

# PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

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

## TITLE 1. ADMINISTRATION

### PART 2. TEXAS ETHICS COMMISSION

#### CHAPTER 8. ADVISORY OPINIONS

##### 1 TAC §§8.3, 8.5, 8.11, 8.18, 8.21

The Texas Ethics Commission (the TEC) proposes amendments to Texas Ethics Commission Rules in Chapter 8 regarding Advisory Opinions.

State law requires state agencies to "review and consider for re-adoption each of its rules ... not later than the fourth anniversary of the date on which the rule takes effect and every four years after that date." Tex. Gov't Code §2001.039. The law further requires agencies to "re-adopt, re-adopt with amendments, or repeal a rule as the result of reviewing the rule under this section." *Id.* The TEC is authorized to adopt rules to administer Chapter 571 of the Government Code. Tex. Gov't Code §§ 571.061, .062.

The TEC is continuing its comprehensive review with a review of the TEC's rules regarding advisory opinions, which are codified in Chapter 8. The adoption of amendments to some rules and the repeal of one rule seeks to clarify the rules related to requests for advisory opinions.

The rules and amendments are designed to more closely track statutory language and to provide more clarity and notice of the TEC's interpretations of the statutory requirements in Chapter 571 of the Government Code regarding advisory opinions.

Specifically, the TEC proposes amendments to rules §§8.3 regarding Subject of an Advisory Opinion, 8.5 regarding Persons Eligible to Receive an Advisory Opinion, 8.11 regarding Review and Processing of a Request, 8.18 regarding No Defense to Prosecution or Civil Penalty, and 8.21 regarding Compilation of Advisory Opinions.

The proposed amendments to Chapter 8 include:

- Repealing parts of §8.3, which are unnecessary as they just repeats statute;
- Amending §8.5 to make clear that a person may not request an opinion about how the law relates to another person;
- Adding §8.11(e) to clearly authorize staff to ask the requestor to clarify a request;
- Adding §8.11(f) to clearly authorize staff to request comments on a pending advisory opinion request from experts or interested parties, similar to the practice of the Office of the Attorney General;
- Repealing §§8.17 and 8.18(4), which purported to give staff the authority to answer an advisory opinion request with a non-

binding letter from the executive director rather than providing an advisory opinion.

- Amending §8.21 to require that advisory opinions adopted by the TEC be posted on the TEC's website rather than a "single reference document."

James Tinley, General Counsel, has determined that for the first five-year period the proposed amended rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amended rules. The public will benefit from clear rules that should result in uniform rules for requestors of advisory opinions.

The General Counsel has also determined that for each year of the first five years the proposed amended rules are in effect, the public benefit will be consistency and clarity in the Commission's rules regarding advisory opinions. There will not be an effect on small businesses, microbusinesses or rural communities. There is no anticipated economic cost to persons who are required to comply with the proposed amended rules.

The General Counsel has determined that during the first five years that the proposed amended rules are in effect, they will not: create or eliminate a government program; require the creation of new employee positions or the elimination of existing employee positions; require an increase in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; expand, limit, or repeal an existing regulation; create a new regulation; increase or decrease the number of individuals subject to the rules' applicability; or positively or adversely affect this state's economy.

The Commission invites comments on the proposed amended rules from any member of the public. A written statement should be emailed to [public\\_comment@ethics.state.tx.us](mailto:public_comment@ethics.state.tx.us), or mailed or delivered to J.R. Johnson, Executive Director, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070. A person who wants to offer spoken comments to the Commission concerning the proposed amended rules may do so at any Commission meeting during the agenda item relating to the proposed amended rules. Information concerning the date, time, and location of Commission meetings is available by telephoning (512) 463-5800 or on the Commission's website at [www.ethics.state.tx.us](http://www.ethics.state.tx.us).

The amended rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Chapter 572 of the Government Code.

The proposed amended rules affect Chapter 572 of the Government Code.

§8.3. *Subject of an Advisory Opinion.*

{(a) The commission may only issue a written advisory opinion on the application of any of the following laws:}

~~[(1) Government Code, Chapter 302 (concerning Speaker of the House of Representatives);]~~

~~[(2) Government Code, Chapter 303 (concerning Governor for a Day and Speaker's Reunion Day Ceremonies);]~~

~~[(3) Government Code, Chapter 305 (concerning Registration of Lobbyists);]~~

~~[(4) Government Code, Chapter 572 (concerning Personal Financial Disclosure, Standards of Conduct, and Conflict of Interest); (5) Government Code, Chapter 2004 (concerning Representation Before State Agencies);]~~

~~[(6) Local Government Code, Chapter 159, Subchapter C, in connection with a county judicial officer, as defined by Section 159.051, Local Government Code, who elects to file a financial statement with the commission;]~~

