42.078, 42.251, 42.252, 42.253, and 42.255.

§745.407. *What fees must I pay when I apply for another permit after Licensing revokes my permit?*

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## DIVISION 10. RELOCATION OF OPERATION

### 26 TAC §§745.429, 745.431, 745.433, 745.435 - 745.437

#### STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Department of Family and Protective Services to HHSC.

The amendments affect Texas Government Code §531.0055 and Texas Human Resources Code, §§42.041(b), 42.042, 42.046, 42.0462, 42.048, 42.049, 42.0495, 42.050, 42.052, 42.0704, 42.071, 42.072, 42.078, 42.251, 42.252, 42.253, and 42.255.

§745.429. *What must I do if I relocate my operation after I receive my compliance certificate?*

(a) A change in location automatically revokes your compliance certificate.

(b) If you are going to relocate your operation for any reason, you must notify us as early as possible before the move to voluntarily relinquish your permit. You may reapply for a permit to operate at your new location. See Division 3 of this subchapter (relating to Submitting the Application Materials).

(c) If you fail to notify us before you relocate, we may deny you a permit for the new location.

§745.431. *What must I do if I relocate my listed family home [after I receive my listing]?*

If you relocate your listed family home, you must notify us of the new address within [as early as possible before the move, but no later than] 15 days after the move. [You must complete a form provided by us showing the new address.] We will amend the listing [certificate] to reflect the new address. The issuance date on the original listing [certificate] will remain in effect. There is no additional fee for your change in location. We may revoke your listing if you do not notify us within 15 days of the relocation.

§745.433. *What must I do if I relocate my registered child-care home after I receive my registration?*

If you relocate your registered child-care home, you must notify us of the new address within [as early as possible before the move, but no later than] 15 days after the move. [You must complete a form provided

by us showing your new address.] We will inspect your new location. If the new location complies [you comply] with the minimum standards, we will amend the registration [certificate] to reflect the new address. The issuance date on the registration [certificate] will remain in effect. There is no additional fee for your change in location. We may revoke your registration if you do not notify us within 15 days of the relocation.

§745.435. *What must I do if I relocate my operation after I receive my license or certification?*

(a) A change in location automatically revokes your license or certification [permit] unless your license or certification is for: [you are licensed or certified to operate a]

(1) A child-placing agency; or [-]

(2) A school-age program that operates exclusively during the summer or any other time school is not in session.

(b) For all licenses and certifications, [operations] other than those exempted in subsection (a) of this section [child-placing agencies], if you are going to relocate your operation for any reason, you must notify us as early as possible before the move to voluntarily relinquish your permit. You may reapply for a permit to operate at your new location. See Division 3 of this subchapter (relating to Submitting the Application Materials). If you fail to notify us before you relocate, we may deny you a permit for the new location.

[(c) If you fail to notify us before you relocate, we may deny you a permit for the new location.]

(c) [(d)] If you are going to relocate your child-placing agency or your school-age program that operates exclusively during the summer or any other time school is not in session, you must notify us of the move no later than 15 days prior to the move. You must complete a form provided by us showing your new address. We will inspect your new location. If the new location complies [you comply] with the minimum standards, we will amend the permit to reflect the new address. The issuance date that is on your original permit will remain in effect. There is no additional fee for your change in location.

§745.436. *What is the result of a change in the ownership of an operation with a license?*

A change in the ownership of an operation with a license results in the automatic revocation of the license.

§745.437. *What is a change in the ownership of an operation?*

(a) A change in ownership of an operation occurs when:

(1) The owner stated on the license [permit] no longer owns the operation;

(2) The governing body stated on the license [permit] no longer has the ultimate authority and responsibility for the operation;

(3) There is a change in the legal organizational structure of the operation; or

(4) A [If the permit holder is a type of business entity, that] business entity that is a permit holder is sold or otherwise acquired by one or more persons or business entities, except as set forth in subsection (b) of this section.

(b) A change in ownership of an operation does not include the acquisition of the [a corporate permit holder's] publicly traded stock of a business entity if the following conditions exist:

(1) The business entity [corporate permit holder] listed on the application and on the permit will continue to [exist as the same corporate entity and to] own and operate the operation following acquisition;

(2) There will be no change in the operation's policy or procedure because of the transaction;

(3) There will be no change in the staff who have contact with children in care because of the transaction; and

(4) Any change in the day-to-day operations that might occur after the sale is in the ordinary course of business and not as a result of the stock transaction.

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## DIVISION 11. EMPLOYER-BASED CHILD CARE

**26 TAC §§745.461, 745.464, 745.467**

### STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Department of Family and Protective Services to HHSC.

The amendments affect Texas Government Code §531.0055 and Texas Human Resources Code, §§42.041(b), 42.042, 42.046, 42.0462, 42.048, 42.049, 42.0495, 42.050, 42.052, 42.0704, 42.071, 42.072, 42.078, 42.251, 42.252, 42.253, and 42.255.

*§745.461. Where must a child's ~~[Does a]~~ parent ~~[have to]~~ be while the [at the work site when their] child is in care?*

A parent must:

(1) Work within the same building in which the child care is located;

(2) Routinely be present at the work site for most ~~[the majority]~~ of the time the child is in care;

(3) Be physically accessible to the child, although the [a] parent may be away from the building for a limited period of time, such as for lunch or to attend [;] a business meeting, a medical [doctor] appointment, or [to attend] training related to work; and

(4) Not ~~[A parent may not]~~ be away from the building for more than four hours in a day or for more than ten hours in a week.

*§745.464. What are my responsibilities regarding criminal background check requirements?*

In addition to meeting the requirements in Subchapter F of this chapter (relating to Background Checks), you must ensure all information

related to background checks is kept confidential as required by Texas [the] Human Resources Code §40.005(d) and (e) and Texas Government Code §411.084 and §411.085.

*§745.467. What are my responsibilities regarding the report of abuse, neglect, or exploitation?*

In addition to reporting serious incidents, you must inform your employees of the duty to report suspected abuse, neglect, or exploitation to the Texas Department of Family and Protective Services as required by the Texas Family Code, §261.101, and Texas Human Resources Code, §42.063(c) [§261.401].

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## DIVISION 12. PERMIT RENEWAL

**26 TAC §§745.471, 745.473, 745.475, 745.477, 745.478, 745.481, 745.483, 745.485, 745.487, 745.489**

### STATUTORY AUTHORITY

The amendments and new section are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Department of Family and Protective Services to HHSC.

The amendments and new section affect Texas Government Code §531.0055 and Texas Human Resources Code, §§42.041(b), 42.042, 42.046, 42.0462, 42.048, 42.049, 42.0495, 42.050, 42.052, 42.0704, 42.071, 42.072, 42.078, 42.251, 42.252, 42.253, and 42.255.

*§745.471. What types of permits need to be renewed?*

(a) A full license, certification [eertifcate], or [and] registration will expire if it is not renewed.

(b) There are no renewal requirements for a compliance certificate or listing.

*§745.473. When do I need to apply to renew my full license, certification [eertifcate], or registration?*

(a) If your permit is subject to renewal as outlined in §745.471 of this division [title] (relating to What types of permits need to be renewed?), you must apply to renew your permit [do so] every two years after the date we issue your full permit. [During the year that you must renew your permit, your renewal period:]

[(1) begins 60 calendar days before the anniversary of when we issued your full permit to you; and]

[(2) ends on the date of the anniversary.]

(b) If your operation is under an enforcement action described in §745.8603 of this chapter (relating to What enforcement actions may Licensing recommend or impose?), you must still timely apply to renew your permit.

(c) During the year that you must renew your permit, your renewal period:

(1) Begins 60 calendar days before the anniversary of when we issued your full permit to you; and

(2) Ends on the date of the anniversary.

(d) [(b)] If you are late in applying for the renewal of your permit, you have 30 additional calendar days after your renewal period to apply for the renewal.

[(e) If we issued your permit on or after December 1, 2017, you must apply to renew it two years from the date we issued it to you and every two years thereafter.]

[(d) If we issued your permit to you prior to December 1, 2017, your first renewal period as described in subsection (a) of this rule will occur in:]

[(1) 2018 if we issued your permit to you in an even-numbered year; or]

[(2) 2019 if we issued your permit to you in an odd-numbered year.]

§745.475. What does a completed renewal application for a permit include?

(a) A completed renewal application includes [the following information]:

(1) Verification that the following information is current and accurate:

(A) Your operation's basic information on Licensing's consumer [the DFPS] website;

(B) The list of controlling persons at your operation;

(C) The list of your governing body's members, such as officers and owners, if applicable;

(2) A statement as to whether [Whether] your operation continues to need any existing waivers and variances; [and]

(3) Verification that you have corrected any deficiency with an expired compliance date, unless the deficiency is pending due process; and

(4) Verification that all fees and administrative penalties that you owe have been paid;

(5) [(3)] Validating on your provider website the [A] list of [all] persons who require a background check because of their association [affiliation] with your operation; and [; as described in §745.615 of this chapter (relating to On Whom Must I Request Background Checks?);]

(6) If you operate a general residential operation that provides treatment services for children with emotional disorders, a written response that addresses any public comments made regarding the renewal of the operation's license during a public hearing, if required by §745.487 of this division (relating to When is a public hearing required for the renewal of a license?).

(b) You must submit a completed renewal application [in order] for us to evaluate your permit for renewal.

§745.477. What happens after Licensing receives my renewal application?

(a) After receiving your renewal application, we evaluate whether [you]:

(1) You completed the renewal application as [Submitted all documentation and information] required by §745.475 of this division [title] (relating to What does a completed renewal application for a permit include?);

(2) We have cited you for repeated deficiencies or a pattern of deficiencies during the previous two years;

(3) You have corrected each deficiency with an expired compliance date that is not pending due process, including an administrative review, a due process hearing, or any subsequent rights of appeal;

(4) [(2)] You [Are] currently meet [meeting] all background check requirements in Subchapter F of this chapter (relating to Background Checks); [and]

(5) [(3)] You have [Have] paid:

(A) All fees required by Subchapter E of this chapter (relating to Fees); and

(B) Each administrative penalty that you owe after waiving or exhausting any due process provided under Texas Human Resources [Tex. Hum. Res.] Code §42.078;

(6) We must visit your operation to determine your eligibility for renewal, such as to review records to determine whether you have corrected all relevant deficiencies; and

(7) We must hold a public hearing as required by §745.487 of this division (relating to Is a public hearing required for the renewal of a license?).

(b) Within 30 [15] days of receiving your renewal application, we will [either] send you written notice that:

(1) We have renewed your permit; [or]

(2) Your renewal application is incomplete as further described in subsection (c) of this section; or [; you are not meeting all background check requirements; and/or you have not paid a fee or administrative penalty.]

(3) We refuse to renew your permit as provided in §745.8655 of this chapter (relating to When may Licensing refuse to renew my permit?).

(c) If your renewal application is incomplete, the written notice will include:

(1) Our evaluation that you did not complete one or more of the renewal application requirements at §745.475 of this division (relating to What does a completed renewal application for a permit include?);

(2) A list of the requirements that must be completed before we can renew your permit, which may include:

(A) Correcting a deficiency with an expired compliance date that is not pending due process;

(B) Meeting a certain background check requirement;  
or

(C) Paying any of the following:

(i) A fee required by Subchapter E of this chapter (relating to Fees); or

(ii) An administrative penalty that you owe after waiving or exhausting any due process provided under Texas Human Resources Code §42.078; and

(3) A statement that we must hold a public hearing required by §745.487 of this division (relating to When is a public hearing required for the renewal of a license?), if applicable.

(d) [(e)] If your renewal application is incomplete and you submitted it during the renewal period, you have unlimited attempts to submit the missing information and to correct the deficiencies until your permit expires [the end of the renewal period].

(e) [(d)] If your renewal application is incomplete and you submitted it during the late renewal period, you have 15 days to submit a completed renewal application from the date it was rejected.

[(e) Notwithstanding any of the other provisions of this subchapter, we may determine that we have good cause to exceed the 15-day timeframe for processing your renewal application in circumstances that would allow us to exceed our timeframes for processing an application for a permit. See §745.327 of this chapter (relating to When does Licensing have good cause for exceeding its timeframes for processing my application?)-]

§745.478. When does Licensing have good cause to exceed the timeframe for processing my renewal application?

We have good cause to exceed the 30-day timeframe for processing your renewal application:

(1) For a reason that would allow us to exceed our timeframes for processing an application for a permit at §745.327 of this subchapter (relating to When does Licensing have good cause for exceeding its timeframes for processing my application?);

(2) Because of an enforcement action, including when:

(A) We are in the process of revoking or suspending your permit;

(B) Your permit is presently suspended; or

(C) We recommend or impose a voluntary plan of action or a corrective action plan;

(3) We impose any other appropriate action to address an issue identified in §745.8605 of this subchapter (relating to When can Licensing recommend or impose an enforcement action against my operation?); or

(4) We are in the process of holding a public hearing as required by §745.487 of this division (relating to When is a public hearing required for the renewal of a license?).

§745.481. When does my permit expire?

(a) Your permit expires if:

(1) You [you] do not submit your renewal application during your renewal period or the late renewal period;

(2) You [you] submit your renewal application during the renewal period, you were notified that [we reject] your application was [as] incomplete, and you do not submit a completed renewal application before the end of the late renewal period; or

(3) You [you] submit your renewal application during the late renewal period, you were notified that [we reject] your application was [as an] incomplete [application], and you do not submit a completed renewal application within 15 calendar days after notification [rejection].

(b) If your permit does not expire under subsection (a) of this section, you may continue to operate while Licensing processes your

renewal application, unless we determine the operation poses an immediate threat or danger to the health or safety of children, according to §745.751 of this chapter (relating to What factors does Licensing consider when determining if a person or operation is an immediate threat to the health or safety of children?). For how an enforcement action may affect your ability to renew your permit, see §745.485 of this division (relating to How does an enforcement action affect the renewal of my permit?).

§745.483. What must I do if my permit expires [expired]?

If your permit expires, your operation must cease operating immediately. Before you can operate again, you will have to submit a new application as required by §745.243 of this chapter (relating to What does a completed application for a permit include?) and pay any necessary fees.

§745.485. How does an enforcement action affect the renewal of my permit?

(a) During the renewal period, or before your permit is renewed, your permit will be affected as stated in subsections (b) and (c) of this section if:

(1) Your operation is presently under an enforcement action; or

(2) We recommend or impose an enforcement action against your permit.

(b) If we renew your permit while your operation is already on a voluntary plan of action or corrective action plan:

(1) You must continue to meet any requirement related to the action taken. For example, if you are on a corrective action plan, you must continue to meet all conditions in the plan; and

(2) Our renewal of your permit does not affect our ability to impose a more serious enforcement action if you do not follow the conditions of the voluntary plan of action or corrective action plan or your operation's compliance with minimum standards, rules, or statutes does not improve as a result of the plan.

(c) The following table describes how certain enforcement actions affect our ability to renew your permit:

Figure: 26 TAC §745.485(c)

§745.487. When is a public hearing required for the renewal of a license?

(a) We must hold a public hearing to obtain public comments regarding the renewal of the license of a general residential operation that provides treatment services to children with emotional disorders, if the commissioner's court in the county in which the operation is located requests one.

(b) The commissioner's court must submit its request to hold a hearing prior to Licensing renewing the operation's license.

§745.489. What is required for a public hearing for the renewal of a license?

(a) For a public hearing related to the renewal of a license to operate a general residential operation that provides treatment services to children with emotional disorders:

(1) A Licensing representative will facilitate the hearing;

(2) A representative of the general residential operation that submitted the renewal application must attend the hearing;

(3) 10 days prior to the scheduled public hearing, Licensing will send a notice of the public hearing to the commissioner's court and the general residential operation that submitted the renewal appli-

cation and post it on the Licensing consumer website with the following information:

(A) The name, address, and phone number of the Licensing representative who will facilitate the hearing;

(B) The name and address of the general residential operation that submitted the renewal application;

(C) The date, time, and location of the hearing;

(D) A description of the population that the general residential operation currently serves, the services being provided (except for the provision of trafficking victim services), the number of children that the operation is currently licensed to serve, and the number of children the operation is currently serving; and

(E) A statement that the public hearing is for Licensing to receive public comments regarding the renewal of the general residential operation's license; and

(4) Licensing will provide written procedures that Licensing has adopted to provide the public with a reasonable opportunity to offer public comments on any issues related to the renewal of the general residential operation's license, including how the hearing will be conducted, order of witnesses, and the conduct of participants at the hearing.

(b) During an active declaration of a state of disaster under Texas Government Code, Chapter 418, public hearings concerning an operation located in an area subject to the declaration of disaster may be held in a manner that allows remote participation.

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## 26 TAC §745.485

### STATUTORY AUTHORITY

The repeal is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Department of Family and Protective Services to HHSC.

The repeal affects Texas Government Code §531.0055 and Texas Human Resources Code, §§42.041(b), 42.042, 42.046, 42.0462, 42.048, 42.049, 42.0495, 42.050, 42.052, 42.0704, 42.071, 42.072, 42.078, 42.251, 42.252, 42.253, and 42.255.

§745.485. *Do I have to comply with the renewal requirements if Licensing is taking an enforcement action against my permit?*

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## SUBCHAPTER L. ENFORCEMENT ACTIONS

### DIVISION 1. OVERVIEW OF ENFORCEMENT ACTIONS

**26 TAC §§745.8600, 745.8601, 745.8603, 745.8605, 745.8607, 745.8609, 745.8611, 745.8613**

### STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Department of Family and Protective Services to HHSC.

The amendments affect Texas Government Code §531.0055 and Texas Human Resources Code, §§42.041(b), 42.042, 42.046, 42.0462, 42.048, 42.049, 42.0495, 42.050, 42.052, 42.0704, 42.071, 42.072, 42.078, 42.251, 42.252, 42.253, and 42.255.

§745.8600. *What is the general purpose of the rules in this subchapter?*

(a) The rules in this subchapter contain:

(1) The [the] different types of actions that we use to enforce the requirements in [rules,] minimum standards, rules, and statutes [statute]; and

(2) The [the] criteria that we use to determine what type of enforcement action we will take in specific circumstances.

(b) Our goal with respect to enforcement is to ensure the safety of children in care that is subject to our regulation. Our use of enforcement actions is tailored toward the objective of safety and not to be punitive in nature.

§745.8601. *What happens if I am deficient in a minimum standard, rule, statute [law], specific term of my permit, or condition of [evaluation,] probation[, or suspension]?*

If you are deficient in a minimum standard, rule, statute [law], specific term of your permit, or a condition of [evaluation,] probation[, or suspension], we may take [offer] one or both of the following actions:

(1) Offer [offer] technical assistance; or

(2) Recommend [recommend] or impose an enforcement action against your permit.