~~[(7) Election Code, Title 15 (concerning Regulating Political Funds and Campaigns);]~~

~~[(8) Penal Code, Chapter 36 (concerning Bribery and Corrupt Influence);]~~

~~[(9) Penal Code, Chapter 39 (concerning Abuse of Office).]~~

~~[(10) Government Code, §2152.064 (concerning Conflict of Interest in Certain Transactions); and]~~

~~[(11) Government Code, §2155.003 (concerning Conflict of Interest).]~~

~~(a) [(b)] The commission may not issue an advisory opinion that concerns the same or substantially similar facts [subject matter] of pending litigation known to the commission.~~

~~(b) [(e)] For purposes of this section, the term litigation includes a sworn complaint proceeding before the commission if the request is made by a respondent or complainant or the agent of a respondent or complainant of pending sworn complaint [only if the Government Code Subchapters C–H, Chapter 2001, applies to the proceeding].~~

~~(c) [(d)] An advisory opinion cannot resolve a disputed question of fact.~~

#### *§8.5. Persons Eligible To Receive an Advisory Opinion.*

A person who is subject to one of the laws described in §571.091, Gov't Code [§8.3(a) of this chapter (relating to Subject of Advisory Opinions)] may request an opinion that advises how the law applies to that person in a specific real or hypothetical factual situation. Opinions may only address how the law applies to the requestor, not any other real or hypothetical person.

#### *§8.11. Review and Processing of a Request.*

(a) Upon receipt of a written request for an advisory opinion, the executive director shall determine whether the request:

(1) pertains to the application of a law specified under §571.091, Gov't Code [§8.3 of this chapter] ;

(2) meets the standing requirements of §8.5 of this chapter; and

(3) meets the form requirements of §8.7 of this chapter. [; and]

~~[(4) cannot be answered by written response under § 8.17 of this chapter by reference to the plain language of a statute, commission rule, or advisory opinion.]~~

(b) If the executive director determines that a request for an opinion meets the requirements of this chapter as set forth in subsections (a)(1) - (3) of this [section and that the request cannot be answered

by written response under §8.17 of this chapter], the executive director shall assign an AOR number to the request. The executive director shall notify the person making the request of the AOR number and of the proposed wording of the question to be answered by the commission.

(c) If the executive director determines that a request for an opinion does not meet the requirements of this chapter as set forth in subsections (a)(1) - (3) of this section [or that the request can be answered by written response under §8.17 of this chapter], the executive director shall notify the person making the request of the reason the person making the request is not entitled to an advisory opinion in response to the request.

(d) A person who requests an opinion may withdraw the request prior to its inclusion on a meeting agenda filed by the Commission pursuant to the Open Meetings Law. Once a request is included on such an agenda, it may not be withdrawn by the requestor.

(e) The executive director may submit written questions to the requestor to clarify the real or hypothetical facts submitted with the request.

(f) The executive director may invite comments regarding an advisory opinion request from individuals or entities that may have expertise or an interest in the subject of the request.

#### *§8.18. No Defense to Prosecution or Civil Penalty.*

A person who requests an advisory opinion does not obtain a defense to prosecution or to imposition of a civil penalty by requesting the opinion if any of the following apply:

(1) the commission is not authorized to answer the request because it does not pertain to the application of a law specified under §571.091, Gov't Code [§8.3 of this chapter];

(2) the request does not meet the standing requirements of §8.5 of this chapter; or

(3) the request does not meet the form requirements of §8.7 of this chapter. [; or]

~~[(4) the executive director responds to the request by written response under §8.17 of this chapter.]~~

#### *§8.21. Compilation of Advisory Opinions.*

The executive director shall number and categorize each advisory opinion issued and publish the opinion on the commission's website. [and shall annually compile a summary of advisory opinions in a single reference document.] The executive director may publish and provide copies of advisory opinions in other formats as may be in the public interest.

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 January 8, 2025.

TRD-202500037

Jim Tinley

General Counsel

Texas Ethics Commission

Earliest possible date of adoption: February 23, 2025

For further information, please call: (512) 463-5800



### **1 TAC §8.17**

The Texas Ethics Commission (the TEC) proposes the repeal of Texas Ethics Commission rule §8.17 regarding Request Answered by Written Response.

State law requires state agencies to "review and consider for readoption each of its rules ... not later than the fourth anniversary of the date on which the rule takes effect and every four years after that date." Tex. Gov't Code §2001.039. The law further requires agencies to "readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section." *Id.* The TEC is authorized to adopt rules to administer Chapter 571 of the Government Code. Tex. Gov't Code §§ 571.061, .062.

The TEC is continuing its comprehensive review with a review of the TEC's rules regarding advisory opinions, which are codified in Chapter 8. The adoption of amendments to some rules and the repeal of one rule seeks to clarify the rules related to requests for advisory opinions.

Section 8.17 of the TEC rules authorized the executive director to issue a non-binding written letter if a question presented in an advisory opinion request is clearly answered by reference to a previous advisory opinion, statute, or rule. The option to issue a non-binding letter rather than an advisory opinion has not been exercised in recent years and is out-of-step with statute, which requires the TEC to issue an advisory opinion upon written request. After reviewing §8.17 the TEC determined the rule was not necessary and therefore proposes repeal of the rule.

James Tinley, General Counsel, has determined that for the first five-year period the proposed repealed rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed repealed rule.

The General Counsel has also determined that for each year of the first five years the proposed repealed rule is in effect, the public benefit will be consistency and clarity in the TEC's response to advisory opinion requests. There will not be an effect on small businesses, microbusinesses or rural communities. There is no anticipated economic cost to persons who are required to comply with the proposed repealed rule.

The General Counsel has determined that during the first five years that the proposed repealed rule is in effect, they will not: create or eliminate a government program; require the creation of new employee positions or the elimination of existing employee positions; require an increase in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; expand, limit, or repeal an existing regulation; create a new regulation; increase or decrease the number of individuals subject to the rule's applicability; or positively or adversely affect this state's economy.

The Commission invites comments on the proposed repealed rule from any member of the public. A written statement should be emailed to [public\\_comment@ethics.state.tx.us](mailto:public_comment@ethics.state.tx.us), or mailed or delivered to J.R. Johnson, Executive Director, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070. A person who wants to offer spoken comments to the Commission concerning the proposed repealed rule may do so at any Commission meeting during the agenda item relating to the proposed repealed rule. Information concerning the date, time, and location of Commission meetings is available by telephoning (512) 463-5800 or on the Commission's website at [www.ethics.state.tx.us](http://www.ethics.state.tx.us).

The repealed rule is proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Chapter 571 of the Government Code.

The proposed repealed rule affects Chapter 571 of the Government Code.

§8.17. *Request Answered by Written Response.*

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 January 8, 2025.

TRD-202500036

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Earliest possible date of adoption: February 23, 2025

For further information, please call: (512) 463-5800



## CHAPTER 13. REFERRALS TO PROSECUTORS

### 1 TAC §13.1

The Texas Ethics Commission (TEC) proposes new rule 1 Texas Administrative Code §13.1, concerning the referral of matters to prosecuting attorneys under Section 571.171(a) of the Texas Government Code.

This rule is being proposed in response to the CCA's recent decision in *Ex Parte Charette*, which held that a referral from the TEC is a jurisdictional prerequisite to the bringing of criminal charges against a political candidate for a violation of title 15 of the Election Code. The purpose of this rule is to provide information regarding the TEC's procedures for making criminal referrals as authorized by Section 571.171(a) of the Texas Government Code. TEC adopted an identical emergency rule on September 25, 2024.

#### Section-by-Section Summary

Subsection (a) clarifies the TEC's exercise of authority granted under section 571.171(a) of the Texas Government Code to refer matters to an appropriate prosecuting attorney for criminal prosecution upon a vote of at least six commission members.

Subsection (b) restates the requirement in section 571.134 of the Texas Government Code that certain referrals shall be delayed until (1) the day after election day; (2) the day after runoff election day if an ensuing runoff involving the alleged violator is held; or (3) the day after general election day if the election involved in the violation is a primary election and the alleged violator is involved in the succeeding general election.

James Tinley, General Counsel, has determined that for the first five-year period the proposed new rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed new rule.

The General Counsel has also determined that for each year of the first five years the proposed new rule is in effect, the public benefit will be clarity in how criminal referrals will be handed at the TEC. There will not be an effect on small businesses, microbusinesses or rural communities. There is no anticipated

economic cost to persons who are required to comply with the proposed new rule.

The General Counsel has determined that during the first five years that the proposed new rule is in effect, it will not: create or eliminate a government program; require the creation of new employee positions or the elimination of existing employee positions; require an increase in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; expand, limit, or repeal an existing regulation; or increase or decrease the number of individuals subject to the rule's applicability.

The Commission invites comments on the proposed new rule from any member of the public. A written statement should be emailed to [public\\_comment@ethics.state.tx.us](mailto:public_comment@ethics.state.tx.us), or mailed or delivered to J.R. Johnson, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070. A person who wants to offer spoken comments to the Commission concerning the proposed new rule may do so at any Commission meeting during the agenda item relating to the proposed new rule. Information concerning the date, time, and location of Commission meetings is available by telephoning (512) 463-5800 or on the Commission's website at [www.ethics.state.tx.us](http://www.ethics.state.tx.us)

#### Statutory Authority

This new rule is proposed under Texas Government Code §571.062, which authorizes the TEC to adopt rules to administer Chapter 571 of the Government Code.