§745.8603. *What enforcement actions may Licensing recommend or impose?*

(a) We may recommend a voluntary plan of action or impose a more serious enforcement action as outlined in the following chart:  
Figure: 26 TAC §745.8603(a)

[Figure: 26 TAC §745.8603(a)]

(b) We may impose an action listed in subsection (a) of this rule any time we determine there is a reason for imposing the action. We will choose the action based on its appropriateness in relation to the situation we are seeking to address. We do not have to recommend or impose a less restrictive action if we determine that a more restrictive action is more appropriate.

(c) In some situations, we may take multiple types of actions against your operation at the same time. For example, if you continue to operate pending the appeal of a denial, we may pursue a judicial action ~~[in order]~~ to prevent you from operating without a permit [illegally].

*§745.8605. When can Licensing recommend or impose an enforcement action against my operation?*

We can recommend or impose an enforcement action any time we find one of the following:

(1) You supplied false information or made false statements during the application process;

(2) You falsified or permitted to be falsified any record or other materials that are required to be maintained by ~~[Licensing]~~ minimum standards;

(3) You do not have an acceptable reason for not having the required liability insurance in §745.251 of this chapter (relating to What are the acceptable reasons not to have liability insurance?);

(4) You do not pay the required fees;

(5) A single serious deficiency of a minimum standard, rule, or statute [minimum standards, rules, or laws], including a finding of abuse or neglect or background check matches;

(6) Several deficiencies that create an endangering situation;

(7) A repetition or pattern of deficiencies;

(8) An immediate threat or danger to the health or safety of children;

(9) You or someone working at your operation refuses, prevents, or delays our ability to conduct an inspection or [and/or] investigation, or the ability of the Department of Family and Protective Services to conduct an investigation of an allegation of abuse, neglect, or exploitation;

(10) A failure to timely report necessary changes to Licensing;

(11) A failure to comply with any restrictions or limits placed on your permit;

(12) A failure to meet the terms and conditions of your ~~[evaluation or]~~ probation;

(13) A failure to comply with minimum standards, rules, or statutes [laws] at the end of the suspension period;

(14) A failure to submit information to us within two days of a change in your controlling persons, as required in §745.903 of this chapter [title] (relating to When and how must an operation submit controlling-person information to Licensing?);

(15) You fail to correct by the compliance date any deficiency that is not pending due process; [You apply for a permit to operate a child-care operation within five years after:]

~~[(A) We revoked your permit; or]~~

~~[(B) You voluntarily closed your operation or relinquished your permit after receiving notice of our intent to take adverse action against your permit or that we were taking adverse action against your permit;]~~

(16) You apply for a permit after we designate you as a controlling person, but before the designation is sustained;

(17) It is within five years since your designation as a controlling person has been sustained;

(18) You apply for a permit to operate a child care [child-care] operation, and you are barred from operating a child care [child-care] operation in another state;

(19) You apply for a permit to operate a child care [child-care] operation, and your permit to operate a child care [child-care] operation in another state was revoked;

(20) You apply for a permit to operate a child care [child-care] operation, and your permit to operate was revoked, suspended, or terminated by another Texas state agency as outlined in Texas Government Code, Chapter 531, Subchapter W (relating to Adverse Licensing, Listing, or Registration Decisions);

(21) You apply for a permit to operate a child care [child-care] operation and:

(A) You fail to comply with public notice and hearing requirements as set forth in §745.277 of this chapter [title] (relating to What will happen if I fail to comply with public notice and hearing requirements?); or

(B) The results of the public hearing meet one of the criteria set forth in §745.340(b) [§745.279] of this chapter [title] (relating to What factors will we consider when evaluating an application for a permit? [How may the results of a public hearing affect my application for a permit or a request to amend my permit?]);

(22) You operate a child care [child-care] operation, and that operation discharges or retaliates against an employee, client, resident, or other person because the person or someone on behalf of the person files a complaint, presents a grievance, or otherwise provides in good faith, information relating to the misuse of restraint or seclusion at the operation;

(23) A reason set forth in Texas Human Resources Code, §42.078;

(24) A failure to pay an administrative penalty under Texas Human Resources Code, §42.078;

(25) A failure to follow conditions or restrictions placed on a person's presence at an operation; or

(26) During the application process you were exempt from the public notice and hearing requirements under §745.273(b) [by §745.273(e)] of this chapter [title] (relating to Which residential child-care operations must meet the public notice and hearing requirements?), but you never provide or cease to provide trafficking victim services and fail to [do not] meet the public notice and hearing requirements.

*§745.8607. How will Licensing decide which type of enforcement action to recommend or impose?*

We decide to recommend or impose enforcement actions based upon our assessment of the following:

(1) The severity of any [the] deficiency that is a reason for the enforcement action, including whether the deficiency involved the abuse or neglect or resulted in the death or near fatal injury of a child;

(2) The severity and frequency of a repetition or pattern of deficiencies [~~Whether the deficiency has been repeated~~];

(3) The extent to which a deficiency or repetition or pattern of deficiencies [~~Whether the deficiency~~] can be corrected;

(4) How quickly you can make the necessary correction [~~can be made~~] (for a suspension, whether the deficiency can be corrected within the suspension period);

(5) Whether you demonstrate the responsibility and ability to maintain compliance with minimum standards, rules, and statutes [~~laws~~];

(6) Whether we must impose conditions [~~must be imposed~~] to avoid further deficiencies;

(7) Your compliance history; [~~and~~]

(8) The degree or [~~and/or~~] immediacy of danger or threat of danger posed to the health or safety of children; and

(9) Any aggravating or mitigating factors.

*§745.8609. How will I know when Licensing is recommending or imposing an enforcement action against my operation?*

We will notify you in the following manner:

Figure: 26 TAC §745.8609

[Figure: 26 TAC §745.8609]

*§745.8611. How long do enforcement actions that cover a specific period of time last?*

(a) The following chart describes the length of time that we may recommend or impose an enforcement action:

Figure: 26 TAC §745.8611(a)

[Figure: 26 TAC §745.8611(a)]

(b) The court will specify the timeframe for a Judicial Action/Temporary Restraining Order and any extensions.

(c) [(b)] We may end a voluntary or corrective action early if we determine:

(1) That [~~that~~] you meet minimum standards and any [~~and/or the~~] imposed conditions, and we are able to evaluate for ongoing compliance; or

(2) Your [~~your~~] compliance does not improve and a more restrictive enforcement action is necessary.

*§745.8613. What rights do I have to challenge an enforcement action?*

(a) The rights you have vary depending upon the type of enforcement action that we recommend or take against you. The chart in this subsection describes your rights to challenge each type of enforcement action:

Figure: 26 TAC §745.8613(a)

[Figure: 26 TAC §745.8613(a)]

(b) For additional information regarding administrative reviews and due process hearings, see Subchapter M of this chapter (relating to Administrative Reviews and Due Process Hearings).

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## DIVISION 2. VOLUNTARY AND CORRECTIVE ACTIONS

**26 TAC §§745.8631, 745.8633, 745.8635, 745.8637, 745.8641, 745.8643**

### STATUTORY AUTHORITY

The amendments and new section are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Department of Family and Protective Services to HHSC.

The amendments and new section affect Texas Government Code §531.0055 and Texas Human Resources Code, §§42.041(b), 42.042, 42.046, 42.0462, 42.048, 42.049, 42.0495, 42.050, 42.052, 42.0704, 42.071, 42.072, 42.078, 42.251, 42.252, 42.253, and 42.255.

*§745.8631. What types of voluntary or corrective actions may Licensing recommend or impose?*

We may recommend or impose the following types of voluntary or corrective actions:

Figure: 26 TAC §745.8631

[Figure: 26 TAC §745.8631]

*§745.8633. When may Licensing recommend a voluntary plan of action?*

(a) Based on our assessment of the criteria provided in §745.8607 of this subchapter (relating to How will Licensing decide which type of enforcement action to recommend or impose?), we [~~We~~] may recommend a voluntary plan of action for your operation for an issue identified in §745.8605 of this subchapter [~~title~~] (relating to When can Licensing recommend or impose an enforcement action against my operation?) if we determine that:

(1) You:

(A) Demonstrate [~~demonstrate~~] the ability to identify risk;

(B) Accept [~~accept~~] responsibility for correcting deficiencies; and

(C) Have [~~have~~] the ability to make corrections;

(2) If applicable, your operation has a history of making corrections to maintain compliance;

(3) Your operation can reduce [~~will be able to mitigate~~] risk by following the plan in addition to complying with minimum standards; and

(4) Your operation has not participated in a voluntary plan of action during the previous 12 months for similar issues.

(b) If you are responsible for [~~you have~~] multiple operations, we may consider your compliance history at any of those multiple operations when we use the factors listed in subsection (a) of this section to determine [~~for each of your operations when determining~~] your eligibility to participate in a voluntary plan of action.



(c) We will impose a more restrictive enforcement action instead of recommending a voluntary plan of action when appropriate under the criteria for that enforcement action.

*§745.8635. What requirements must I meet during a voluntary plan of action?*

You must:

(1) Correct the deficiencies and reduce risk through your compliance with the plan of action; and

(2) Maintain compliance with all other minimum standards, rules, and statutes.

*§745.8637. When may Licensing place my operation on probation?*

(a) Based on our assessment of the criteria provided in §745.8607 of this subchapter (relating to How will Licensing decide which type of enforcement action to recommend or impose?), we [We] may place your operation on probation for an issue identified in §745.8605 of this subchapter [title] (relating to When can Licensing recommend or impose an enforcement action against my operation?) if we determine that:

(1) Your [your] operation:

(A) Is eligible to participate in a voluntary plan of action, but you refuse to do so; or

(B) Does [does] not qualify for a voluntary plan of action, including not meeting all of the requirements in §745.8633 of this division (relating to When may Licensing recommend a voluntary plan of action?); [less restrictive enforcement action];

(2) Your operation has [you have] not demonstrated the ability to make the necessary changes to reduce [address] risk, but expresses [express] a willingness to comply and make corrections;

(3) Your [your] operation can reduce [will be able to mitigate] risk by complying with the conditions identified in the corrective action plan in addition to minimum standards; and

(4) A [a] more restrictive enforcement action is not necessary to reduce risk.

(b) If you are responsible for multiple operations, we may consider your compliance history at any of those operations when we use the factors listed in subsection (a) of this section to determine your eligibility for probation.

(c) [(b)] If we determine that are you not eligible for probation, we will consider imposing an adverse action.

*§745.8641. What requirements must I meet during the [evaluation or] probation period?*

You must:

(1) Comply [comply] with all of the conditions imposed by the corrective action plan;

(2) Correct [correct] the deficiencies and reduce risk;

(3) Unless [unless] you are an independent or agency foster family home, post [the evaluation letter or] the probation notice or copy in [a] prominent places [place(s)] near all public entrances; and

(4) Maintain [maintain] compliance with all other [Licensing statutes, rules, and] minimum standards, rules, and statutes.

*§745.8643. What may Licensing do if my operation's compliance with minimum standards, rules, or statutes does not improve as a result of the voluntary plan of action or corrective action plan?*

If your operation's compliance with minimum standards, rules, or statutes does not improve sufficiently to reduce risk at your operation

as a result of the voluntary plan of action or corrective action plan, we will reevaluate your plan to determine the appropriateness of its terms and conditions. As a result, we may take one or more of the following actions:

(1) Recommend [recommend] or impose additional conditions;

(2) Increase [and/or increase] inspections; or

(3) [(2)] Impose [impose] a more serious enforcement action.

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## 26 TAC §745.8635, §745.8639

### STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Department of Family and Protective Services to HHSC.

The repeals affect Texas Government Code §531.0055 and Texas Human Resources Code, §§42.041(b), 42.042, 42.046, 42.0462, 42.048, 42.049, 42.0495, 42.050, 42.052, 42.0704, 42.071, 42.072, 42.078, 42.251, 42.252, 42.253, and 42.255.

*§745.8635. When may Licensing place my operation on evaluation?*

*§745.8639. What requirements must I meet during a voluntary plan of action?*

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## DIVISION 3. ADVERSE ACTIONS

### 26 TAC §§745.8649 - 745.8657, 745.8659, 745.8661

### STATUTORY AUTHORITY

The amendments and new section are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Department of Family and Protective Services to HHSC.

The amendments and new section affect Texas Government Code §531.0055 and Texas Human Resources Code, §§42.041(b), 42.042, 42.046, 42.0462, 42.048, 42.049, 42.0495, 42.050, 42.052, 42.0704, 42.071, 42.072, 42.078, 42.251, 42.252, 42.253, and 42.255.

§745.8649. *What adverse actions may Licensing impose?*

We may impose the following adverse actions:

Figure: 26 TAC §745.8649

[Figure: 26 TAC §745.8649]

§745.8650. *When may Licensing deny [me] a permit?*

Based on our assessment of the criteria provided in §745.8607 of this subchapter (relating to How will Licensing decide which type of enforcement action to recommend or impose?), we [We] may deny you a permit for an issue identified in §745.8605 of this subchapter [title] (relating to When can Licensing recommend or impose an enforcement action against my operation?) if we determine that:

(1) A [a] background check result makes you ineligible for a permit, because either the result is ineligible for a risk evaluation or the [Department of Family and Protective Services] Centralized [Central] Background Check Unit does [informs us that it will] not approve a risk evaluation as provided in Subchapter F of this chapter (relating to Background Checks);

(2) Your [your] operation does not demonstrate the ability to comply with minimum standards, rules, and statutes [and other applicable laws] during your initial permit period[, if applicable];

(3) The [the] results of a public hearing make you ineligible for a permit;

(4) Your [your] operation presents an immediate threat to the health or safety of children; or

(5) You are otherwise ineligible for a permit because of a criterion [criteria] identified in §745.8605 of this subchapter [title].

§745.8651. *When may Licensing impose an adverse amendment on my permit?*

Based on our assessment of the criteria provided in §745.8607 of this subchapter (relating to How will Licensing decide which type of enforcement action to recommend or impose?), we [We] may impose an adverse amendment on your permit for an issue identified in §745.8605 of this subchapter [title] (relating to When can Licensing recommend or impose an enforcement action against my operation?) if we determine that:

(1) An [an] amendment on your permit will reduce risk [mitigate any risks];

(2) The [the] amendment would be the most effective enforcement action to reduce [for addressing] risk at your operation; and

(3) You will be able to follow [you are capable of following] the restrictions or conditions of the amendment.

§745.8652. *When may [will] Licensing suspend my permit?*

Based on our assessment of the criteria provided in §745.8607 of this subchapter (relating to How will Licensing decide which type of enforcement action to recommend or impose?), we [We] may suspend

your permit for an issue identified in §745.8605 of this subchapter [title] (relating to When can Licensing recommend or impose an enforcement action against my operation?) if we determine that:

(1) Your [your] operation will pose a danger or threat of danger to the health or safety of children in your operation's care until the issue is resolved;

(2) You [you] cannot correct the issue while children are in care, but you can do so during a specific period of time;

(3) You can make [you are capable of making] the necessary corrections while your permit is suspended; and

(4) There [there] are no additional concerns about your compliance history that would make revocation a more appropriate enforcement action for the health or safety of children.

§745.8653. *What happens when my suspension period ends?*

(a) When your suspension period ends, we will assess whether:

(1) You have resolved all the issues that were the basis for the suspension;

(2) There are any new issues identified in §745.8605 of this subchapter (relating to When can Licensing recommend or impose an enforcement action against my operation?); or

(3) There is any unresolved issue or new issue that would pose a danger or threat of danger to the health or safety of children in your care.

(b) Following our assessment, we may either end the suspension or take any further enforcement action as described in this subchapter.

§745.8654. *When may Licensing revoke my permit?*

Based on our assessment of the criteria provided in §745.8607 of this subchapter (relating to How will Licensing decide which type of enforcement action to recommend or impose?), we [We] may revoke your permit for an issue identified in §745.8605 of this subchapter [title] (relating to When can Licensing recommend or impose an enforcement action against my operation?) if we determine that:

(1) Your [your] operation is ineligible for corrective action;

(2) We [we] cannot reduce [address] the risk at your operation by placing your operation on probation or suspending your permit [taking corrective action or another type of adverse action];

(3) A [a] background check result or a finding of abuse or neglect makes you ineligible for a permit, either because the result is ineligible for a risk evaluation or the Centralized [Department of Family and Protective Services (DFPS) Central] Background Check Unit [informs us that it] will not approve a risk evaluation as provided in Subchapter F of this chapter (relating to Background Checks); or

(4) Revocation [revocation] is otherwise necessary to address the issue identified in §745.8605 of this subchapter [chapter].

§745.8655. *When may Licensing refuse to renew my permit?*

(a) Based on our assessment of the criteria provided in §745.8607 of this subchapter (relating to How will Licensing decide which type of enforcement action to recommend or impose?), we may refuse to renew your permit for an issue identified in §745.8605 of this subchapter (relating to When can Licensing recommend or impose an enforcement action against my operation?) if we:

(1) Cannot take another type of enforcement action because:

(A) Your operation is ineligible for corrective action; or  
(B) The action would not resolve the issue or reduce risk at your operation;

(2) Determine that a background check result or a finding of abuse or neglect makes you ineligible for a permit, either because the result is ineligible for a risk evaluation or the Centralized Background Check Unit does not approve a risk evaluation as provided in Subchapter F of this chapter (relating to Background Checks); or

(3) Otherwise refuse to renew your permit to address the issue identified in §745.8605 of this subchapter.

(b) We may refuse to renew your permit at any point before or after the renewal period expires. For example, if there is a finding of abuse or neglect that makes you ineligible for a permit, then we may refuse to renew your permit before the expiration of your permit.

(c) The basis for refusing to renew your permit may be based on grounds that occurred before or after the renewal period expires.

(d) If we are:

(1) Refusing to renew your permit, we do not also have to revoke your permit; or

(2) Revoking your permit before or after the renewal period expires, we do not also have to refuse to renew your permit.

(e) You are entitled to an administrative review and a due process hearing if we refuse to renew your permit. You may continue to operate pending the outcome of the administrative review and due process hearing unless we determine the operation poses an immediate threat or danger to the health or safety of children.

(f) For other rules relating to renewals, see Division 12 of Subchapter D (relating to Permit Renewal).

*§745.8656. Are there any notice requirements when Licensing attempts to take adverse action against my operation?*

(a) You must post the notice of the adverse action or a copy in prominent places near each public entrance. You must post this notice as soon as you receive it.

(b) You must notify the parents of each child in your care that we are attempting to take adverse action. You must send a copy of the notice of the adverse action from us to the parents within five days of your receipt of the notice. You must send the notice by certified mail and give us a copy of each return receipt (the green card) within five days after the receipt is returned to you.

(c) Neither of these notice requirements apply to:

(1) A denial; or

(2) An adverse amendment.

*§745.8657. Whom may Licensing inform when attempting to deny, suspend, revoke, or refuse to renew my permit?*

(a) The fact that we are attempting to deny, suspend, revoke, or refuse to renew your permit is available to the public.