The proposed new rule affects Chapter 571 of the Texas Government Code, including Section 571.062, and the laws placed under the civil enforcement jurisdiction of the TEC as identified in Section 571.061(a) of the Texas Government Code.

#### §13.1. Referral to Prosecuting Attorney.

(a) Under section 571.171 of the Government Code, the commission may vote to refer a matter related to a sworn complaint to the appropriate prosecuting attorney for criminal prosecution upon the commission accepting jurisdiction over the sworn complaint.

(b) A referral under subsection (a) of this section shall be delayed in accordance with section 571.134 of the Government Code.

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

Filed with the Office of the Secretary of State on January 8, 2025.

TRD-202500039

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Texas Ethics Commission

Earliest possible date of adoption: February 23, 2025

For further information, please call: (512) 463-5800



## CHAPTER 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES

### SUBCHAPTER A. GENERAL RULES

#### 1 TAC §20.1

The Texas Ethics Commission (TEC) proposes amendments to Texas Ethics Commission rules in Subchapter A of Chapter 20.

Specifically, the TEC proposes amendments to §20.1(17), regarding the definition of "principal purpose".

A political committee is defined by state law as "two or more persons acting in concert with a *principal purpose* of accepting political contributions or making political expenditures." Tex. Elec. Code § 251.001(12) (emphasis added). The TEC defined the term "principal purpose" for the purpose of defining whether a group is a political committee. Tex. Elec. Code § 251.001(12). The existing rule states that a group has a principal purpose of accepting political contributions or making political expenditures if 25 percent of its incoming funds are political contributions or 25 percent of its expenditures are political expenditures. The setting a bright-line activity threshold at 25 percent of a group's activity has proved unworkable and is contrary to how a similar federal law is interpreted for defining political committee status.

The amended rule avoids a bright-line approach based on a percentage of spending. Instead, it embraces the Federal Election Code (FEC) method of determining whether a group is a political committee by taking a holistic view of the group's activity to be adjudicated on a case-by-case basis. This approach has been upheld as constitutional by the Fourth Circuit. *Real Truth About Abortion, Inc. v. FEC*, 681 F.3d 544, 557-58 (4th Cir. 2012); see also *Citizens for Responsibility & Ethics in Washington v. FEC*, 209 F. Supp. 3d 77, 82 (D.D.C. 2016). Embracing the FEC approach will also allow the TEC and regulated community to more easily use the precedent set by FEC adjudications and federal court decisions to determine whether a group is a political committee. See Tex. Ethics Comm'n Op. No. 614 (2024).

James Tinley, General Counsel, has determined that for the first five-year period the proposed amended rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amended rule.

The General Counsel has also determined that for each year of the first five years the proposed amended rule is in effect, the public benefit will be clarity in the definition of "principal purpose" for use by political committees. There will not be an effect on small businesses, microbusinesses or rural communities. There is no anticipated economic cost to persons who are required to comply with the proposed amended rule.

The General Counsel has determined that during the first five years that the proposed amended rule is in effect, it will not: create or eliminate a government program; require the creation of new employee positions or the elimination of existing employee positions; require an increase in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; expand, limit, or repeal an existing regulation; or increase or decrease the number of individuals subject to the rule's applicability.

The Commission invites comments on the proposed amended rule from any member of the public. A written statement should be emailed to [public\\_comment@ethics.state.tx.us](mailto:public_comment@ethics.state.tx.us), or mailed or delivered to J.R. Johnson, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070. A person who wants to offer spoken comments to the Commission concerning the proposed amended rule may do so at any Commission meeting during the agenda item relating to the proposed amended rule. Information concerning the date, time, and location of Commission meetings is available by telephoning (512) 463-5800 or on the Commission's website at [www.ethics.state.tx.us](http://www.ethics.state.tx.us).

The amendment is proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code.

The proposed amended rule affects Chapter 255 of the Election Code.

§20.1. *Definitions.*

The following words and terms, when used in Title 15 of the Election Code, in this chapter, Chapter 22 of this title (relating to Restrictions on Contributions and Expenditures), and Chapter 24 of this title (relating to Restrictions on Contributions and Expenditures Applicable to Corporations and Labor Organizations), shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (16) (No change.)

(17) Principal purpose--A group has as a principal purpose of accepting political contributions or making political expenditures, including direct campaign expenditures, when that activity is an important or a main function of the group.

(A) A group may have more than one principal purpose. When determining whether a group has a principal purpose of accepting political contributions or making political contributions, the Commission may consider the full range of activities by the group and its members, including, but not limited to:

(i) public statements;

(ii) fundraising appeals;

(iii) government filings;

(iv) organizational documents; and

(v) the amount of political expenditures made and political contributions accepted by the group and its members.