(b) We will inform the following that we are attempting to suspend, revoke, or refuse to renew your permit:

(1) The Texas Workforce Commission Local Workforce Board or the Child and Adult Care Food Program, if you are a child day-care operation participating in that program;

(2) The Department of Family and Protective Services (DFPS), if you are a residential child care operation who cares for a child in DFPS conservatorship; or

(3) Any other state or federal program or agency, as appropriate.

(c) When we inform a program or agency under subsection (b), we will include whether you may care for children pending any due process.

*§745.8659. Will there be any publication of the denial, suspension, [ø] revocation, or refusal to renew [ø] my permit?*

(a) If you waive the administrative review and due process hearing or if the denial, suspension, [ø] revocation, or refusal to renew your permit is upheld in the process, we will publish a notice of the adverse action taken against you on the Licensing consumer [DFPS's Internet] website along with other information regarding your child-care services.

(b) In addition, we will send notification of the outcomes of the administrative review and the due process hearing to those state and federal programs or [and] agencies that we previously informed of the adverse action.

*§745.8661. What notice must I provide parents when the denial, suspension, [ø] revocation, or refusal to renew [ø] my permit is final?*

If you are operating at the time you receive the final notice, you must notify the parents of each child that is enrolled of the denial, suspension, [ø] revocation, or refusal to renew [ø] your permit. You must send notice of this action to the parents by certified mail within five days of the receipt of the notice of the denial, suspension, [ø] revocation, or refusal to renew.

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## **26 TAC §§745.8653, 745.8655, 745.8657**

### **STATUTORY AUTHORITY**

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Department of Family and Protective Services to HHSC.

The repeals affect Texas Government Code §531.0055 and Texas Human Resources Code, §§42.041(b), 42.042, 42.046, 42.0462, 42.048, 42.049, 42.0495, 42.050, 42.052, 42.0704, 42.071, 42.072, 42.078, 42.251, 42.252, 42.253, and 42.255.

*§745.8653. What happens if I do not correct the deficiency during the suspension period?*

*§745.8655. Are there any notice requirements when Licensing attempts to take adverse action against my operation?*

*§745.8657. Will Licensing inform anyone that they are attempting to deny, suspend, or revoke my permit?*

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## DIVISION 4. JUDICIAL ACTIONS

### 26 TAC §§745.8681, 745.8683, 745.8685, 745.8687

#### STATUTORY AUTHORITY

The amendments and new section are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Department of Family and Protective Services to HHSC.

The amendments and new section affect Texas Government Code §531.0055 and Texas Human Resources Code, §§42.041(b), 42.042, 42.046, 42.0462, 42.048, 42.049, 42.0495, 42.050, 42.052, 42.0704, 42.071, 42.072, 42.078, 42.251, 42.252, 42.253, and 42.255.

*§745.8681. What judicial actions may Licensing impose?*

Only courts may impose judicial actions. The judicial actions we may ask the court to order include the following:

Figure: 26 TAC §745.8681

[Figure: 26 TAC §745.8681]

*§745.8683. Whom may Licensing inform when taking a judicial action against my operation?*

(a) The fact that we are taking a judicial action against your operation is available to the public.

(b) We will inform the following that we are taking a judicial action against your operation:

(1) The Texas Workforce Commission Local Workforce Board or the Child and Adult Care Food Program, if you are a child day-care operation participating in that program;

(2) The Department of Family and Protective Services (DFPS), if you are a residential child care operation who cares for a child in DFPS conservatorship; or

(3) Any other state or federal program or agency, as appropriate.

(c) When we inform a program or agency under subsection (b) of this section, we will include whether:

(1) We have obtained a temporary restraining order preventing your operation from caring for children;

(2) We are attempting to extend the order or make it permanent; and

(3) Your operation may care for children pending a final hearing in the matter.

*§745.8685. What steps must I take regarding children in my care when [When] a court orders me to [order instructs me to suspend and] close my operation immediately[; what happens to the children in my care]?*

(a) When a court orders you to close your operation immediately:

Figure: 26 TAC §745.8685(a)

[(a) For child day care, you must notify the parents to pick up their children within four hours or by the end of the workday, whichever is longer. For residential child care, a parent, guardian, or managing conservator of the child must make other arrangements for the child's care. If the child was placed by a state agency, such as Mental Health Mental Retardation (MHMR) or Child Protective Services, that agency should be notified.]

(b) In addition to notifying the parents as required in subsection (a) of this section, within five days of delivery of the temporary restraining order (TRO) you must inform the parents of each child in care or enrolled in the operation of the reason for the closure and the length of the closure by:

(1) Sending to each parent a copy of the TRO by certified mail [a copy of the TRO] and giving us a copy of each return receipt (the green card) within five days after the receipt is returned to you; or

(2) Delivering a copy of the TRO in person to the parents when the child is picked up from your care[;] and giving us a copy of an acknowledgment of receipt of the TRO that the parents signed.

*§745.8687. Will there be any type of publication of the judicial action taken against me?*

Yes, once there is a final court order, we will publish a notice of the judicial action taken against you on Licensing's consumer website [in the local newspaper]. In addition, we will send notifications of the outcome of the final judicial action to those state and federal programs or [and] agencies that we had [were] previously informed of the judicial action [temporary restraining order].

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### 26 TAC §745.8683

#### STATUTORY AUTHORITY

The repeal is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Department of Family and Protective Services to HHSC.

The repeal affects Texas Government Code §531.0055 and Texas Human Resources Code, §§42.041(b), 42.042, 42.046,

42.0462, 42.048, 42.049, 42.0495, 42.050, 42.052, 42.0704, 42.071, 42.072, 42.078, 42.251, 42.252, 42.253, and 42.255.

*§745.8683. Will anyone be informed of the judicial action being taken against me?*

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## DIVISION 5. MONETARY ACTIONS

### 26 TAC §§745.8711, 745.8713, 745.8714

#### STATUTORY AUTHORITY

The amendments and new section are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Department of Family and Protective Services to HHSC.

The amendments and new section affect Texas Government Code §531.0055 and Texas Human Resources Code, §§42.041(b), 42.042, 42.046, 42.0462, 42.048, 42.049, 42.0495, 42.050, 42.052, 42.0704, 42.071, 42.072, 42.078, 42.251, 42.252, 42.253, and 42.255.

*§745.8711. What monetary actions may Licensing impose?*

We may impose administrative penalties or ask the court to order civil penalties, which are described below:

Figure: 26 TAC §745.8711

[Figure: 26 TAC §745.8711]

*§745.8713. When may Licensing impose an administrative [a monetary] penalty before a corrective action?*

(a) We may impose an administrative [a monetary] penalty before imposing a corrective action any time we find a deficiency of a high risk minimum standard, including a deficiency for:

(1) The abuse, neglect, or exploitation of a child; [A violation of a high risk standard, as identified on the Licensing public website, and the Licensing enforcement methodology; or]

(2) A safety hazard standard;

(3) A safe sleeping standard;

(4) Any standard establishing times for reporting information to a parent or Licensing;

(5) A supervision standard; or

(6) [(2)] One of the following background check standards:

(A) A failure to timely submit the information required to conduct a background check under Subchapter F of this chapter (relating to Background Checks) on two or more occasions;

(B) You knowingly allow a person to be present at your operation before you receive notification from the Centralized Background Check Unit (CBCU) that a person is eligible, eligible with conditions, or provisionally eligible with conditions to be present at your operation;

(C) You knowingly allow a subject of a background check to be present at your operation after you have received notification from the CBCU that the subject is ineligible to be present at your operation; or

(D) You violate a condition or restriction that the CBCU has placed on the subject of a background check at your operation as part of the CBCU background check determination.

(b) For more information regarding deficiencies that may result in an administrative penalty, go to the Child Care Regulation Enforcement Actions page on [hhs.texas.gov](https://hhs.texas.gov).

*§745.8714. What penalty amounts must Licensing recommend for certain deficiencies?*

(a) Except for subsection (b) of this section, an administrative penalty for a deficiency is based on the maximum number of children the operation is authorized to provide care for or the number of children under the care of a child-placing agency, and may not exceed the following amounts:

(1) For deficiencies that occur in a child day-care operation:

Figure: 26 TAC §745.8714(a)(1)

(2) For deficiencies that occur in a residential child-care operation:

Figure: 26 TAC §745.8714(a)(2)

(b) For the following deficiencies, Licensing must recommend the following penalty amounts:

Figure 26 TAC §745.8714(b)

(c) For a penalty that Licensing assesses under subsection (a) of this section, Licensing may assess the penalty for each day the deficiency occurs.

(d) For penalty that Licensing assesses under subsections (b)(3) - (5), Licensing must recommend \$50 for the initial deficiency and an additional \$50 for each day the deficiency continues to occur.

*§745.8715. When may Licensing impose an administrative penalty against a controlling person?*

We may impose an administrative penalty against a controlling person when the controlling person:

(1) Violates a term of a license or registration;

(2) Makes a statement about a material fact that the person knows or should know is false:

(A) On an application for the issuance of a license or registration or an attachment to the application; or

(B) In response to a matter under investigation;

(3) Refuses to allow a representative of Licensing [DFPS] to inspect:

(A) A book, record, or file required to be maintained by the child care [child-care] operation; or

(B) Any part of the premises of the child care [child-care] operation;

(4) Purposefully interferes with the work of a Licensing [DFPS] representative or the enforcement of Texas Human Resources Code (HRC), Chapter 42; or

(5) Fails to pay a penalty assessed under HRC, Chapter 42, on or before the date the penalty is due as determined under HRC §42.078.

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

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §§746.201, 746.305, 746.307, 746.701, 746.801, 746.3605, and 746.3607; and new §§746.203, 746.205, 746.207, 746.309, and 746.311 in Title 26, Texas Administrative Code, Chapter 746, Minimum Standards for Child-Care Centers.

### BACKGROUND AND PURPOSE

The purpose of this proposal is to implement the portions of Senate Bill (S.B.) 568, 86th Legislature, Regular Session, 2019, that amended Chapter 42, Human Resources Code (HRC) to require HHSC Child Care Regulation (CCR) to establish minimum standards for safe sleeping, expand liability insurance requirements, and alter reporting requirements for certain incidents and deficiencies.

### SECTION-BY-SECTION SUMMARY

The proposed amendment to §746.201 (1) updates grammar and language for better readability and understanding; (2) replaces an abbreviation with the name of an agency; (3) replaces a citation with a requirement for a child-care center to comply with proposed new liability rules; and (4) corrects the name of the agency.

Proposed new §746.203 includes the statutory requirement that a child-care center have liability insurance of at least \$300,000 for each occurrence of negligence that covers injury to a child, unless there is an acceptable reason not to have the insurance. The child-care center must also submit proof of coverage to Licensing each year.

Proposed new §746.205 lists the statutory exceptions for the liability insurance referred to in proposed new §746.203. The rule also includes the requirement that a child-care center provide written notification to Licensing if the child-care center is unable to carry or stops carrying the insurance because of one of the exceptions.

Proposed new §746.207 requires a child-care center to provide written parental notification if the center cannot carry the required

liability insurance, and the notification must be made (1) before admitting a child; or (2) within 14 days of the liability insurance coverage ending, if the child-care center previously carried the liability insurance and subsequently stopped carrying it. The proposed rule also allows a child-care center to use the form on the Licensing provider website to notify parents.

The proposed amendment to §746.305 (1) specifies that a child-care center must notify Licensing of an injury to a child that requires medical treatment; (2) adds a requirement for a child-care center to notify Licensing if a child in care sustains an injury that requires hospitalization or shows signs or symptoms of an illness that requires hospitalization; (3) updates grammar and punctuation throughout the rule for better readability and understanding; and (4) renumbers the rules accordingly.

The proposed amendment to §746.307 (1) adds a requirement for a child-care center to immediately notify the parent if there is an allegation that the child has been abused, neglected, or exploited; (2) updates language and grammar throughout the rule for better readability and understanding; (3) updates the parental notification requirement regarding injuries to require a child-care center to notify the parent if the child is injured and requires medical treatment or hospitalization; and (4) adds a requirement for a child-care center to notify a parent if a child shows signs or symptoms of an illness that requires hospitalization.

Proposed new §746.309 (1) requires a child-care center to notify the parent of each child attending the child-care center when Licensing determines the center has a deficiency related to safe sleeping or in the standard related to the abuse, neglect, or exploitation of a child; and (2) outlines the specific safe sleeping standards that require notification.

Proposed new §746.311 outlines how a child-care center is required to notify parents of a deficiency in safe sleeping or in the standard related to the abuse, neglect, or exploitation of a child in care as required by proposed new §746.309. The proposed rule requires a child-care center to notify parents in writing within five days of receiving notification of the deficiency and use prescribed Licensing forms for those notifications.

The proposed amendment to §746.701 (1) updates the rule title for better readability and understanding; (2) updates grammar for better readability and understanding; (3) adds a form number for the Licensing Incident/Illness Report Form; (4) updates the rule to require a child-care center to use the Licensing Incident/Illness Report or similar form to document (A) child injuries that require medical treatment or hospitalization; (B) child illnesses that require hospitalization; and (C) incidents of a child in care or employee contracting a communicable disease deemed notifiable by the Texas Department of State Health Services; and (4) renumbers the rule accordingly.

The proposed amendment to §746.801 (1) updates citations; (2) adds a requirement for a child-care center to maintain proof that the center has notified parents in writing that the child-care center does not carry liability insurance, if applicable; (3) removes an abbreviation; (4) corrects the name of the agency; (5) updates language involving cribs for consistency with other Licensing chapters; and (6) adds a requirement for a child-care center to maintain proof that the center has notified parents in writing of deficiencies in safe sleeping and abuse, neglect, or exploitation.

The proposed amendment to §746.3605 (1) updates the rule title for better readability and understanding; (2) clarifies how a child-care center must respond when a child in care becomes ill but does not require immediate treatment by a health-care pro-

fessional or hospitalization; and (3) adds requirements regarding how a child-care center must respond when a child becomes ill while in care and requires immediate treatment by a healthcare professional or hospitalization.

The proposed amendment to §746.3607 (1) updates the rule title and language in the rule to remove previous requirements involving illnesses, as those requirements are now included in proposed §746.3605; and (2) replaces the word "attention" with "treatment" as it applies to a health-care professional addressing injuries sustained in care.

#### FISCAL NOTE

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

#### GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The rules do not impose any additional costs on small businesses, micro-businesses, or rural communities required to comply with the rules.

#### 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 (1) are necessary to protect the health, safety, and welfare of the residents of Texas; (2) do not impose a cost on regulated persons; and (3) are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

#### PUBLIC BENEFIT AND COSTS

Jean Shaw, Associate Commissioner for Child Care Regulation, has determined that for each year of the first five years the rules are in effect, the public benefit will be (1) improved awareness of sleep safety for children in care; (2) compliance with statutory requirements; and (3) increased communication and transparency in child-care operations that will allow parents to make a more

informed choice when choosing and maintaining a relationship with a child-care operation.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons required to comply with the proposed rules because the proposal does not impose any additional costs or fees on persons required to comply with these rules.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed to Aimee Belden by email at [Aimee.Belden@hhsc.state.tx.us](mailto:Aimee.Belden@hhsc.state.tx.us).

Written comments on the proposal may be submitted to Aimee Belden, Rules Writer, Child Care Regulation, Texas Health and Human Services Commission, E-550, P.O. Box 149030, Austin, Texas 78714-9030; or by email to [CCLRules@hhsc.state.tx.us](mailto:CCLRules@hhsc.state.tx.us).

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 20R026" in the subject line.

## SUBCHAPTER B. ADMINISTRATION AND COMMUNICATION

### DIVISION 1. PERMIT HOLDER RESPONSIBILITIES

#### 26 TAC §§746.201, 746.203, 746.205, 746.207

#### STATUTORY AUTHORITY

The amendments and new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies.

The amendments and new sections affect Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

*§746.201. What are my responsibilities as the permit holder?*

You are responsible for [the following]:

- (1) Developing and implementing your child-care center's operational policies, which must comply with or exceed the minimum standards specified in this subchapter;
- (2) Developing written personnel policies, including job descriptions, job responsibilities, and requirements;
- (3) Making provisions for training that comply with Division 4, Subchapter D of this chapter (relating to Professional Development);

(4) Designating a child-care center director who meets minimum standard qualifications and has daily, on-site responsibility for the operation of the child-care center;

(5) Reporting and ensuring your employees and volunteers report suspected abuse, neglect, or exploitation directly to the Texas Department of Family and Protective Services [DFPS] without delegating this responsibility, as required by [the] Texas Family Code[;] §261.101;

(6) Ensuring all information related to background checks is kept confidential, as required by the Human Resources Code, §40.005(d) and (e);

(7) Ensuring parents can [have the opportunity to] visit the child-care center any time during the child-care center's hours of operation to observe their child, program activities, the building, the grounds, and the equipment without having to secure prior approval;

(8) Complying with the [Maintaining] liability insurance requirements in this division[; as required by the Human Resources Code §42.049, if we license you to care for 13 or more children];

(9) Complying with the child-care licensing law found in Chapter 42 of the Human Resources Code, the applicable minimum standards, and other applicable rules in the Texas Administrative Code;

(10) Reporting to Licensing [DFPS] any Department of Justice substantiated complaints related to Title III of the Americans with Disabilities Act, which applies to commercial public accommodations; and

(11) Ensuring the total number of children in care at the center or away from the center, such as during a field trip, never exceeds the licensed capacity of the center.

§746.203. What are the liability insurance requirements?

Unless you have an acceptable reason not to have the insurance, you must:

(1) Have liability insurance coverage:

(A) Of at least \$300,000 for each occurrence of negligence; and

(B) That covers injury to a child that occurs while the child is in your care, regardless of whether the injury occurs on or off the premises of your operation; and

(2) Provide proof of coverage to Licensing each year by the anniversary date of the issuance of your permit.

§746.205. What are acceptable reasons not to have liability insurance?

(a) You do not have to have liability insurance that meets the requirements of §746.203 of this division (relating to What are the liability insurance requirements?) if you cannot carry insurance because:

(1) Of financial reasons;

(2) You are unable to locate an underwriter who is willing to issue a policy to the operation; or

(3) You have already exhausted the limits of a policy that met the requirements.

(b) If you cannot carry liability insurance or stop carrying the insurance because of a reason listed in subsection (a) of this section, you must send written notification to Licensing by the anniversary date of the issuance of your permit. Your notification must include the reason that you cannot carry the insurance.

§746.207. When must I notify parents that I do not carry liability insurance?

(a) If you do not carry liability insurance that meets the requirements of §746.203 of this division (relating to What are the liability insurance requirements?), then you must notify the parent of each child in your care in writing that you do not carry liability insurance before you admit the child into your care.