(B) A group is presumed to be a political committee if the proportion of the group's political contributions to the total contributions to the group is 50 percent or more. [A group has as a principal purpose accepting political contributions if the proportion of the political contributions to the total contributions to the group is more than 25 percent within a calendar year. A contributor intends to make a political contribution if the solicitations that prompted the contribution or the statements made by the contributor about the contribution would lead to no other reasonable conclusion than that the contribution was intended to be a political contribution.]

(C) The group may maintain specific evidence of contributions related only to political contributions or only to nonpolitical contributions. For example, the group may ask the contributor to make an indication when the contribution is made that the contribution is only a nonpolitical contribution.

(D) A group is presumed to be a political committee if the proportion of the group's political expenditures to the total expenditures of the group is 50 percent or more. [A group has as a principal purpose making political expenditures, including direct expenditures, if the group expends more than 25 percent of its annual expenses to make political expenditures within a calendar year.] The following shall be included for purposes of calculating the proportion of a group's political expenditures to all other spending [threshold]:

(i) the amount of money paid in compensation and benefits to the group's employees for work related to making political expenditures;

(ii) the amount of money spent on political expenditures; and

(iii) the amount of money attributable to the proportional share of administrative expenses related to political expenditures. The proportional share of administrative expenses is calculated by comparing the political expenditures in clause (ii) with nonpolitical expenditures. (For example, if the group sends three mailings a year and each costs \$10,000, if the first two are issue-based newsletters and the third is a direct advocacy sample ballot, and there were no other [outside] expenditures, then the proportion of the administrative expenses attributable to political expenditures would be 33%.) Administrative expenses include:

(I) fees for services to non-employees;

(II) advertising and promotion;

(III) office expenses;

(IV) information technology;

(V) occupancy;

(VI) travel expenses;

(VII) interest; and

(VIII) insurance

(E) The group may maintain specific evidence of administrative expenses related only to political expenditures or only to nonpolitical expenditures. Specifically identified administrative expenses shall not be included in the proportion established by subparagraph (D)(iii) but allocated by the actual amount of the expense.

(F) In this section, the term "political expenditures" includes direct campaign expenditures.

(18) - (23) (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 January 8, 2025.

TRD-202500040

Jim Tinley

General Counsel

Texas Ethics Commission

Earliest possible date of adoption: February 23, 2025

For further information, please call: (512) 463-5800



## PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

### CHAPTER 355. REIMBURSEMENT RATES

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §355.502, concerning Reimbursement Methodology for Common Services in Home and Community-Based Services Waivers; §355.505, concerning Reimbursement Methodology for the Community Living Assistance and Support Services Waiver Program; §355.513, concerning Reimbursement Methodology for the Deaf-Blind with Multiple Disabilities Waiver Program; §355.723, concerning Reimbursement Methodology for Home and Community-Based Services and Texas Home Living Programs; and §355.725, concerning Reimbursement Methodology for Common Waiver Services in Home and Community-based Services (HCS) and Texas Home Living (TxHML).

## BACKGROUND AND PURPOSE

The purpose of the proposal is to add in-home and out-of-home settings for home health care services (including nursing, occupational therapy, and physical therapy) to the reimbursement methodologies for Community Living Assistance and Support Services Waiver Program (CLASS), the Deaf-blind Multiple Disabilities (DBMD), Home and Community-based Services (HCS), and Texas Home Living (TxHmL) waiver programs. These amendments ensure compliance with the 21st Century Cures Act, which requires all states to implement the use of electronic visit verification (EVV).

The proposal also establishes the reimbursement methodology for employment readiness services in the DBMD, HCS, and TxHmL waiver programs in accordance with House Bill 4169, 88th Legislature, Regular Session, 2023.

## SECTION-BY-SECTION SUMMARY

Edits to correct formatting, references, and punctuation are made throughout all the rules. Also, "speech/language therapy" is revised to "speech and language pathology" throughout the rules.

The proposed amendments to §355.502(b) and (d) clarify that nursing services, occupational therapy, and physical therapy are offered in both in-home and out-of-home settings under the umbrella of professional services.

The proposed amendments to §355.505(c)(4)(A) and subsection (c)(4)(A)(vii) clarify that nursing services, occupational therapy, and physical therapy are offered in both in-home and out-of-home settings under §1915(c) waiver programs.

The proposed amendment to §355.513(c)(5) clarifies that nursing services, occupational therapy, and physical therapy are offered in both in-home and out-of-home settings under the DBMD waiver program. Additionally, the proposed amendment adds the reimbursement methodology for employment readiness services. New paragraph (12) is added to describe the employment readiness payment rates. The remaining section is renumbered to account for the addition of a paragraph.