(b) If you previously carried the liability insurance and subsequently stop carrying the liability insurance, then you must notify the parent of each child in your care in writing that you do not carry the insurance within 14 days after you stop carrying it.

(c) You may use Form 2962, Verification of Liability Insurance, located on the Licensing provider website, to notify parents. Regardless of whether you use this form, you must be able to demonstrate that you provided written notice to the parent of each child in your care, as required in §746.801(6) of this chapter (relating to What records must I keep at my child-care center?).

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 December 2, 2020.

TRD-202005123

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: January 17, 2021

For further information, please call: (512) 438-3269



## DIVISION 2. REQUIRED NOTIFICATION

**26 TAC §§746.305, 746.307, 746.309, 746.311**

### STATUTORY AUTHORITY

The amendments and new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies.

The amendments and new sections affect Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

§746.305. What other situations require notification to Licensing?

(a) You must notify us as soon as possible, but no later than two days after:

(1) Any occurrence that renders all or part of your center unsafe or unsanitary for a child;

(2) Injury to a child in your care that requires medical treatment by a health-care professional or hospitalization;

(3) A child in your care shows signs or symptoms of an illness that requires hospitalization;

(4) [(3)] You become aware that an employee or child in your care contracts an illness deemed notifiable by the Texas Department of State Health Services [DHS] as specified in 25 TAC Chapter 97, Subchapter A (relating to Control of Communicable Diseases);



(5) ~~[(4)]~~ A person for whom ~~[which]~~ you are required to request a background check under Chapter 745, Subchapter F of this title (relating to Background Checks) is arrested or charged with a crime;

(6) ~~[(5)]~~ The occurrence of any other situation~~;~~ ~~that~~ ~~[which]~~ places a child at risk, such as forgetting a child in a center vehicle or on the playground or not preventing a child from wandering away from the child-care center unsupervised; and

(7) ~~[(6)]~~ A new individual becomes a controlling person at your operation, or an individual that was previously a controlling person ceases to be a controlling person at your operation.

(b) You must notify us immediately if a child dies while in your care.

*§746.307. What emergency or medical situations must I notify parents about?*

(a) You must notify the parent of a child immediately if there is an allegation that the child has been abused, neglected, or exploited, as defined in Texas Family Code §261.001, while in your care.

(b) ~~(a)~~ After you ensure the safety of the child, you must notify the parent of the child immediately after the ~~[a]~~ child:

(1) Is injured and the injury requires medical treatment ~~[attention]~~ by a health-care professional or hospitalization;

(2) Shows signs or symptoms of an illness that requires hospitalization;

~~[(2) Has a sign or symptom requiring exclusion from the child-care center as specified in Subchapter R of this chapter (relating to Health Practices));~~

(3) Has been involved in any situation that placed the child at risk. For example, a caregiver forgetting the ~~[a]~~ child in a center vehicle or failing to prevent the ~~[not preventing a]~~ child from wandering away from the child-care center unsupervised; or

(4) Has been involved in any situation that renders the child-care center unsafe, such as a fire, flood, or damage to the child-care center as a result of severe weather.

(c) ~~[(b)]~~ You must notify the parent of less serious injuries when the parent picks the child up from the child-care center. Less serious injuries include~~;~~ ~~but are not limited to;~~ minor cuts, scratches, and bites from other children requiring first-aid treatment by employees.

(d) ~~[(c)]~~ You must provide written notice to the parent of each child attending ~~[notify all parents of children in]~~ the child-care center ~~[in writing and]~~ within 48 hours of becoming aware that a child in your care or an employee has contracted a communicable disease deemed notifiable by the Texas Department of State Health Services, as specified in 25 TAC Chapter 97, Subchapter A (relating to Control of Communicable Diseases).

(e) ~~[(d)]~~ You must provide written notice to the parent of each child in a group within 48 hours ~~[to the parents of all children in a group]~~ when there is an outbreak of lice or other infestation in the group. You must either post this notice in a prominent and publicly accessible place where parents can easily view it or send an individual note to each parent.

*§746.309. What are the notification requirements when Licensing finds my center deficient in a standard related to safe sleeping or the abuse, neglect, or exploitation of a child?*

(a) You must notify the parent of each child attending your child-care center of a deficiency in:

(1) A safe sleeping standard noted in subsection (b) of this section; or

(2) The abuse, neglect, or exploitation standard in §746.1201(4) of this chapter (relating to What general responsibilities do my child-care center employees have?).

(b) The following are safe sleeping standards requiring notification:

(1) §746.2409(a)(1) of this chapter (relating to What specific safety requirements must my cribs meet?);

(2) §746.2411(2)(A) of this chapter (relating to Are play yards allowed?);

(3) §746.2415(a)(5) and (b) of this chapter (relating to What specific types of equipment am I prohibited from using with infants?);

(4) §746.2426 of this chapter (relating to May I allow infants to sleep in a restrictive device?);

(5) §746.2427 of this chapter (relating to Are infants required to sleep on their backs?);

(6) §746.2428 of this chapter (relating to May I swaddle an infant to help the infant sleep?); and

(7) §746.2429 of this chapter (relating to If an infant has difficulty falling asleep, may I cover the infant's head or crib?).

*§746.311. How must I notify parents of a safe sleeping deficiency or an abuse, neglect, or exploitation deficiency?*

(a) Within five days after you receive notification of a deficiency described in §746.309 of this division (relating to What are the notification requirements when Licensing finds my center deficient in a standard related to safe sleeping or the abuse, neglect, or exploitation of a child in care?), you must notify the parents of each child attending your child-care center at the time of notification, including a child who may not have been in care on the day of the actual incident.

(b) If the deficiency is for a safe sleeping standard, you must notify the parents using Form 2970, Notification of Safe Sleeping Deficiency, located on the Licensing provider website.

(c) If the deficiency is for the standard related to the abuse, neglect, or exploitation of a child in care, you must notify the parents using Form 7266, Notification of Abuse/Neglect/Exploitation Deficiency, located on the Licensing provider website.

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-3269



## SUBCHAPTER C. RECORD KEEPING

### DIVISION 2. RECORDS OF ACCIDENTS AND INCIDENTS

## 26 TAC §746.701

### STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies.

The amendment affects Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

*§746.701. What ~~[Must I keep a]~~ written records ~~[record]~~ must I keep of accidents and incidents that occur at my child-care center?*

*[Yes.] You must record the following information on the ~~[use a]~~ Licensing Incident/Illness Report Form 7239 ~~[form;]~~ or another ~~[other]~~ form that contains ~~[containing]~~ at least the same information~~;~~ ~~to record information regarding]~~:*

*(1) An injury to a child in care ~~[Injuries]~~ that required medical treatment ~~[attention]~~ by a health-care professional or hospitalization; ~~[and]~~*

*(2) An illness that required the hospitalization of a child in care;*

*(3) An incident of a child in care or employee contracting a communicable disease deemed notifiable by the Texas Department of State Health Services, as specified in 25 TAC Chapter 97, Subchapter A (relating to Control of Communicable Diseases); and*

*(4) ~~[(2)]~~ Any other situation that placed a child at risk, such as forgetting a child in a center vehicle or not preventing a child from wandering away from the child-care center unsupervised.*

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

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Karen Ray

Chief Counsel

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## DIVISION 3. RECORDS THAT MUST BE KEPT ON FILE AT THE CHILD-CARE CENTER

### 26 TAC §746.801

#### STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies.

The amendment affects Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

*§746.801. What records must I keep at my child-care center?*

You must maintain and make the following records available for our review upon request, during hours of operation. Paragraphs (14), (15), and (16) of this section are optional, but if provided will allow Licens-

ing to avoid duplicating the evaluation of standards that have been evaluated by another state agency within the past year:

(1) Children's records, as specified in Division 1 of this subchapter (relating to Records of Children);

(2) Infant feeding instructions, as required in §746.2421 of this chapter ~~[title]~~ (relating to What written feeding instructions must I obtain for an infant not ready for table food?), if applicable;

(3) Personnel and training records according to Division 4 of this subchapter (relating to Personnel Records);

(4) Licensing Child-Care Center Director's Certificate;

(5) Attendance records or time sheets listing all days and hours worked for each employee;

(6) Proof of current ~~[Verification of]~~ liability insurance coverage or, if applicable, that you have provided written notice to the parent of each child that you do not carry the insurance;

(7) Medication records, if applicable;

(8) Playground maintenance checklists;

(9) Pet vaccination records, if applicable;

(10) Safety documentation for emergency drills, fire extinguishers, and smoke detectors;

(11) Most recent fire inspection report, including any written approval from the fire marshal to provide care above or below ground level, if applicable;

(12) Most recent sanitation inspection report;

(13) Most recent gas inspection report, if applicable;

(14) Most recent Texas Department of State Health Services~~[']~~ immunization compliance review form, if applicable;

(15) Most recent Texas Department of Agriculture Child and Adult Care Food Program ~~[(CACFP)]~~ report, if applicable;

(16) Most recent local workforce board Child-Care Services Contractor inspection report, if applicable;

(17) Record of pest extermination, if applicable;

(18) Most recent Licensing ~~[DFPS]~~ form certifying that you have reviewed each of the bulletins and notices issued by the United States Consumer Product Safety Commission regarding unsafe children's products and that there are no unsafe children's products in use or accessible to children in the child-care center;

(19) A daily tracking system for when a child's care begins and ends, as specified in §746.631 of this subchapter ~~[title]~~ (relating to Must I have a system for signing children in and out of my care?);

(20) Documentation for all full-size and non-full-size cribs, as specified in §746.2409(a)(9) of this chapter ~~[title]~~ (relating to What specific safety requirements must my cribs meet?); ~~;~~ ~~if applicable; and]~~

(21) Documentation for vehicles, as specified in §746.5627 of this chapter ~~[title]~~ (relating to What documentation must I keep at the child-care center for each vehicle used to transport children in care?), if applicable; and

(22) Proof that you have notified parents in writing of deficiencies in safe sleeping and abuse, neglect, or exploitation, as specified in §746.309 of this chapter (relating to What are the notification requirements when Licensing finds my center deficient in a standard related to safe sleeping or the abuse, neglect, or exploitation of a child?) and §746.311 of this chapter (relating to How must I notify parents of

a safe sleeping deficiency or an abuse, neglect, or exploitation deficiency?).

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-3269



## SUBCHAPTER R. HEALTH PRACTICES DIVISION 3. ILLNESS AND INJURY

### 26 TAC §746.3605, §746.3607

#### STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies.

The amendments affect Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

*§746.3605. How must caregivers respond when ~~[What if]~~ a child becomes ill ~~[while in care]~~?*

(a) If a child becomes ill while in your care but does not require immediate treatment by a health-care professional or hospitalization, you must:

- (1) Contact the parent to pick up the child;
- (2) Care for the child apart from other children;
- (3) Give appropriate attention and supervision until the parent picks the child up; and
- (4) Give extra attention to hand washing and sanitation if the child has diarrhea or vomiting.

(b) If a child becomes ill while in your care and requires immediate treatment by a health-care professional or hospitalization, you must:

- (1) Contact emergency medical services (or take the child to the nearest emergency room after you have ensured the supervision of other children in the group);
- (2) Give the child first-aid treatment or CPR when needed;
- (3) Contact the child's parent;
- (4) Contact the physician or other health-care professional identified in the child's record; and
- (5) Ensure the supervision of other children in the group.

*§746.3607. How must ~~[should]~~ caregivers respond when a child is injured and ~~[to an illness or injury that]~~ requires immediate treatment by ~~[the immediate attention of]~~ a health-care professional?*

For an ~~[illness or]~~ injury that requires ~~[the]~~ immediate treatment by ~~[attention of]~~ a health-care professional, you must:

(1) Contact emergency medical services (or take the child to the nearest emergency room after you have ensured the supervision of other children in the group);

(2) Give the child first-aid treatment or CPR when needed;

(3) Contact the child's parent;

(4) Contact the physician or other health-care professional identified in the child's record; and

(5) Ensure supervision of other children in the group.

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

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## CHAPTER 747. MINIMUM STANDARDS FOR CHILD-CARE HOMES SUBCHAPTER B. ADMINISTRATION AND COMMUNICATION

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §§747.207, 747.303, 747.305, 747.701, 747.801, 747.3405, and 747.3407; and new §§747.209, 747.211, 747.213, 747.307, and 747.309 in Title 26, Texas Administrative Code, Chapter 747, Minimum Standards for Child Care Homes.

#### BACKGROUND AND PURPOSE

The purpose of this proposal is to implement the portions of Senate Bill (S.B.) 568, 86th Legislature, Regular Session, 2019, that amended Chapter 42, Human Resources Code (HRC) to require HHSC Child Care Regulation (CCR) to establish minimum standards for safe sleeping, expand liability insurance requirements, and alter reporting requirements for certain incidents and deficiencies.

#### SECTION-BY-SECTION SUMMARY

The proposed amendment to §747.207 (1) updates the citation to the Texas Family Code to the correct section number; (2) updates grammar and language for better readability and understanding; (3) clarifies that a child-care home must make reports of abuse, neglect, or exploitation directly to the Texas Department of Family and Protective Services; (4) adds a requirement for a child-care home to comply with proposed new liability rules; and (5) rennumbers the rules accordingly.

Proposed new §747.209 includes the statutory requirement that a child-care home have liability insurance of at least \$300,000 for each occurrence of negligence that covers injury to a child, unless there is an acceptable reason not to have the insurance. The child-care home must also submit proof of coverage to Licensing each year.

Proposed new §747.211 lists the statutory exceptions for the liability insurance referred to in proposed new §747.209. The rule also includes the requirement that a child-care home provide written notification to Licensing if the child-care home is unable to carry or stops carrying the insurance because of one of the exceptions.

Proposed new §747.213 requires a child-care home to provide written parental notification if the home cannot carry the required liability insurance, and the notification must be made (1) before admitting a child; (2) for current children in care, by May 25, 2021, if the child-care home received its permit before April 25, 2021, and cannot obtain the liability insurance by that date; or (3) within 14 days of the liability insurance coverage ending, if the child-care home previously carried the liability insurance and subsequently stopped carrying it. The proposed rule also allows a child-care home to use the form on the Licensing provider website to notify parents.

The proposed amendment to §747.303 (1) specifies that a child-care home must notify Licensing of an injury to a child that requires medical treatment; (2) adds a requirement for a child-care home to notify Licensing if a child in care sustains an injury that requires hospitalization or shows signs or symptoms of an illness that requires hospitalization; (3) updates grammar for better readability and understanding; and (4) renumbers the rules accordingly.

The proposed amendment to §747.305 (1) adds a requirement for a child-care home to immediately notify the parent if there is an allegation that the child has been abused, neglected, or exploited; (2) updates language and grammar throughout the rule for better readability and understanding; (3) updates the parental notification requirement regarding injuries to require a child-care home to notify the parent if the child is injured and requires medical treatment or hospitalization; and (4) adds a requirement for a child-care home to notify a parent if a child shows signs or symptoms of an illness that requires hospitalization.

Proposed new §747.307 (1) requires a child-care home to notify the parent of each child attending the child-care home when Licensing determines the home has a deficiency related to safe sleeping or in the standard related to the abuse, neglect, or exploitation of a child; and (2) outlines the specific safe sleeping standards that require notification.

Proposed new §747.309 outlines how a child-care home is required to notify parents of a deficiency in safe sleeping or in the standard related to the abuse, neglect, or exploitation of a child in care as required by proposed new §747.307. The proposed rule requires a child-care home to notify parents in writing within five days of receiving notification of the deficiency and use prescribed Licensing forms for those notifications.

The proposed amendment to §747.701 (1) updates the rule title for better readability and understanding; (2) updates grammar for better readability and understanding; (3) adds a form number for the Licensing Incident/Illness Report Form; (4) updates the rule to require a child-care home to use the Licensing Incident/Illness Report or similar form to document (A) child injuries that require medical treatment or hospitalization; (B) child illnesses that require hospitalization; and (C) incidents of a child in care or caregiver contracting a communicable disease deemed notifiable by the Texas Department of State Health Services; and (4) renumbers the rule accordingly.

The proposed amendment to §747.801 (1) updates citations; (2) removes an abbreviation; (3) corrects the name of the agency;

(4) updates language involving cribs for consistency with other Licensing chapters; (5) adds a requirement for a child-care home to maintain proof that the home has liability insurance coverage, if applicable, or has notified parents in writing that the home does not carry liability insurance; and (6) adds a requirement for a child-care home to maintain proof that the home has notified parents in writing of deficiencies in safe sleeping and abuse, neglect, or exploitation.

The proposed amendment to §747.3405 (1) updates the rule title for better readability and understanding; (2) clarifies how a child-care home must respond when a child in care becomes ill but does not require immediate treatment by a health-care professional or hospitalization; and (3) adds requirements regarding how a child-care home must respond when a child becomes ill while in care and requires immediate treatment by a healthcare professional or hospitalization.

The proposed amendment to §747.3407 (1) updates the rule title and language in the rule to remove previous requirements involving illnesses, as those requirements are now included in proposed §747.3405; and (2) replaces the word "attention" with "treatment" as it applies to a health-care professional addressing injuries sustained in care.

#### FISCAL NOTE

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

#### GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Trey Wood has also determined that there could be an adverse economic effect on small and micro-businesses, but no adverse economic effect on rural communities.

Chapter 206 of Texas Government Code defines a small business as one that is for-profit with fewer than 100 employees. A micro-business is one that is for-profit with fewer than 20 employees. Based on data obtained from the 2019 CCR Data Book as of August 20, 2020, CCR estimates that there are approximately 4,914 Licensed and Registered Child-Care Homes required to comply with the rules. These homes are limited to caring for a maximum of 12 children. CCR assumes that all Licensed and Registered Child-Care Homes (4,914 homes) are for-profit

homes with less than 20 employees and qualify as small businesses and micro-businesses.

The projected economic impact on small businesses and micro-businesses is limited to proposed new §747.209.

CCR staff developed the methodologies used to calculate the fiscal impact of this rule. The impact was calculated using cost research conducted by staff and assumptions regarding child-care practices. The key assumptions and methodologies are described in detail below, as these underlie the individual impact calculations that are projected to have a fiscal impact on at least some licensed and registered child-care homes.

Section 747.209 requires liability insurance coverage in the amount of at least \$300,000 for each occurrence of negligence, unless there is an acceptable reason not to have the insurance. The section also requires that the insurance cover injury to a child that occurs either at the child-care home or off the premises while the child is in care. Two insurance companies that were contacted indicated an approximate insurance cost per year would be between \$600 and \$1,600 per year. Currently, CCR posts to the HHSC provider website any deficient minimum standards. It is unclear whether this will have a subsequent impact on the cost of the liability insurance. Since licensed and registered child-care homes are limited to providing care and supervision to at most 12 unrelated children with regularly fluctuating enrollment, CCR's assessment is that many licensed and registered homes may determine the insurance to be cost prohibitive. For licensed and registered homes that determine liability insurance to be cost prohibitive, §747.211 lists out acceptable reasons for a licensed or registered home not to have liability insurance. For the homes that do obtain the required insurance, CCR estimates that the insurance costs will be between \$600 and \$1600 annually. As a result, HHSC does not have sufficient information to determine economic costs for persons required to comply with the rule as proposed.

HHSC determined that alternative methods to achieve the purpose of the proposed rules for small businesses, micro-businesses, or rural communities would not be consistent with ensuring the health and safety of children attending child-care in Texas.

#### 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: (1) to protect the health, safety, and welfare of the residents of Texas; and (2) to implement legislation that does not specifically state that §2001.0045 applies to the rules.

#### PUBLIC BENEFIT AND COSTS

Jean Shaw, Associate Commissioner for Child Care Regulation, has determined that for each year of the first five years the rules are in effect, the public benefit will be (1) improved awareness of sleep safety for children in care; (2) compliance with statutory requirements; and (3) increased communication and transparency in child-care operations that will allow parents to make a more informed choice when choosing and maintaining a relationship with a child-care operation.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons required to comply with the proposed rules other than

the costs noted under the small businesses, micro-businesses, and rural community analysis.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed to Aimee Belden by email to [Aimee.Belden@hhsc.state.tx.us](mailto:Aimee.Belden@hhsc.state.tx.us).

Written comments on the proposal may be submitted to Aimee Belden, Rules Writer, Child Care Regulation, Texas Health and Human Services Commission, E-550, P.O. Box 149030, Austin, Texas 78714-9030; or by email to [CCLRules@hhsc.state.tx.us](mailto:CCLRules@hhsc.state.tx.us).

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 20R026" in the subject line.

### DIVISION 1. PRIMARY CAREGIVER RESPONSIBILITIES

#### 26 TAC §§747.207, 747.209, 747.211, 747.213

##### STATUTORY AUTHORITY

The amendments and new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies.

The amendments and new sections affect Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

*§747.207. What are my responsibilities as the primary caregiver?*

You are responsible for ~~the following~~:

(1) Developing and implementing your child-care home's operational policies, which comply with or exceed Division 4 of this subchapter (relating to Operational Policies);

(2) Ensuring all assistant caregivers and substitute caregivers comply with the relevant minimum standards for those caregivers, as specified in this chapter, and are provided assignments that match their skills, abilities, and training;

(3) Ensuring all household members comply with the minimum standards that apply to household members, as specified in this chapter;

(4) Reporting suspected abuse, neglect, or ~~and~~ exploitation directly to the Texas Department of Family and Protective Services, as required by ~~the~~ Texas Family Code~~[,]~~ §261.1401 ~~§261.401~~;

(5) Ensuring parents ~~can~~ ~~have the opportunity to~~ visit your child-care home any time during all hours of operation to observe their child, program activities, the home, the grounds, and the equipment, without having to secure prior approval;

(6) Initiating background checks as specified in Chapter 745, Subchapter F of this title (relating to Background Checks);

(7) Ensuring all information related to background checks is kept confidential as required by the Human Resources Code, §40.005(d) and (e);

(8) Complying with the liability insurance requirements in this division;

(9) ~~[(8)]~~ Complying with:

(A) The child-care licensing law, found in Chapter 42 of the Human Resources Code;

(B) All the minimum standards that apply to your licensed or registered child-care home, as specified in this chapter; ~~and~~

(C) All other applicable laws and rules in the Texas Administrative Code; and

(10) ~~[(9)]~~ Ensuring the total number of children in care at the home or away from the home, such as during a field trip, never exceeds the capacity of the home as specified on the license or registration.

§747.209. What are the liability insurance requirements?

Unless you have an acceptable reason not to have the insurance, you must:

(1) Have liability insurance coverage:

(A) Of at least \$300,000 for each occurrence of negligence; and

(B) That covers injury to a child that occurs while the child is in your care, regardless of whether the injury occurs on or off the premises of your home; and

(2) Provide proof of coverage to Licensing each year by the anniversary date of the issuance of your permit.

§747.211. What are acceptable reasons not to have liability insurance?

(a) You do not have to have liability insurance that meets the requirements of §747.209 of this division (relating to What are the liability insurance requirements?) if you are unable to carry the insurance because:

(1) Of financial reasons;

(2) You are unable to locate an underwriter who is willing to issue a policy to the home; or

(3) You have already exhausted the limits of a policy that met the requirements.

(b) If you cannot carry liability insurance or stop carrying the insurance because of a reason listed in subsection (a) of this section, you must send written notification to Licensing by the anniversary date of the issuance of your permit. Your notification must include the reason that you cannot carry the insurance.

§747.213. When must I notify parents that I do not carry liability insurance?

(a) If you do not carry liability insurance that meets the requirements of §747.209 of this division (relating to What are the liability insurance requirements?), then you must notify the parent of each child in your care in writing that you do not carry liability insurance before you admit the child into your care.

(b) If you received your permit before April 25, 2021 and cannot obtain the liability insurance by that date, then you must notify the

parent of each child in your care in writing that you do not carry the insurance by May 25, 2021.

(c) If you previously carried the liability insurance and subsequently stop carrying the liability insurance, then you must notify the parent of each child in your care in writing that you do not carry the insurance within 14 days after you stop carrying it.

(d) You may use Form 2962, Verification of Liability Insurance, located on the Licensing provider website, to notify parents. Regardless of whether you use this form, you must be able to demonstrate that you provided written notice to the parent of each child in your care, as required in §747.801(14) of this chapter (relating to What records must I keep at my child-care home?).

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 December 2, 2020.

TRD-202005128

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: January 17, 2021

For further information, please call: (512) 438-3269



## SUBCHAPTER B. ADMINISTRATION AND COMMUNICATION

### DIVISION 2. REQUIRED NOTIFICATIONS

#### 26 TAC §§747.303, 747.305, 747.307, 747.309

#### STATUTORY AUTHORITY

The amendments and new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies.

The amendments and new sections affect Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

§747.303. What other situations require notification to Licensing?

(a) You must notify us as soon as possible, but no later than two days after:

(1) Any occurrence that renders all or part of your child-care home unsafe or unsanitary for a child;

(2) Injury to a child in your care that requires medical treatment by a health-care professional or hospitalization;

(3) A child in your care shows signs or symptoms of an illness that requires hospitalization;

(4) ~~[(3)]~~ You become aware that a household member, caregiver, or child in care contracts an illness deemed notifiable by the Texas Department of State Health Services [(DSHS)] as specified in 25 TAC Chapter 97, Subchapter A (relating to Control of Communicable Disease);

(5) ~~[(4)]~~ A person for whom ~~[which]~~ you are required to request a background check under Chapter 745, Subchapter F of this title (relating to Background Checks) is arrested or charged with a crime;

(6) [(5)] The occurrence of any other situation that places a child at risk, such as forgetting a child in a vehicle or not preventing a child from wandering away from your child-care home unsupervised; and

(7) [(6)] A new individual becomes a controlling person at your operation, or an individual that was previously a controlling person ceases to be a controlling person at your operation.

(b) You must notify us immediately if a child dies while in your care.

*§747.305. What emergency and medical situations must I notify parents about?*

(a) You must notify the parent of a child immediately if there is an allegation that the child has been abused, neglected, or exploited, as defined in Texas Family Code §261.001, while in your care.

(b) [(a)] After you ensure the safety of the child, you must notify the parent of the child immediately after the [a] child:

(1) Is injured and the injury requires medical treatment [attention] by a health-care professional;

(2) Shows signs or symptoms of an illness that requires hospitalization;

[(2) Has a sign or symptom requiring exclusion from the child-care home as listed in Subchapter R of this chapter (relating to Health Practices);]

(3) Has been involved in any situation that placed the child at risk. For example, forgetting the [a] child in a vehicle or failing to prevent the [not preventing a] child from wandering away from your child-care home unsupervised; or

(4) Has been involved in any situation that renders the child-care home unsafe, such as a fire, flood, or damage to the child-care home as a result of severe weather.

(c) [(b)] You must notify the parent of less serious injuries when the parent picks the child up from your child-care home. Less serious injuries include[, but are not limited to,] minor cuts, scratches, and bites from other children requiring first-aid treatment by caregivers.

(d) [(c)] You must provide written notice to the parent of each child attending [notify all parents of children in] the child-care home within 48 hours when any child in your care, a caregiver, or a household member has contracted a communicable disease deemed notifiable by the Texas Department of State Health Services as specified in 25 TAC Chapter 97, Subchapter A (relating to Control of Communicable Disease).

(e) [(d)] You must provide written notice to the parent of each child attending the child-care home [notify parents] within 48 hours when there is an outbreak of lice or other infestation in the child-care home.

*§747.307. What are the notification requirements when Licensing finds my child-care home deficient in a standard related to safe sleeping or the abuse, neglect, or exploitation of a child?*

(a) You must notify the parent of each child attending your child-care home of a deficiency in:

(1) A safe sleeping standard noted in subsection (b) of this section; or

(2) The abuse, neglect, or exploitation standard in §747.1501(a)(3) of this chapter (relating to What general responsibilities do caregivers have in my child-care home?).

(b) The following are safe sleeping standards requiring notification:

(1) §747.2309(a)(1) of this chapter (relating to What specific safety requirements must my cribs meet?);

(2) §747.2311(2)(A) of this chapter (relating to Are play yards allowed?);

(3) §747.2315(a)(4) and (b) of this chapter (relating to What specific types of equipment am I prohibited from using with infants?);

(4) §747.2326 of this chapter (relating to May I allow infants to sleep in a restrictive device?);

(5) §747.2327 of this chapter (relating to Are infants required to sleep on their backs?);

(6) §747.2328 of this chapter (relating to May I swaddle an infant to help the infant sleep?); and

(7) §747.2329 of this chapter (relating to If an infant has difficulty falling asleep, may I cover the infant's head or crib?).

*§747.309. How must I notify parents of a safe sleeping deficiency or an abuse, neglect, or exploitation deficiency?*

(a) Within five days after you receive notification of a deficiency described in §747.307 of this division (relating to What are the notification requirements when Licensing finds my child-care home deficient in a standard related to safe sleeping or the abuse, neglect, or exploitation of a child?), you must notify the parents of each child attending your child-care home at the time of the notification, including a child who may not have been in care on the day of the actual incident.

(b) If the deficiency is for a safe sleeping standard, you must notify the parents using Form 2970, Notification of Safe Sleeping Deficiency, located on the Licensing provider website.

(c) If the deficiency is for the standard related to the abuse, neglect, or exploitation of a child in care, you must notify the parents using Form 7266, Notification of Abuse/Neglect/Exploitation Deficiency, located on the Licensing provider website.

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 December 2, 2020.

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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-3269



## SUBCHAPTER C. RECORD KEEPING

### DIVISION 2. RECORDS OF ACCIDENTS AND INCIDENTS

#### 26 TAC §747.701

#### STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner

of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies.

The amendment affects Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

*§747.701. What ~~[Must I keep a]~~ written records must I keep ~~[record]~~ of accidents and injuries that occur at my child-care home?*

~~[Yes.]~~ You must record the following information on the ~~[use a]~~ Licensing *Incident/Illness Report Form 7239* ~~[form,]~~ or another ~~[other]~~ form ~~that contains~~ ~~[containing]~~ at least the same information~~;~~ ~~to record~~ information regarding~~]~~:

(1) An injury to a child in care ~~[Injuries]~~ that required medical treatment ~~[attention]~~ by a health-care professional or hospitalization; ~~[and]~~

(2) An illness that required the hospitalization of a child in care;

(3) An incident of a child in care or caregiver contracting a communicable disease deemed notifiable by the Texas Department of State Health Services as specified in 25 TAC Chapter 97, Subchapter A (relating to Control of Communicable Diseases); and

(4) ~~[(2)]~~ Any other situation that placed a child at risk, such as forgetting a child in a vehicle or not preventing a child from wandering away from the child-care home.

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

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## DIVISION 3. RECORDS THAT MUST BE KEPT ON FILE AT THE CHILD-CARE HOME

### 26 TAC §747.801

#### STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies.

The amendment affects Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

*§747.801. What records must I keep at my child-care home?*

You must maintain and make the following records available for our review upon request during hours of operation. Paragraphs (8), (9), and (10) are optional, but if provided, will allow Licensing to avoid duplicating the evaluation of standards that have been evaluated by another state agency within the past year:

(1) Children's records, as specified in Division 1 of this subchapter (relating to Records of Children);

(2) Infant feeding instructions, as required in §747.2321 of this chapter ~~[title]~~ (relating to Must I obtain written feeding instructions for children not ready for table food?), if applicable;

(3) Personnel and training records, as required in §747.901 of this subchapter ~~[title]~~ (relating to What information must I maintain in my personnel records?), and in §747.1327 of this chapter ~~[title]~~ (relating to What documentation must I provide to Licensing to verify that training requirements have been met?);

(4) Menus, as required in §747.3113 of this chapter ~~[title]~~ (relating to Must I post and maintain daily menus?);

(5) Medication records, as required in §747.3605 of this chapter ~~[title]~~ (relating to How must I administer medication to a child in my care?) if applicable;

(6) Pet vaccination records, as required in §747.3703 of this chapter ~~[title]~~ (relating to Must I keep documentation of vaccinations for the animals?), if applicable;

(7) Safety documentation for emergency drills, fire extinguishers, smoke detectors, and emergency evacuation and relocation diagram, as required in §747.5005 of this chapter ~~[title]~~ (relating to Must I practice my emergency preparedness plan?), §747.5007 of this chapter ~~[title]~~ (relating to Must I have an emergency evacuation and relocation diagram?), §747.5107 of this chapter ~~[title]~~ (relating to How often must I inspect and service the fire extinguisher?), §747.5115 of this chapter ~~[title]~~ (relating to How often must the smoke detectors at my child-care home be tested?), and §747.5117 of this chapter ~~[title]~~ (relating to How often must I have an electronic smoke alarm system tested?);

(8) Most recent Texas Department of State Health Services~~[']~~ immunization compliance review form, if applicable;

(9) Most recent Texas Department of Agriculture Child and Adult Care Food Program ~~[(CACFP)]~~ report, if applicable;

(10) Most recent local workforce board Child-Care Services Contractor inspection report, if applicable;

(11) Written approval from the fire marshal to provide care above or below ground level, if applicable;

(12) Most recent Licensing ~~[DFPS]~~ form certifying that you have reviewed each of the bulletins and notices issued by the United States Consumer Product Safety Commission regarding unsafe children's products and that there are no unsafe children's products in use or accessible to children in the home; ~~[and]~~

(13) Documentation for all full-sized and non-full-sized cribs, as specified in §747.2309(a)(9) of this chapter ~~[title]~~ (relating to What specific safety requirements must my cribs meet?);~~]~~ if applicable~~]~~;

(14) Proof of current liability insurance coverage or, if applicable, that you have provided written notice to the parent of each child that you do not carry the insurance; and

(15) Proof that you have notified parents in writing of deficiencies in safe sleeping and abuse, neglect, or exploitation, as specified in §747.307 of this chapter (relating to What are the notification requirements when Licensing finds my child-care home deficient in a standard related to safe sleeping or the abuse, neglect, or exploitation of a child?) and §747.309 of this chapter (relating to How must I notify parents of a safe sleep deficiency or an abuse, neglect, or exploitation deficiency?).



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 December 2, 2020.

TRD-202005131

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: January 17, 2021

For further information, please call: (512) 438-3269



## SUBCHAPTER R. HEALTH PRACTICES

### DIVISION 3. ILLNESS AND INJURY

#### 26 TAC §747.3405, §747.3407

##### STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies.

The amendments affect Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

*§747.3405. How must caregivers respond when [~~What if~~] a child becomes ill [~~while in care~~]?*

(a) If a child becomes ill while in your care but does not require immediate treatment by a health-care professional or hospitalization, you must:

- (1) Contact the parent to pick up the child;
- (2) Care for the child apart from other children;
- (3) Give appropriate attention and supervision until the parent picks the child up; and
- (4) Give extra attention to hand washing and sanitation if the child has diarrhea or vomiting.

(b) If a child becomes ill while in your care and requires immediate treatment by a health-care professional or hospitalization, you must:

- (1) Contact emergency medical services (or take the child to the nearest emergency room after you have ensured the supervision of other children in the group);
- (2) Give the child first-aid treatment or CPR when needed;
- (3) Contact the child's parent;
- (4) Contact the physician or other health-care professional identified in the child's record; and
- (5) Ensure the supervision of other children in the group.

*§747.3407. How must caregivers [~~should I~~] respond when a child is injured and [~~to an illness or injury that~~] requires immediate treatment by [~~the immediate attention of~~] a health-care professional?*

For an [~~illness or~~] injury that requires [~~the~~] immediate treatment by [~~attention of~~] a health-care professional, you must:

(1) Contact emergency medical services (or take the child to the nearest emergency room after you have ensured the supervision of other children in the home);

(2) Give the child first-aid treatment or CPR when needed;

(3) Contact the child's parent;

(4) Contact the physician or other health-care professional identified in the child's record; and

(5) Ensure supervision of other children in the group.

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 December 2, 2020.

TRD-202005132

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: January 17, 2021

For further information, please call: (512) 438-3269



## CHAPTER 748. MINIMUM STANDARDS FOR GENERAL RESIDENTIAL OPERATIONS

### SUBCHAPTER C. ORGANIZATION AND ADMINISTRATION

#### DIVISION 1. PLANS AND POLICIES

#### REQUIRED FOR THE APPLICATION PROCESS

##### 26 TAC §748.101

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §748.101, concerning What plans must I submit for Licensing's approval as part of the application process, in Title 26, Texas Administrative Code, Chapter 748, Minimum Standards for General Residential Operations.

##### BACKGROUND AND PURPOSE

The purpose of the proposal is to implement a portion of Senate Bill 781, 86th Legislature, Regular Session, 2019, which created in Texas Human Resources Code, Chapter 42, new §42.252. The new section requires an application for a general residential operation (GRO) that will provide treatment services to children with emotional disorders to include an operational plan.

##### SECTION-BY-SECTION SUMMARY

The proposed amendment to §748.101 clarifies that GRO application must include all relevant application forms required by §745.243, which includes a GRO - Additional Operation Plan for a GRO applicant that will provide treatment services to children with emotional disorders, and a business plan. To make sure there is no confusion with the new GRO - Additional Operation Plan requirement, the previous "operation plan" required by subsection §748.101(1) has been renamed "business plan."

##### FISCAL NOTE

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

#### GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because the rule does not alter any current business practices.

#### LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

#### COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule is necessary to protect the health, safety, and welfare of the residents of Texas, does not impose a cost on regulated persons, and is necessary to implement legislation that does not specifically state that §2001.0045 applies to the rule.