The proposed amendment to §355.723 clarifies that nursing services, occupational therapy, and physical therapy are offered in both in-home and out-of-home settings under the HCS and TxHmL programs. Additionally, the proposed amendment adds the reimbursement methodology for employment readiness services. The paragraphs under subsection (d) are renumbered to account for the addition of a paragraph.

The proposed amendment to §355.725 clarifies that nursing services, occupational therapy, and physical therapy are offered in both in-home and out-of-home settings under common waiver 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 not create a new regulation;

(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.

## 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

Victoria Grady, Director of Provider Finance, has determined that for each year of the first five years the rules are in effect, the public benefit will be appropriate reimbursement methodologies for the programs that use EVV to deliver home health care services and the newly-developed employment readiness services.

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 because the rules do not impose any requirements on regulated persons.

## TAKINGS IMPACT ASSESSMENT

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

## PUBLIC COMMENT

Written comments on the proposal may be submitted to HHSC Provider Finance Department, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; 4601 W. Guadalupe Sreet, Austin, Texas 78751; or by email to PFD-LTSS@hhs.texas.gov.

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

indicate "Comments on Proposed Rule 24R067" in the subject line.

## SUBCHAPTER E. COMMUNITY CARE FOR AGED AND DISABLED

### 1 TAC §§355.502, 355.505, 355.513

#### STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out HHSC's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Texas Human Resources Code Chapter 32.

The amendments affect Texas Government Code Chapter 531 and Texas Human Resources Code Chapter 32.

#### §355.502. *Reimbursement Methodology for Common Services in Home and Community-Based Services Waivers.*

(a) General requirements. The Texas Health and Human Services Commission (HHSC) applies the general principles of cost determination as specified in §355.101 of this chapter [title] (relating to Introduction). Common services are those services that are available in multiple home and community-based services (HCBS) waivers.

(b) Professional services. Professional services include in-home and out-of-home nursing services provided by a registered nurse (RN) or a licensed vocational nurse (LVN) (including Adjunct Support and Respite in the Medically Dependent Children Program), in-home and out-of-home physical therapy, in-home and out-of-home occupational therapy, speech and language pathology [~~speech/language therapy~~], cognitive rehabilitative therapy, nutrition/dietary services, audiology services, and behavioral support services.

(c) Employment services. Employment services include employment assistance and supported employment.

(d) Rates for professional services, employment services, and in-home respite. The rates for these services are calculated in the following manner.[:]

(1) If there is sufficient reliable cost report data from which to determine reimbursements, rates are calculated in the following manner.

(A) An allowable cost per unit of service for each cost report is calculated in accordance with the specific methodology for each HCBS waiver.

(B) The allowable cost per unit of service for each cost report for all HCBS waivers is combined into an array.

(C) The array of allowable costs per unit of service for all HCBS waivers is weighted by the number of units of service, and the median cost per unit of service is calculated.

(2) If there is not sufficient, reliable cost report data from which to determine reimbursements, reimbursements will be developed by using pro forma costing. This approach involves using historical costs of delivering similar services, where appropriate data are available, and estimating the basic types and costs of products and ser-

vices necessary to deliver services meeting federal and state requirements.

(3) In-home and out-of-home specialized [Specialized] nursing rates will be determined for both RN and LVN services by multiplying the RN and LVN rates by 1.15. The specialized nursing rate is paid when a client requires, as determined by a physician, daily skilled nursing to cleanse, dress, and suction a tracheostomy or daily skilled nursing assistance with ventilator or respirator care. The client must be unable to do self-care and require the assistance of a nurse for the ventilator, respirator, or tracheostomy care.

(e) Transition assistance services. The reimbursement for transition assistance services will be determined as a one-time rate per client based on modeled costs of compensation and other support costs using data from surveys, cost reports, consultation with other professionals in delivering contracted services, or other sources determined appropriate by HHSC.

#### §355.505. *Reimbursement Methodology for the Community Living Assistance and Support Services Waiver Program.*

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

(c) Waiver reimbursement determination methodology.

(1) Unit of service reimbursement or reimbursement ceiling by unit of service. Reimbursement or reimbursement ceilings for related-conditions waiver services, habilitation, nursing services provided by a registered nurse (RN), nursing services provided by a licensed vocational nurse (LVN), physical therapy, occupational therapy, speech and language pathology [~~speech/language therapy~~], behavioral support, auditory integration training/auditory enhancement training (audiology services), nutritional services, employment assistance, supported employment, day activity and health services, and in-home and out-of-home respite care services will be determined on a fee-for-service basis. These services are provided under §1915(c) of the Social Security Act Medicaid waiver for persons with related conditions.

(2) Monthly reimbursement. The reimbursement for case management waiver service will be determined as a monthly reimbursement. This service is provided under the §1915(c) of the Social Security Act Medicaid waiver for persons with related conditions.

(3) Reporting and verification of allowable cost.