#### PUBLIC BENEFIT AND COSTS

Jean Shaw, Associate Commissioner for Child Care Regulation, has determined that for each year of the first five years the rule is in effect, the public benefit will be compliance with the statutory requirement and a clearer understanding of the application process.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because there are no additional costs or fees imposed on persons required to comply with the rule.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed to Gerry Williams by email at [Gerry.Williams@hhsc.state.tx.us](mailto:Gerry.Williams@hhsc.state.tx.us).

Written comments on the proposal may be submitted to Gerry Williams, Rules Writer, Child Care Regulation, Health and Human Services Commission, E-550, P.O. Box 149030, Austin, Texas 78714-9030; or by email to [CCLrules@hhsc.state.tx.us](mailto:CCLrules@hhsc.state.tx.us).

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 20R039" in the subject line.

#### STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of the Texas Human Resources Code.

The amendment implements Texas Government Code §531.0055 and Texas Human Resources Code, §42.042 and §42.252.

*§748.101. What plans must I submit for Licensing's approval as part of the application process?*

In addition to the relevant application forms required by §745.243 of this title (relating to What does a completed application for a permit include?), as [As] part of the application process, you must submit the following plans to us for approval:

- (1) A business [~~An operation~~] plan that includes:
  - (A) The location and telephone numbers of all [of] your general residential operations; and
  - (B) A list of persons or officers and their titles that comprise the governing body, if applicable;
- (2) A fiscal plan that includes:
  - (A) A detailed estimate of the operating costs of the operation for the first three months;
  - (B) Documentation of reserve funds or available credit at least equal to operating costs for the first three months;
  - (C) An estimated 12-month budget of income and expenses; and
  - (D) Predictable funds sufficient for the first year of operation;
- (3) A sketch of the operation's floor plan showing the dimensions and the purpose of all rooms and specifying where children and caregivers, if applicable, will sleep; and
- (4) An emergency evacuation and relocation plan that complies with Division 6 of Subchapter O (relating to Emergency Evacuation and Relocation).

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 December 1, 2020.

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Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: January 17, 2021

For further information, please call: (512) 438-3269



## CHAPTER 748. MINIMUM STANDARDS FOR GENERAL RESIDENTIAL OPERATIONS

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §748.151 and §748.303; and new §§748.158 - 748.160, 748.317, 748.319, and 748.1767 in Title 26, Texas Administrative Code, Chapter 748, Minimum Standards for General Residential Operations.

### BACKGROUND AND PURPOSE

The purpose of this proposal is to implement the portions of Senate Bill (S.B.) 568, 86th Legislature, Regular Session, 2019, that amended Chapter 42, Human Resources Code (HRC) to require HHSC Child Care Regulation (CCR) to establish minimum standards for safe sleeping, expand liability insurance requirements, and alter reporting requirements for certain incidents and deficiencies.

### SECTION-BY-SECTION SUMMARY

The proposed amendments to §748.151 (1) updates a citation; and (2) replaces a citation with a requirement for a General Residential Operation (GRO) to comply with proposed new liability rules.

Proposed new §748.158 includes the statutory requirement that a GRO have liability insurance of at least \$300,000 for each occurrence of negligence that covers injury to a child, unless there is an acceptable reason not to have the insurance. The GRO must also submit proof of coverage to Licensing each year.

Proposed new §748.159 lists the statutory exceptions for the liability insurance referred to in proposed new §748.158. The rule also includes the requirement that a GRO provide written notification to Licensing if the GRO is unable to carry or stops carrying the insurance because of one of the exceptions.

Proposed new §748.160 requires a GRO to provide written parental notification if the GRO cannot carry the required liability insurance, and the notification must be made (1) before admitting a child; or (2) within 14 days of the liability insurance coverage ending if the GRO previously carried the liability insurance and subsequently stopped carrying it. The proposed rule also allows a GRO to use the form on the Licensing provider website to notify parents.

The proposed amendments to §748.303 (1) changes the timeframe regarding parental notification for substantial physical injuries and critical illnesses requiring medical treatment form as soon as possible, but no later than 24 hours after the incident,

to immediately after ensuring the safety of the child; and (2) changes the timeframe regarding parental notification for allegations and incidents of possible abuse, neglect, or exploitation from as soon as the operation becomes aware of it, to immediately after ensuring the safety of the child.

Proposed new §748.317 (1) requires a GRO to notify the parent of each child residing at the GRO when Licensing determines the operation has a deficiency related to safe sleeping or in the standard related to the abuse, neglect, or exploitation of a child; and (2) outlines the specific safe sleeping standards that require notification.

Proposed new §748.319 outlines how a GRO is required to notify parents of a deficiency in safe sleeping or in the standard related to the abuse, neglect, or exploitation of a child residing at the GRO, as required by proposed new §748.317. The proposed rule (1) requires a GRO to notify parents in writing within five days of receiving notification of the deficiency, use prescribed Licensing forms for those notifications, and maintain proof that the operation has notified the parents in writing of those deficiencies as required by the rule.

Proposed new §748.1767 prohibits laying down a swaddled infant to sleep or rest, unless the GRO has an order signed by a health-care professional. The rule also requires the order to be maintained in the child's record.

### FISCAL NOTE

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

### GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The rules do not impose any additional costs on small businesses, micro-businesses, or rural communities required to comply with the rules.

### 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 (1) are necessary to protect the health, safety, and welfare of the residents of Texas; (2) do not impose a cost on regulated persons; and (3) are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

#### PUBLIC BENEFIT AND COSTS

Jean Shaw, Associate Commissioner for Child Care Regulation, has determined that for each year of the first five years the rules are in effect, the public benefit will be (1) improved awareness of sleep safety for children in care; (2) compliance with statutory requirements; and (3) increased communication and transparency in child-care operations that will allow parents to make a more informed choice when choosing and maintaining a relationship with a child-care operation.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons required to comply with the proposed rules because the proposal does not impose any new costs or fees on persons required to comply with the rules.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed to Aimee Belden by email at [Aimee.Belden@hhsc.state.tx.us](mailto:Aimee.Belden@hhsc.state.tx.us).

Written comments on the proposal may be submitted to Aimee Belden, Rules Writer, Child Care Regulation, Health and Human Services Commission, E-550, P.O. Box 149030, Austin, Texas 78714-9030; or by email to [CCLRules@hhsc.state.tx.us](mailto:CCLRules@hhsc.state.tx.us).

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 20R026" in the subject line.

### SUBCHAPTER C. ORGANIZATION AND ADMINISTRATION

#### DIVISION 2. OPERATIONAL RESPONSIBILITIES AND NOTIFICATIONS

##### 26 TAC §§748.151, 748.158 - 748.160

##### STATUTORY AUTHORITY

The amendment and new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies.

The amendment and new sections affect Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

##### *§748.151. What are my operational responsibilities?*

While you are operating, you must:

- (1) Have a designated full-time child-care administrator who meets the minimum qualifications of §748.531 of this chapter [title] (relating to What qualifications must a child-care administrator meet?);
- (2) Operate according to your approved plans, policies, and procedures;
- (3) Maintain current, true, accurate, and complete records;
- (4) Allow us to inspect your operation during its hours of operation;
- (5) Not offer unrelated types of services that conflict or interfere with the best interests of a child in care, a caregiver's responsibilities, or operation space. If you offer more than one type of service, you must determine and document that no conflict exists;
- (6) Complying with the [Maintain] liability insurance requirements in this division [as required by the Human Resources Code, §42.049]; and
- (7) Prepare the annual budget and control expenditures and ensure compliance with Division 3 of this subchapter (relating to General Fiscal Requirements).

##### *§748.158. What are the liability insurance requirements?*

Unless you have an acceptable reason not to have the insurance, you must:

- (1) Have liability insurance coverage:
  - (A) Of at least \$300,000 for each occurrence of negligence; and
  - (B) That covers injury to a child that occurs while the child is in your care, regardless of whether the injury occurs on or off the premises of your operation; and
- (2) Provide proof of coverage to Licensing each year by the anniversary date of the issuance of your permit.

##### *§748.159. What are acceptable reasons not to have liability insurance?*

- (a) You do not have to have liability insurance that meets the requirements of §748.158 of this division (relating to What are the liability insurance requirements?) if you cannot carry insurance because:
  - (1) Of financial reasons;
  - (2) You are unable to locate an underwriter who is willing to issue a policy to the operation; or
  - (3) You have already exhausted the limits of a policy that met the requirements.
- (b) If you cannot carry liability insurance or stop carrying the insurance because of a reason listed in subsection (a) of this section, you must send written notification to Licensing by the anniversary date of the issuance of your permit. Your notification must include the reason that you cannot carry the insurance.

##### *§748.160. When must I notify parents that I do not carry liability insurance?*

- (a) If you do not carry liability insurance that meets the requirements of §748.158 of this division (relating to What are the liability insurance requirements?), then you must notify the parent of each child in your care in writing that you do not carry liability insurance before you admit the child into your care.

(b) If you previously carried the liability insurance and subsequently stop carrying the liability insurance, then you must notify the parent of each child in your care in writing that you do not carry the insurance within 14 days after you stop carrying it.

(c) You may use the Form 2962, Verification of Liability Insurance, located on the Licensing provider website, to notify parents. Regardless of whether you use this form, you must be able to demonstrate that you provided written notice to the parents of each child in your care.

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-3269



## DIVISION 3. GENERAL FISCAL REQUIREMENTS

### 26 TAC §§748.303, 748.317, 748.319

#### STATUTORY AUTHORITY

The amendment and new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies.

The amendment and new sections affect Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

*§748.303. When must I report and document a serious incident?*

(a) You must report and document the following types of serious incidents involving a child in your care. The reports must be made to the following entities, and the reporting and documenting must be within the specified time frames:

Figure: 26 TAC §748.303(a)

[Figure: 26 TAC §748.303(a)]

(b) If there is a medically pertinent incident, such as a seizure, that does not rise to the level of a serious incident, you do not have to report the incident but you must document the incident in the same manner as for a serious incident, as described in §748.311 of this division (relating to How must I document a serious incident?).

(c) You must document an unauthorized absence that does not meet the reporting time requirements defined in subsection (a)(7) - (9) of this section within 24 hours after you become aware of the unauthorized absence. You must document the absence:

(1) In the same manner as for a serious incident, as described in §748.311 of this division; and

(2) Complete an addendum to the serious incident report to finalize the documentation requirements, if the child returns to an operation after 24 hours.

(d) If there is a serious incident involving an adult resident, you do not have to report the incident to Licensing, but you must document the incident in the same manner as a serious incident. You do have to report the incident to:

(1) Law enforcement, as outlined in the chart above;

(2) The parents, if the adult resident is not capable of making decisions about the resident's own care; and

(3) Adult Protective Services through the Texas Abuse and Neglect Hotline if there is reason to believe the adult resident has been abused, neglected or exploited.

(e) You must report and document the following types of serious incidents involving your operation, an employee, a professional level service provider, contract staff, or a volunteer to the following entities within the specified timeframe:

Figure: 26 TAC §748.303(e)

[Figure: 26 TAC §748.303(e)]

*§748.317. What are the notification requirements when Licensing finds my operation deficient in a standard related to safe sleeping or the abuse, neglect, or exploitation of a child?*

(a) You must notify the parent of each child residing at your child-care operation of a deficiency in:

(1) A safe sleeping standard noted in subsection (b) of this section; or

(2) The abuse, neglect, or exploitation standard in §748.1101(b)(1)(B) of this chapter (relating to What rights does a child in care have?).

(b) The following are safe sleeping standards requiring notification:

(1) §748.1751(a)(1) of this chapter (relating to What specific safety requirements must my cribs meet?);

(2) §748.1753(a)(2)(A) of this chapter (relating to Are play yards allowed?);

(3) §748.1757(a)(5) and (b) of this chapter (relating to What types of equipment are not allowed for use with infants?);

(4) §748.1763 of this chapter (relating to What are the specific sleeping requirements for infants?);

(5) §748.1765 of this chapter (relating to May I allow infants to sleep in a restrictive device?); and

(6) §748.1767 of this chapter (relating to May I swaddle an infant to help the infant sleep?).

*§748.319. How must I notify parents of a safe sleeping deficiency or an abuse, neglect, or exploitation deficiency?*

(a) Within five days after you receive notification of a deficiency described in §748.317 of this chapter (relating to What are the notification requirements when Licensing finds my operation deficient in a standard related to safe sleeping or the abuse, neglect, or exploitation of a child in care?), you must notify the parents of each child residing at your child-care operation at the time of notification, including a child who may not have been in care on the day of the actual incident.

(b) If the deficiency is for a safe sleeping standard, you must notify the parents using Form 2970, Notification of Safe Sleeping Deficiency, located on the Licensing

(c) If the deficiency is for the standard related to the abuse, neglect, or exploitation of a child in care, you must notify the parents using Form 7266, Notification of Abuse/Neglect/Exploitation Deficiency, located on the Licensing provider website.

(d) You must maintain and make available for our review, upon request, proof that you have notified parents in writing of deficiencies in safe sleeping and abuse, neglect, or exploitation, as required by subsection (a) of this section.

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

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## SUBCHAPTER J. CHILD CARE

### DIVISION 8. ADDITIONAL REQUIREMENTS FOR INFANT CARE

#### 26 TAC §748.1767

##### STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies.

The amendment affects Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

§748.1767. May I swaddle an infant to help the infant sleep?

You may not lay a swaddled infant down to sleep or to rest on any surface at any time, unless you have an order signed by a health-care professional. You must keep the order in the child's record.

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-3269



## CHAPTER 749. MINIMUM STANDARDS FOR CHILD-PLACING AGENCIES

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §749.151 and §749.503; and new §§749.155, 749.157, 749.159, 749.517, 749.519, 749.1817, and 749.1821 in Title 26, Texas Administrative Code, Chapter 749, Minimum Standards for Child-Placing Agencies.

## BACKGROUND AND PURPOSE

The purpose of this proposal is to implement the portions of Senate Bill (S.B.) 568, 86th Legislature, Regular Session, 2019, that amended Chapter 42, Human Resources Code (HRC) to require HHSC Child Care Regulation (CCR) to establish minimum standards for safe sleeping, expand liability insurance requirements, and alter reporting requirements for certain incidents and deficiencies.

## SECTION-BY-SECTION SUMMARY

The proposed amendment to §749.151 replaces a citation with a requirement for a Child-Placing Agency (CPA) to comply with proposed new liability rules.

Proposed new §749.155 includes the statutory requirement that a CPA have liability insurance of at least \$300,000 for each occurrence of negligence that covers injury to a child, unless there is an acceptable reason not to have the insurance. The CPA must also submit proof of coverage to Licensing each year.

Proposed new §749.157 lists the statutory exceptions for the liability insurance referred to in proposed new §749.155. The rule also includes the requirement that a CPA provide written notification to Licensing if the CPA is unable to carry or stops carrying the insurance because of one of the exceptions.

Proposed new §749.159 requires a CPA to provide written parental notification if the CPA cannot carry the required liability insurance, and the notification must be made (1) before admitting a child; or (2) within 14 days of the liability insurance coverage ending if the CPA previously carried the liability insurance and subsequently stopped carrying it. The proposed rule also allows a CPA to use the form on the Licensing provider website to notify parents.

The proposed amendment to §749.503 (1) changes the timeframe regarding parental notification for substantial physical injuries and critical illnesses requiring medical treatment from as soon as possible, but no later than 24 hours after the incident, to immediately after ensuring the safety of the child; and (2) changes the timeframe regarding parental notification for allegations and incidents of possible abuse, neglect, or exploitation from as soon as the operation becomes aware of it, to immediately after ensuring the safety of the child.

Proposed new §749.517 (1) requires a CPA to notify the parent of each child residing at the operation when Licensing determines the operation has a deficiency related to safe sleeping or in the standard related to the abuse, neglect, or exploitation of a child; and (2) outlines the specific safe sleeping standards that require notification.

Proposed new §749.519 outlines how a CPA is required to notify parents of a deficiency in safe sleeping or in the standard related to the abuse, neglect, or exploitation of a child residing at the operation as required by proposed new §749.317. The proposed rule requires a CPA to notify parents in writing within five days of receiving notification of the deficiency, use prescribed Licensing forms for those notifications, and maintain proof that the operation has notified the parents in writing of those deficiencies as required by the rule.

Proposed new §749.1817 prohibits an infant sleeping in a restrictive device and requires a caregiver to move an infant who has fallen asleep in a restrictive device to a crib as soon as possible.

Proposed new §749.1821 prohibits laying down a swaddled infant to sleep or rest, unless the CPA has an order signed by a

health-care professional. The rule also requires the order to be maintained in the child's record.

#### FISCAL NOTE

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

#### GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Trey Wood has also determined there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The rules do not impose any additional costs on small businesses, micro-businesses, or rural communities required to comply with the rules.

#### 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 (1) are necessary to protect the health, safety, and welfare of the residents of Texas; (2) do not impose a cost on regulated persons; and (3) are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

#### PUBLIC BENEFIT AND COSTS

Jean Shaw, Associate Commissioner for Child Care Regulation, has determined that for each year of the first five years the rules are in effect, the public benefit will be (1) improved awareness of sleep safety for children in care; (2) compliance with statutory requirements; and (3) increased communication and transparency in child-care operations that will allow parents to make a more informed choice when choosing and maintaining a relationship with a child-care operation.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons required to comply with the proposed rules because the proposal does not impose any additional costs or fees on persons required to comply with these rules.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed to Aimee Belden by email at [Aimee.Belden@hhsc.state.tx.us](mailto:Aimee.Belden@hhsc.state.tx.us).

Written comments on the proposal may be submitted to Aimee Belden, Rules Writer, Child Care Regulation, Texas Health and Human Services Commission, E-550, P.O. Box 149030, Austin, Texas 78714-9030; or by email to [CCLRules@hhsc.state.tx.us](mailto:CCLRules@hhsc.state.tx.us).

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 20R026" in the subject line.

## SUBCHAPTER C. ORGANIZATION AND ADMINISTRATION

### DIVISION 2. OPERATIONAL RESPONSIBILITIES AND NOTIFICATIONS

#### 26 TAC §§749.151, 749.155, 749.157, 749.159

#### STATUTORY AUTHORITY

The amendments and new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies.

The amendments and new sections affect Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

#### §749.151. *What are my operational responsibilities?*

While you are operating, you must:

- (1) Have a designated full-time child-placing agency administrator who meets the minimum qualifications of §749.631 of this title (relating to What qualifications must a child-placing agency administrator meet?);
- (2) Operate according to your approved plans, policies, and procedures;
- (3) Maintain current, true, accurate, and complete records;
- (4) Allow us to inspect your child-placing agency during its hours of operation;
- (5) Allow us to inspect or monitor any of your foster homes at any time;
- (6) Not offer unrelated types of services that conflict or interfere with the best interests of a child in care, a caregiver's responsibilities, or space in the homes. If you offer more than one type of service, you must determine and document that no conflict exists;

(7) Comply with the [Maintain] liability insurance requirements in this division [as required by the Human Resources Code, §42.049]; and

(8) Prepare the annual budget and control expenditures and ensure compliance with Division 3 of this Subchapter (relating to General Fiscal Requirements).

§749.155. What are the liability insurance requirements?

Unless you have an acceptable reason not to have the insurance, you must:

(1) Have liability insurance coverage:

(A) Of at least \$300,000 for each occurrence of negligence; and

(B) That covers injury to a child that occurs while the child is in your care, regardless of whether the injury occurs on or off the premises of your operation; and

(2) Provide proof of coverage to Licensing each year by the anniversary date of the issuance of your permit.

§749.157. What are acceptable reasons not to have liability insurance?

(a) You do not have to have liability insurance that meets the requirements of §749.155 of this division (relating to What are the liability insurance requirements?) if you cannot carry insurance because:

(1) Of financial reasons;

(2) You are unable to locate an underwriter who is willing to issue a policy to the operation; or

(3) You have already exhausted the limits of a policy that met the requirements.

(b) If you cannot carry liability insurance or stop carrying the insurance because of a reason listed in subsection (a) of this section, you must send written notification to Licensing by the anniversary date of the issuance of your permit. Your notification must include the reason that you cannot carry the insurance.

§749.159. When must I notify parents that I do not carry liability insurance?

(a) If you do not carry liability insurance that meets the requirements of §749.155 of this division (relating to What are the liability insurance requirements?), then you must notify the parent of each child in your care in writing that you do not carry liability insurance before you admit the child into your care.

(b) If you previously carried the liability insurance and subsequently stop carrying the liability insurance, then you must notify the parent of each child in your care in writing that you do not carry the insurance within 14 days after you stop carrying it.

(c) You may use Form 2962, Verification of Liability Insurance, located on the Licensing provider website, to notify parents. Regardless of whether you use this form, you must be able to demonstrate that you provided written notice to the parents of each child in your care.

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-3269



## SUBCHAPTER D. REPORTS AND RECORD KEEPING

### DIVISION 1. REPORTING SERIOUS INCIDENTS AND OTHER OCCURRENCES

**26 TAC §§749.503, 749.517, 749.519**

#### STATUTORY AUTHORITY

The amendment and new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies.

The amendment and new sections affect Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

*§749.503 When must I report and document a serious incident?*

(a) You must report and document the following types of serious incidents involving a child in your care. The reports must be made to the following entities, and the reporting and documenting must be within the specified time frames:

Figure: 26 TAC §749.503(a)

(b) If there is a medically pertinent incident, such as a seizure, that does not rise to the level of a serious incident, you do not have to report the incident but you must document the incident in the same manner as for a serious incident, as described in §749.511 of this division (relating to How must I document a serious incident?).

(c) You must document an unauthorized absence that does not meet the reporting time requirements defined in subsection (a)(7) - (9) of this section within 24 hours after you become aware of the unauthorized absence. You must document the absence:

(1) In the same manner as for a serious incident, as described in §749.511 of this division; and

(2) Complete an addendum to the serious incident report to finalize the documentation requirements, if the child returns to a foster home after 24 hours.

(d) If there is a serious incident involving an adult resident, you do not have to report the incident to Licensing, but you must document the incident in the same manner as a serious incident. You do have to report the incident to:

(1) Law enforcement as outlined in the chart above;

(2) The parents, if the adult resident is not capable of making decisions about the resident's own care; and

(3) Adult Protective Services through the Texas Abuse and Neglect Hotline if there is reason to believe the adult resident has been abused, neglected or exploited.

(e) You must report and document the following types of serious incidents involving your agency, one of your foster homes, an employee, professional level service provider, contract staff, or a volunteer to the following entities within the specified timeframe:

Figure: 26 TAC §749.503(e)



§749.517. What are the notification requirements when Licensing finds my operation deficient in a standard related to safe sleeping or the abuse, neglect, or exploitation of a child?

(a) You must notify the parent of each child residing at your child-care operation of a deficiency in:

(1) A safe sleeping standard noted in subsection (b) of this section; or

(2) The abuse, neglect, or exploitation standard in §749.1003(b)(1)(B) of this chapter (relating to What rights does a child in care have?).

(b) The following are safe sleeping standards requiring notification:

(1) §749.1807(a)(1) of this chapter (relating to What specific safety requirements must my cribs meet?);

(2) §749.1809(2)(A) of this chapter (relating to Are mesh cribs or port-a-cribs allowed?);

(3) §749.1813(a)(5) and (b) of this chapter (relating to What types of equipment may a foster home not use with infants?);

(4) §749.1815 of this chapter (relating to What are the specific sleeping requirements for infants?);

(5) §749.1817 of this chapter (relating to May I allow an infant to sleep in a restrictive device?); and

(6) §749.1821 of this chapter (relating to May I swaddle an infant to help the infant sleep?).

§749.519. How must I notify parents of a safe sleeping deficiency or an abuse, neglect, or exploitation deficiency?

(a) Within five days after you receive notification of a deficiency described in §749.517 of this division (relating to What are the notification requirements when Licensing finds my operation deficient in a standard related to safe sleeping or the abuse, neglect, or exploitation of a child in care?), you must notify the parents of each child residing at your child-care operation at the time of notification, including a child who may not have been in care on the day of the actual incident.

(b) If the deficiency is for a safe sleeping standard, you must notify the parents using Form 2970, Notification of Safe Sleeping Deficiency, located on the Licensing provider website.

(c) If the deficiency is for the standard related to the abuse, neglect, or exploitation of a child in care, you must notify the parents using Form 7266, Notification of Abuse/Neglect/Exploitation Deficiency, located on the Licensing provider website.

(d) You must maintain and make available for our review, upon request, proof that you have notified parents in writing of deficiencies in safe sleeping and abuse, neglect, or exploitation, as required by subsection (a) of this section.

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-3269

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SUBCHAPTER K. FOSTER CARE SERVICES:  
DAILY CARE, PROBLEM MANAGEMENT  
DIVISION 1. ADDITIONAL REQUIREMENTS  
FOR INFANT CARE

**26 TAC §749.1817, §749.1821**

STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies.

The new sections affect Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

§749.1817. May I allow an infant to sleep in a restrictive device?

You may not allow an infant to sleep in a restrictive device. If an infant falls asleep in a restrictive device, you must remove the infant from the device and place the infant in a crib as soon as possible.

§749.1821. May I swaddle an infant to help the infant sleep?

You may not lay a swaddled infant down to sleep or to rest on any surface at any time, unless you have an order signed by a health-care professional. You must keep the order in the child's record.

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

Filed with the Office of the Secretary of State on December 2, 2020.

TRD-202005141

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: January 17, 2021

For further information, please call: (512) 438-3269

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**TITLE 28. INSURANCE**

**PART 2. TEXAS DEPARTMENT OF  
INSURANCE, DIVISION OF WORKERS'  
COMPENSATION**

**CHAPTER 142. DISPUTE RESOLUTION--  
BENEFIT CONTESTED CASE HEARING**

**28 TAC §142.13, §142.19**

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (DWC or division) proposes to amend 28 TAC §142.13, concerning Discovery, and §142.19, concerning Form Interrogatories, to update the interrogatories to increase the time to respond to the interrogatories and to describe the questions that a party may ask using the interrogatories.

EXPLANATION. Texas Labor Code §410.159 requires that the commissioner of workers' compensation prescribe standard

form interrogatories for parties to use in a contested case proceeding before DWC. Under §142.13(b) - (d), interrogatories may be presented after the required exchange of documentary evidence, which is to take place no later than 15 days after a benefit review conference, and no later than 20 days before a contested case hearing, unless otherwise agreed. In these amendments, DWC proposes to increase the time for responding to an interrogatory from five days to ten. In order to accommodate the additional five days to respond within the allotted time for a contested case, interrogatories would now be required to be presented no later than 25 days before a hearing, unless the parties agree otherwise. The current form interrogatories, which have not been updated since 1991, are available on DWC's website.

Section 142.13. DWC proposes to amend §142.13(d) to set out the rule text in paragraphs and to make other editorial changes to conform the section to DWC's current style and to improve the rule's clarity. Paragraph (1) would be amended to clarify that the interrogatories may be used by all parties, including subclaimants. Section 140.1(3) defines a "party to a proceeding" as "a person entitled to take part in a proceeding because of a direct legal interest in the outcome." Section 140.6(b) states that "a subclaimant as described in *Labor Code* §409.009 *relating to Subclaims* is a party to a claim concerning workers' compensation benefits." Paragraph (2) would be amended to require that interrogatories must be presented no later than 25 days before a hearing, rather than 20 days. Paragraph (3) would be amended to increase the time to respond to interrogatories from five days to 10.

Section 142.19. DWC proposes to amend §142.19 to describe in new subsection (a) the information that may be sought through interrogatories. That information includes the name and contact information of the person answering the interrogatories, the issues in dispute, any certification of maximum medical improvement and impairment rating, any statement obtained from any person on the issues in dispute, the name and contact information for each health care provider the claimant has seen since the date of injury, the conditions the health care provider treated, and any recordings, photographs, videotapes, or similar material showing the claimant since the date of injury. In addition, for each health care provider the claimant has seen during the five years before the date of injury for treatment of a body part the claimant believes to be part of the claim, a party may request the health care provider's name and contact information, the dates the health care provider treated the claimant, and the conditions the health care provider treated. For each expert witness expected to testify, a party may be asked to provide the expert witness' name and contact information, the subject matter the expert witness may or will testify on, the general substance of the expert witness' opinions, and a brief summary of the basis for those opinions. Also, the interrogatories provide space for five additional questions that a party may use to get specific information relevant to an individual dispute.

Section 142.19 would also be amended to add new subsection (b) to note that DWC will develop and make available standard form interrogatories in a form and manner consistent with this rule as required under *Labor Code* §410.159.

**FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Kerry Sullivan, deputy commissioner of Hearings, has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of

enforcing or administering the amendments. The amendments to §142.13 clarify existing requirements and modify existing timelines to allow more time to respond to interrogatories. Mr. Sullivan does not anticipate that these changes will increase the costs for responding to interrogatories. The amendments to §142.19 describe the exchange of interrogatories, but the requirements for the use of interrogatories are not new. Most of the questions have been in use since 1991, and the overall sets of questions are consistent with the use of interrogatories in civil litigation. Mr. Sullivan does not anticipate that the updated questions will increase the costs of using the interrogatories. The proposed amendments will not add to or decrease state revenues or expenditures. In addition, as self-insurers, local governments will benefit from the updated form interrogatories and the additional time to respond to interrogatories from other parties.

Mr. Sullivan does not anticipate any measurable effect on local employment or a local economy as a result of this proposal.

**PUBLIC BENEFIT AND COST NOTE.** For each year of the first five years the proposed amendments are in effect, Mr. Sullivan expects that administering the proposed amendments will have the public benefit of providing a more efficient discovery process during the dispute of injured employees' claims. The amended rules and updated interrogatories will also have the benefit of educating and informing system participants of their rights and responsibilities and how to interact appropriately within the Texas workers' compensation system.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** DWC has determined that the proposed amendments will not have an adverse economic effect or a disproportionate economic impact on small or micro-businesses, or on rural communities. The proposed amendments merely update and clarify existing procedures for system participants engaged in a dispute. As a result, and in accordance with *Government Code* §2006.002(c), DWC is not required to prepare a regulatory flexibility analysis.

**EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045.** DWC has determined that the proposed amendments do not impose a possible cost on regulated persons.

**GOVERNMENT GROWTH IMPACT STATEMENT.** DWC has determined that for each year of the first five years that the proposed amendments are in effect, the proposed rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will not create a new regulation;
- will not expand, limit, or repeal an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

**TAKINGS IMPACT ASSESSMENT.** DWC has determined that no private real property interests are affected by this proposal, and this proposal does not restrict or limit an owner's right to

property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. DWC will consider any written comments on the proposed amendments or revised interrogatories that DWC receives no later than 5 p.m., Central time, on Tuesday, January 19, 2021. The revised interrogatories are available on the Texas Department of Insurance website at [www.tdi.texas.gov/wc/rules/2020rules.html](http://www.tdi.texas.gov/wc/rules/2020rules.html). Send your comments to [RuleComments@tdi.texas.gov](mailto:RuleComments@tdi.texas.gov); or to Cynthia Guillen, MS-4D, Texas Department of Insurance, Division of Workers' Compensation, Legal Services, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645.

To request a public hearing on the proposal, submit a request before the end of the comment period, and separate from any comments, to [RuleComments@tdi.texas.gov](mailto:RuleComments@tdi.texas.gov); or to Cynthia Guillen, MS-4D, Texas Department of Insurance, Division of Workers' Compensation, Legal Services, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645. The request for public hearing must be separate from any comments and received by DWC no later than 5 p.m., Central time, on Tuesday, January 19, 2021. If DWC holds a public hearing, it will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. DWC proposes these amendments to §142.13 and §142.19 under Labor Code §§402.00128, 402.021, 402.061, 410.157, 410.158, 410.159, and 410.161.

Section 402.00128 describes the general powers and duties of the commissioner, including to hold hearings, take testimony directly or by deposition or interrogatory, and prescribe the form, manner, and procedure for the transmission of information to the division.

Section 402.021(b)(8) describes the Legislature's intent that DWC "effectively educate and clearly inform each person who participates in the system of the person's rights and responsibilities under the system and how to appropriately interact within the system."

Section 402.061 provides that the commissioner shall adopt rules as necessary to implement the Labor Code, Title 5, Subtitle A.

Section 410.157 provides that the commissioner shall adopt rules governing procedures under which contested case hearings are conducted.

Section 410.158 provides for the scope of discovery in contested case hearings.

Section 410.159 requires the commissioner, by rule, to prescribe standard form sets of interrogatories to obtain information from claimants and insurance carriers.

CROSS-REFERENCE TO STATUTE. Section 142.13 implements the Texas Workers' Compensation Act, Labor Code, Title 5, Subtitle A.

*§142.13. Discovery.*

(a) - (c) (No change.)

(d) Interrogatories.

(1) Interrogatories, as prescribed by §142.19 of this title (concerning ~~relating to~~ Interrogatories), may be used by all parties, including subclaimants, to obtain ~~elicit~~ information from any other party. ~~[claimants and insurance carriers.]~~

(2) Except as provided in subsection (g) of this section, interrogatories must [shall] be presented no later than ~~25~~ [20] days before the hearing, unless otherwise agreed.

(3) Answers to interrogatories must [shall] be exchanged no later than 10 [five] days after receipt of the interrogatories.

(4) Answers to interrogatories must [shall] be made under oath.

(e) - (g) (No change.)

*§142.19. Form Interrogatories.*

(a) The division has developed standard interrogatories for parties to exchange [commission adopts] the following information [form interrogatories by reference]:

(1) the name and contact information of the person answering the interrogatories;

(2) the issues in dispute;

(3) any certification of maximum medical improvement and impairment rating;

(4) any statement obtained from any person on the issues in dispute;

(5) the name and contact information for each health care provider the claimant has seen since the date of injury, and the conditions the health care provider treated;

(6) any recordings, photographs, videotapes, or similar material showing the claimant since the date of injury;

(7) for each health care provider the claimant has seen during the five years before the date of injury for treatment of a body part the claimant believes to be part of the claim:

(A) the health care provider's name and contact information;

(B) the dates the health care provider treated the claimant; and

(C) the conditions the health care provider treated; and

(8) for each expert witness expected to testify:

(A) the expert witness' name and contact information;

(B) the subject matter the expert witness may or will testify on; and

(C) the general substance of the expert witness' opinions and a brief summary of the basis for them.

(b) In addition to these standard interrogatories, a party may add up to five additional questions. The parties should write the questions in plain language and present them in a readable and understandable format.

(c) Parties to a dispute must use the standard form interrogatories developed and published by the division in a form and manner consistent with this rule:

(1) Claimant's Interrogatories to Carrier; and

(2) Carrier's Interrogatories to Claimant.

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 December 7, 2020.

TRD-202005301

Kara Mace

Deputy Commissioner of Legal Services

Texas Department of Insurance, Division of Workers' Compensation

Earliest possible date of adoption: January 17, 2021

For further information, please call: (512) 804-4703

## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

#### CHAPTER 53. FINANCE

##### SUBCHAPTER A. FEES

#### DIVISION 1. LICENSE, PERMIT, AND BOAT AND MOTOR FEES

##### 31 TAC §53.16

The Texas Parks and Wildlife Department proposes an amendment to 31 TAC §53.16, concerning Vessel, Motor, and Marine Licensing Fees. The proposed amendment would alter subsection (d) to eliminate an unnecessary word and clarify that a replacement marine dealer, manufacturer, or distributor's card does not include a decal.

The proposed amendments are a result of the department's review of its regulations under the provisions of Government Code, §2001.039, which requires each state agency to review each of its regulations no less frequently than every four years and to re-adopt, adopt with changes, or repeal each rule as a result of the review.

Julie Aronow, Manager of Boat Titling, Registration and Marine Licensing, has determined that for each of the first five years that the rule as proposed is in effect, there will be no fiscal implications to the department as a result of administering or enforcing the rule.

Ms. Aronow also has determined that for each of the first five years that the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the proposed rule will be rules that accurately reflect agency products available to the public.

There will be no adverse economic effect on persons required to comply with the rule.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses, micro-businesses, or rural communities. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small and micro-businesses and rural communities. Those guidelines state that an agency need only consider a proposed rule's direct adverse economic impacts to determine if any further analysis is required. The department considers "direct economic impact" to mean a requirement that

would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that proposed rule would result in no direct economic effect on any small businesses, micro-businesses, or rural community. Therefore, neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rule.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rule as proposed, if adopted, will not create or eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of an existing fee; not expand, limit, or repeal an existing regulation; not increase or decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposal may be submitted to Julie Aronow at (512) 389-4860, e-mail: [julie.aronow@tpwd.texas.gov](mailto:julie.aronow@tpwd.texas.gov). Comments also may be submitted via the department's website at [http://www.tpwd.texas.gov/business/feedback/public\\_comment/](http://www.tpwd.texas.gov/business/feedback/public_comment/).

##### Statutory Authority

The amendment is proposed under the authority of Parks and Wildlife Code, §31.041, which authorizes the commission to establish rules concerning the issuance and price of validation cards; and §31.0412, which authorizes the commission to adopt rules regarding marine dealer, manufacturer, and distributor licenses.

The proposed amendment affects Government Code, Chapter 31.

*§53.16. Vessel, Motor, and Marine Licensing Fees.*

(a) - (c) (No change.)

(d) Marine dealer/distributor/manufacturer fees:

(1) - (5) (No change.)

(6) replacement [eard] marine dealer, manufacturer, or distributor's licensee validation card [~~(with decal)~~]-\$11.