(A) Providers are responsible for reporting only allowable costs on the cost report, except where cost report instructions indicate that other costs are to be reported in specific lines or sections. Only allowable cost information is used to determine recommended reimbursements. HHSC excludes from reimbursement determination any unallowable expenses included in the cost report and makes the appropriate adjustments to expenses and other information reported by providers; the purpose is to ensure that the database reflects costs and other information that are necessary for the provision of services and are consistent with federal and state regulations.

(B) Individual cost reports may not be included in the database used for reimbursement determination if:

(i) there is reasonable doubt as to the accuracy or allowability of a significant part of the information reported; or

(ii) an auditor determines that reported costs are not verifiable.

(4) Reimbursement determination. Recommended unit of service reimbursements and reimbursement ceilings by unit of service are determined in the following manner:

(A) Unit of service reimbursement for habilitation, and cost per unit of service for in-home and out-of-home nursing services

provided by an RN, in-home and out-of-home nursing services provided by an LVN, in-home and out-of-home physical therapy, in-home and out-of-home occupational therapy, speech and language pathology [speech/language therapy], behavioral support services, auditory integration training/auditory enhancement training (audiology services), nutritional services, employment assistance, supported employment, and in-home and out-of-home respite care are determined in the following manner.[:]

(i) The total allowable cost for each contracted provider cost report will be determined by analyzing the allowable historical costs reported on the cost report and other pertinent cost survey information.

(ii) The total allowable cost is reduced by the amount of the administrative expense fee and requisition fee revenues accrued for the reporting period.

(iii) Each provider's total allowable cost, excluding depreciation and mortgage interest, is projected from the historical cost reporting period to the prospective reimbursement period as described in §355.108 of this chapter [title] (relating to Determination of Inflation Indices).

(iv) Payroll taxes and employee benefits are allocated to each salary line item on the cost report on a pro rata basis based on the portion of that salary line item to the amount of total salary expense for the appropriate group of staff. Employee benefits will be charged to a specific salary line item if the benefits are reported separately. The allocated payroll taxes are Federal Insurance Contributions Act (FICA) or social security, Medicare contributions, Workers' compensation Insurance (WCI), the Federal Unemployment Tax Act (FUTA), and the Texas Unemployment Compensation Act (TUCA).

(v) Allowable administrative and facility costs are allocated or spread to each waiver service cost component on a pro rata basis based on the portion of each waiver service's units of service to the amount of total waiver units of service.

(vi) Each provider's projected total allowable cost is divided by the number of units of service to determine the projected cost per unit of service.

(vii) For in-home and out-of-home nursing services provided by an RN, in-home and out-of-home nursing services provided by an LVN, in-home and out-of-home physical therapy, in-home and out-of-home occupational therapy, speech and language pathology [speech/language therapy], in-home respite care, behavioral support services, auditory integration training/auditory enhancement training (audiology services), nutritional services, employment assistance, and supported employment, the projected cost per unit of service, for each provider is multiplied by 1.044. This adjusted allowable cost per unit of service may be combined into an array with the allowable cost per unit of service of similar services provided by other programs in determining rates for these services in accordance with §355.502 of this chapter [title] (relating to Reimbursement Methodology for Common Services in Home and Community-Based Services Waivers).

(viii) For habilitation services two cost areas are created:

(I) The attendant cost area includes salaries, wages, benefits, and mileage reimbursement calculated as specified in §355.112 of this chapter [title] (relating to Attendant Compensation Rate Enhancement).

(II) Another attendant cost area is created which includes the other habilitation services costs not included in subclause (I) of this clause as determined in clauses (i) - (v) of this subparagraph to

create an other attendant cost area. An allowable cost per unit of service is calculated for the other habilitation cost area. The allowable costs per unit of service for each contracted provider cost report are arrayed and weighted by the number of units of service, and the median cost per unit of service is calculated. The median cost per unit of service is multiplied by 1.044.

(III) The attendant cost area and the other attendant cost area are summed to determine the habilitation attendant cost per unit of service.

(ix) For out-of-home respite care, the allowable costs per unit of service are calculated as determined in clauses (i) - (vi) of this subparagraph. The allowable costs per unit of service for each contracted provider cost report are multiplied by 1.044. The costs per unit of service are then arrayed and weighted by the number of units of service, and the median cost per unit of service is calculated.

(B) The monthly reimbursement for case management services is determined in the following manner:

(i) Total allowable costs for each provider will be determined by analyzing the allowable historical costs reported on the cost report and other pertinent cost survey information.

(ii) Total allowable costs are reduced by the amount of administrative expense fee revenues reported.

(iii) Each provider's total allowable costs, excluding depreciation and mortgage interest, are projected from the historical cost reporting period to the prospective reimbursement period as described in §355.108 of this title (relating to Determination of Inflation Indices).