(e) - (f) (No change.)

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 December 4, 2020.



## SUBCHAPTER B. STAMPS

### 31 TAC §53.60

The Texas Parks and Wildlife Department proposes an amendment to 31 TAC §53.60, concerning Stamps. The amendment would eliminate the exemption from the upland bird stamp requirement for persons hunting under a nonresident spring turkey license and remove references to the collector's edition stamp package. The exemption of nonresident spring turkey license holders from the upland game bird stamp requirement (and its precursor, the turkey stamp) has been in existence since at least the 1970s; however, the department is unable to determine the original reason for the exemption. For that reason, and because there is no logical reason to continue the exemption, the department has concluded that the exemption should be eliminated.

In 2015 the department discontinued the sale of the collector's edition stamp package because sales had declined to the point that the product was no longer fiscally defensible.

The proposed amendment is a result of the department's review of its regulations under the provisions of Government Code, §2001.039, which requires each state agency to review each of its regulations no less frequently than every four years and to re-adopt, adopt with changes, or repeal each rule as a result of the review.

Justin Halvorsen, Acting Director of the Financial Resources Division, has determined that for each of the first five years that the rule as proposed is in effect, there will be fiscal implications to the department as a result of administering or enforcing the rule. The department estimates that requiring nonresident spring turkey license holders to obtain an upland game bird stamp will result in a revenue increase of approximately \$34,780 per fiscal year, which was derived by taking the average annual sales of that license over the last five years (4,968) and multiplying that value by \$7, which is the fee for the upland game bird license.

There will be no fiscal implications for other units of state or local governments as a result of administering or enforcing the rule.

Mr. Halvorsen also has determined that for each of the first five years that the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the proposed rule will be the elimination of unnecessary regulations and rules that accurately reflect agency products available to the public.

There will be adverse economic effect on persons required to comply with the rule, namely to nonresidents who participate in spring turkey hunting, who will be required to purchase an upland game bird license at a fee of \$7.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses, micro-businesses, or rural communities. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential

adverse economic impact on small and micro-businesses and rural communities. Those guidelines state that an agency need only consider a proposed rule's direct adverse economic impacts to determine if any further analysis is required. The department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that the proposed rule would result in no direct economic effect on any small businesses, micro-businesses, or rural community. Therefore, neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rule.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rule as proposed, if adopted, will not create a government program but will eliminate the collector's edition stamp package; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of an existing fee; expand an existing regulation by requiring nonresident spring turkey hunters to obtain an upland game bird stamp, but will not otherwise limit or repeal an existing regulation; not increase or decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposal may be submitted to Robert Macdonald at (512) 389-4775, e-mail: [robert.macdonald@tpwd.texas.gov](mailto:robert.macdonald@tpwd.texas.gov). Comments also may be submitted via the department's website at [http://www.tpwd.texas.gov/business/feedback/public\\_comment/](http://www.tpwd.texas.gov/business/feedback/public_comment/).

#### Statutory Authority

The amendment is proposed under the authority of Parks and Wildlife Code, §11.056, which authorizes the department to issue editions of wildlife stamps; §43.202, which authorizes the department to issue other editions of the archery stamp that are not valid for hunting; §43.403, which authorizes the department to issue other editions of the saltwater sportfishing stamp that are not valid for fishing; §43.652, which authorizes the commission to exempt a person or class of persons from the stamp requirements of Parks and Wildlife Code, Chapter 43, Subchapter S; §43.654, which authorizes the department to issue and sell a collector's edition of the migratory or upland game bird stamps; and §43.804, which authorizes the department to issue a collectible freshwater fishing stamp.

The proposed amendment affects Parks and Wildlife Code, Chapters 11 and 43.

§53.60. Stamps.

(a) - (b) (No change.)

(c) Stamp Exemptions.

(1) (No change.)

~~[(2) All nonresident spring turkey hunting license holders are exempt from requirements for acquisition and possession of the upland game bird stamp.]~~

(2) ~~[(3)]~~ Youth license holders and lifetime resident hunting license holders are exempt from requirements for acquisition and possession of the following stamps:

(A) - (C) (No change.)

(3) ~~[(4)]~~ All lifetime resident combination hunting and fishing license holders are exempt from requirements for acquisition and possession of the following stamps:

(A) - (E) (No change.)

(4) ~~[(5)]~~ All lifetime resident fishing license holders are exempt from requirements for acquisition and possession of the following stamps;

(A) - (B) (No change.)

(5) ~~[(6)]~~ All persons meeting the definition of a qualified disabled veteran under the provisions of Parks and Wildlife Code, §42.012(c), are exempt from the fees for the following stamps:

(A) - (E) (No change.)

(6) ~~[(7)]~~ All Texas residents on active duty in the armed forces of the United States (including members of the Reserves and National Guard on active duty) are exempt from the fees for the following stamps:

(A) - (E) (No change.)

(7) ~~[(8)]~~ Special fishing license holders are exempt from the requirements for acquisition and possession of the following stamps:

(A) - (B) (No change.)

(8) ~~[(9)]~~ All one-day all-water fishing license holders are exempt from requirements for acquisition and possession of the following stamps:

(A) - (B) (No change.)

(d) (No change.)

~~[(e) Collector's edition stamp package.]~~

~~[(1) A collector's edition stamp package shall consist of one each of the following stamps:]~~

~~[(A) migratory game bird stamp;]~~

~~[(B) upland game bird stamp;]~~

~~[(C) nongame stamp;]~~

~~[(D) archery stamp;]~~

~~[(E) saltwater sportfishing stamp; and]~~

~~[(F) freshwater fishing stamp.]~~

~~[(2) Stamps in the package are not valid for hunting or fishing.]~~

~~[(3) Fee for the package shall be \$10 wholesale price and \$20 retail price plus applicable sales tax.]~~

~~(e)~~ ~~[(f)]~~ In addition to the freshwater fishing stamp, the department may make available a collectible freshwater habitat stamp for a fee of \$5.

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 December 4, 2020.

TRD-202005246

James Murphy

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: January 17, 2021

For further information, please call: (512) 389-4775



## SUBCHAPTER F. BONDED TITLE FOR VESSELS/OUTBOARD MOTORS

### 31 TAC §53.100

The Texas Parks and Wildlife Department proposes an amendment to 31 TAC §53.100, concerning Bonded Title--Acceptable Situations. The proposed amendment would correct an inaccurate internal reference.

The proposed amendment is a result of the department's review of its regulations under the provisions of Government Code, §2001.039, which requires each state agency to review each of its regulations no less frequently than every four years and to re-adopt, adopt with changes, or repeal each rule as a result of the review.

Julie Aronow, Manager of Boat Titling, Registration and Marine Licensing, has determined that for each of the first five years that the rule as proposed is in effect, there will be no fiscal implications to the department as a result of administering or enforcing the rule.

Ms. Aronow also has determined that for each of the first five years that the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the proposed rule will be accurate rules.

There will be no adverse economic effect on persons required to comply with the rule.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses, micro-businesses, or rural communities. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small and micro-businesses and rural communities. Those guidelines state that an agency need only consider a proposed rule's direct adverse economic impacts to determine if any further analysis is required. The department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that proposed rule would result in no direct economic effect on any small businesses, micro-businesses, or rural community. Therefore, neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rule.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rule as proposed, if adopted, will not create or eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of an existing fee; not expand, limit, or repeal an existing regulation; not increase or decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposal may be submitted to Julie Aronow at (512) 389-4860, e-mail: [julie.aronow@tpwd.texas.gov](mailto:julie.aronow@tpwd.texas.gov). Comments also may be submitted via the department's website at [http://www.tpwd.texas.gov/business/feedback/public\\_comment/](http://www.tpwd.texas.gov/business/feedback/public_comment/).

#### Statutory Authority

The amendment is proposed under the authority of Parks and Wildlife Code, §31.0465, which authorizes the department by rule to define acceptable situations in which certificates of title may be issued after the filing of a bond.

The proposed amendments affect Parks and Wildlife Code, Chapter 31.

#### *§53.100. Bonded Title--Acceptable Situations.*

(a) - (b) (No change.)

(c) The department shall not under any circumstances issue a bonded title if the applicant does not have any proof of payment, ownership transfer or other related documentation to support a claim of ownership, unless the vessel or outboard motor is determined to be abandoned, as defined by Parks and Wildlife Code, §31.003[(17)].

(d) (No change.)

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 December 4, 2020.

TRD-202005247

James Murphy

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: January 17, 2021

For further information, please call: (512) 389-4775

## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 9. TEXAS COMMISSION ON JAIL STANDARDS

#### CHAPTER 273. HEALTH SERVICES

##### 37 TAC §273.5

The Texas Commission on Jail Standards proposes to make a change to §273.5, concerning mental health and intellectual disabilities of inmates in Texas county jails. The proposed amendment to 37 TAC §273.5 clarifies and expands the scope of inmates for whom county jails must perform a mental history check to include inmates with Intellectual and Developmental Disabilities. It expands the scope of records jails must keep in relation to such inmates and of the jails' notification to other entities of their incarceration. The amendment also expands the information to be recorded on the mental health screening form to include information related to intellectual and developmental disability.

For the first five-year period, the proposed rule expands an existing regulation. Otherwise, the proposed rule neither creates nor eliminates a government program; implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions; implementation of the proposed rule does not require an 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 expands an existing regulation; the proposed rule neither increases nor decreases the number of individuals subject to the rule's applicability; and the proposed rule neither positively nor adversely affects this state's economy.

Executive Director Brandon Wood has determined that, for each of the first five years of the amendments' effect, the Commission anticipates that the public benefit anticipated as a result of enforcing the amended section is that food will be prepared properly and safely in county jails under its purview.

Mr. Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities to comply with the amended rules, as they will not be required to alter their business practices, and the rules do not impose any additional costs on those required to comply with the rules.

Comments on the proposal may be submitted in writing to William Turner, P.O. Box 12985, Austin, Texas 78711, Fax (512) 463-3185, or e-mail at [will.turner@tcjs.state.tx.us](mailto:will.turner@tcjs.state.tx.us).

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

This proposed change does not affect other rules or statutes.

#### *§273.5. Mental Disabilities/Suicide Prevention Plan.*

(a) Each sheriff/operator shall develop and implement a mental disabilities/suicide prevention plan, in coordination with available medical and mental health officials, approved by the Commission by

March 31, 1997. The plan shall address the following principles and procedures:

(1) Training. Provisions for staff training (including frequency and duration) on the procedures for recognition, supervision, documentation, and handling of inmates who are mentally disabled and/or potentially suicidal. Supplemental training should be provided to those staff members responsible for intake screening;

(2) Identification. Procedures for intake screening to identify inmates who are known to be or observed to be mentally disabled and/or potentially suicidal and procedures for compliance with Code of Criminal Procedure Article 16.22 and referrals to available mental health officials;

(3) Communication. Procedures for communication of information relating to inmates who are mentally disabled and/or potentially suicidal;

(4) Housing. Procedures for the assignment of inmates who are mentally disabled and/or potentially suicidal to appropriate housing;

(5) Supervision. Provisions for adequate supervision of inmates who are mentally disabled and/or potentially suicidal and procedures for documenting supervision;

(6) Intervention and Emergency Treatment. Procedures for staff intervention prior to the occurrence of a suicide and during the progress of a suicide attempt, or serious deterioration of mental condition;

(7) Reporting. Procedures for reporting of completed suicides to appropriate outside authorities and family members; and

(8) Follow-Up Review. Procedures for follow-up review of policies by the sheriff/operator and mental health and medical officials following all attempted or completed suicides.

(b) Screening Instrument. An approved mental disabilities/suicide prevention screening instrument shall be completed immediately on all inmates admitted.

(c) Mental Health/Intellectual and Developmental Disabilities History Check. Each jail shall:

(1) check each inmate upon intake into the jail against the Texas Health and Human Services Commission CCQ system to determine if the inmate has previously received state mental healthcare or has a known intellectual or developmental disability, unless the inmate is being housed as an out of state inmate or a federal inmate on a contractual basis;

(2) maintain documentation to be available at the time of inspection showing that information for each inmate designated in paragraph (1) of this subsection was submitted for CCQ/IDD system checks, to include notification to the magistrate and the Local Mental Health Authority or Local Intellectual and Developmental Disabilities Authority as per CCP 16.22(a)(1); and

(3) include any relevant mental health or intellectual and developmental disability information on the mental health screening instrument and, if sentenced to the Department of Criminal Justice, on the Uniform Health Status 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.

Filed with the Office of the Secretary of State on December 1, 2020.

TRD-202005109

Brandon Wood

Executive Director

Texas Commission on Jail Standards

Earliest possible date of adoption: January 17, 2021

For further information, please call: (512) 463-5505



## CHAPTER 281. FOOD SERVICE

### 37 TAC §281.5

The Texas Commission on Jail Standards proposes to make a change to §281.5, concerning food service in Texas county jails. The proposed amendment to 37 TAC §281.5 requires that those who prepare food in county jails shall possess a food handler license in accordance with Texas Food Establishment Rules.

Executive Director Brandon Wood has determined that, for each of the first five years of the amendments' effect, the Commission anticipates that the public benefit anticipated as a result of enforcing the amended section is that food will be prepared properly and safely in county jails under its purview.

Mr. Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities to comply with the amended rules, as they will not be required to alter their business practices and the rules do not impose any additional costs on those required to comply with the rules.

For the first five-year period, the proposed rule expands an existing regulation. Otherwise, the proposed rule neither creates nor eliminates a government program; implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions; implementation of the proposed rule does not require an 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 expands an existing regulation; the proposed rule neither increases nor decreases the number of individuals subject to the rule's applicability; and the proposed rule neither positively nor adversely affects this state's economy.

Comments on the proposal may be submitted in writing to William Turner, P.O. Box 12985, Austin, Texas 78711, Fax (512) 463-3185, or e-mail at will.turner@tcjs.state.tx.us.

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

This proposed change does not affect other rules or statutes.

#### §281.5. *Staff Supervision.*

Food shall be prepared under the supervision of a staff member or contract employee who possesses a food handler license in accordance with Texas Food Establishment Rules (TFER) §228.33 and shall be served only under the immediate supervision of a staff member. Care shall be taken that hot foods are served reasonably warm and that cold foods are served reasonably cold.

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 December 1, 2020.

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Brandon Wood

Executive Director

Texas Commission on Jail Standards

Earliest possible date of adoption: January 17, 2021

For further information, please call: (512) 463-5505



## **TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

### **PART 2. DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES**

#### **CHAPTER 109. OFFICE FOR DEAF AND HARD OF HEARING SERVICES**

##### **SUBCHAPTER C. SPECIALIZED TELECOMMUNICATIONS ASSISTANCE PROGRAM**

**40 TAC §§109.501, 109.503, 109.505, 109.507, 109.509, 109.511, 109.513, 109.515, 109.517, 109.519, 109.521, 109.523, 109.525, 109.527, 109.529, 109.531, 109.533**

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes the repeal of Chapter 109, Subchapter C, concerning Specialized Telecommunications Assistance Program, consisting of §§109.501, 109.503, 109.505, 109.507, 109.509, 109.511, 109.513, 109.515, 109.517, 109.519, 109.521, 109.523, 109.525, 109.527, 109.529, 109.531, and 109.533.

##### **BACKGROUND AND PURPOSE**

The purpose of the proposal is to update and relocate the Specialized Telecommunications Assistance Program (STAP) rules from 40 TAC Chapter 109, Subchapter C to 26 TAC Chapter 360, Subchapter C. The relocation of the rules is necessary to implement Senate Bill 200, 84th Legislature, Regular Session, 2015, which transferred the functions of the legacy Department of Assistive and Rehabilitative Services (DARS) to HHSC. The new rules are proposed simultaneously elsewhere in this issue of the *Texas Register*.

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

The proposed repeal of 40 TAC Chapter 109, Subchapter C deletes the STAP rules in 40 TAC and updates and relocates them to 26 TAC Chapter 360.

##### **FISCAL NOTE**

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

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

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

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

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

Trey Wood, Chief Financial Officer, has also determined there is no adverse small business, micro-business, or rural community impact related to the repeal of the proposed rules. The new proposed rule does not impose any additional costs on small business, micro-businesses, or rural communities that are required to comply with the rules.

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

The proposed rules will not affect a local economy.

##### **COSTS TO REGULATED PERSONS**

Texas Government Code §2001.0045 does not apply to these rules because the rules do not impose a cost on regulated persons.

##### **PUBLIC BENEFIT AND COSTS**

Dee Budgewater, Deputy Executive Commissioner for Health, Developmental, and Independence Services, has determined that for each year of the first five years the rules are in effect, the public benefit will be new and updated rules in 26 TAC which provide more choice in equipment selection and in professionals who can certify an application, as well as better services from program providers.

Trey Wood, Chief Financial Officer, has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons required to comply with the proposed rule, as there is no requirement to alter current business practices.

##### **TAKINGS IMPACT ASSESSMENT**

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

##### **PUBLIC COMMENT**

Written comments on the proposal may be submitted to Bryant Robinson, STAP Manager, P.O. Box 12904, Austin, Texas 78711; or by email to [DHHS.STAP@hhsc.state.tx.us](mailto:DHHS.STAP@hhsc.state.tx.us).

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day

to submit comments falls on a holiday, comments must be post-marked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 18R061" in the subject line.

#### STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies. The repeals are also authorized by Texas Utilities Code §56.151, which provides that the Executive Commissioner of HHSC by rule shall establish a specialized telecommunications assistance program to provide financial assistance to individuals with disabilities that impair the individuals' ability to effectively access the telephone network.

The repeals implement Texas Government Code §531.0055 and Texas Utilities Code §56.151.

§109.501. *Purpose.*

§109.503. *Legal Authority.*

§109.505. *Definitions.*

§109.507. *Determination of Basic Specialized Telecommunications Equipment or Service.*

§109.509. *Preliminary and Comprehensive Assessment.*

§109.511. *Voucher Recipient Eligibility.*

§109.513. *Persons Authorized to Certify Disability.*

§109.515. *Vouchers.*

§109.517. *Determination of Voucher Category Value and Eligibility Criteria for a Voucher.*

§109.519. *Consumer Confidentiality.*

§109.521. *Determination of Approved Equipment or Services.*

§109.523. *Reimbursement Amounts for Approved Equipment or Services.*

§109.525. *STAP Vendor Eligibility Requirements.*

§109.527. *STAP Vendor Duties and Responsibilities.*

§109.529. *Voucher Reimbursement.*

§109.531. *Suspension or Loss of STAP Vendor Eligibility.*

§109.533. *Reinstatement of STAP Vendors.*

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 December 3, 2020.

TRD-202005221

Karen Ray

Chief Counsel

Department of Assistive and Rehabilitative Services

Earliest possible date of adoption: January 17, 2021

For further information, please call: (512) 961-3125

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