(iv) Payroll taxes and employee benefits are allocated to each salary line item on the cost report on a pro rata basis based on the portion of that salary line item to the amount of total salary expense for the appropriate group of staff. Employee benefits will be charged to a specific salary line item if the benefits are reported separately. The allocated payroll taxes are Federal Insurance Contributions Act (FICA) or social security, Medicare contributions, Workers' compensation Insurance (WCI), the Federal Unemployment Tax Act (FUTA), and the Texas Unemployment Compensation Act (TUCA).

(v) Each provider's projected total allowable costs are divided by the number of monthly units of service to determine the projected cost per client month of service.

(vi) Each provider's projected cost per client month of service is arrayed from low to high and weighted by the number of units of service and the median cost per client month of service is calculated.

(vii) The median projected cost per client month of service is multiplied by 1.044.

(C) The unit of service reimbursement for day activity and health services is determined in accordance with §355.6907 (Relating to Reimbursement Methodology for Day Activity and Health Services).

(D) HHSC also adjusts reimbursement according to §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs) if new legislation, regulations, or economic factors affect costs.

(5) The reimbursement for support family services and continued family services will be determined as a per day rate using a method based on modeled costs which are developed by using data from surveys, cost report data from other similar programs, payment rates from other similar programs, consultation with other service



providers and/or professionals experienced in delivering contracted services, or other sources as determined appropriate by HHSC. The per day rate will have two parts, one part for the child placing agency and one part for the support family.

(d) - (j) (No change.)

§355.513. *Reimbursement Methodology for the Deaf-Blind with Multiple Disabilities Waiver Program.*

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

(c) Waiver rate determination methodology. If HHSC deems it appropriate to require contracted providers to submit a cost report, recommended reimbursements for waiver services will be determined on a fee-for-service basis in the following manner for each of the services provided:

(1) Total allowable costs for each provider will be determined by analyzing the allowable historical costs reported on the cost report.

(2) Each provider's total reported allowable costs, excluding depreciation and mortgage interest, are projected from the historical cost-reporting period to the prospective reimbursement period as described in §355.108 of this title (relating to Determination of Inflation Indices). The prospective reimbursement period is the period of time that the reimbursement is expected to be in effect.

(3) Payroll taxes and employee benefits are allocated to each salary line item on the cost report on a pro rata basis based on the portion of that salary line item to the amount of total salary expense for the appropriate group of staff. Employee benefits will be charged to a specific salary line item if the benefits are reported separately. The allocated payroll taxes are Federal Insurance Contributions Act (FICA) or Social Security, Medicare Contributions, Workers' Compensation Insurance (WCI), the Federal Unemployment Tax Act (FUTA), and the Texas Unemployment Compensation Act (TUCA).

(4) Allowable administrative and overall facility/operations costs are allocated or spread to each waiver service cost component on a pro rata basis based on the portion of each waiver service's service units reported to the amount of total waiver service units reported. Service-specific facility and operations costs for out-of-home respite, and individualized skills and socialization services will be directly charged to the specific waiver service.

(5) For in-home and out-of-home nursing services provided by a registered nurse (RN), in-home and out-of-home nursing services provided by a licensed vocational nurse (LVN), in-home and out-of-home physical therapy, in-home and out-of-home occupational therapy, speech and language pathology [~~speech/language therapy~~], behavioral support services, audiology services, dietary services, employment assistance, and supported employment, an allowable cost per unit of service is calculated for each contracted provider cost report in accordance with paragraphs (1) - (4) of this subsection. The allowable costs per unit of service for each contracted provider cost report is multiplied by 1.044. This adjusted allowable costs per unit of service may be combined into an array with the allowable cost per unit of service of similar services provided by other programs in determining rates for these services in accordance with §355.502 of this title (relating to Reimbursement Methodology for Common Services in Home and Community-Based Services Waivers).

(6) Requisition fees are reimbursements paid to the Deaf-Blind with Multiple Disabilities (DBMD) Waiver contracted providers for their efforts in acquiring adaptive aids, medical supplies, dental services, and minor home modifications for DBMD participants. Reimbursement for adaptive aids, medical supplies, dental services, and minor home modifications will vary based on the actual cost of the

adaptive aid, medical supply, dental service, and minor home modification. Reimbursements are determined using a method based on modeled projected expenses which are developed by using data from surveys, cost report data from similar programs, consultation with other service providers or professionals experienced in delivering contracted services, or other sources.

(7) For residential habilitation transportation, chore, and intervener (excluding Interveners I, II, and III), services, two cost areas are created:

(A) The attendant cost area, which includes salaries, wages, benefits, and mileage reimbursement calculated as specified in §355.112 of this title (relating to Attendant Compensation Rate Enhancement).

(B) An administration and facility cost area, which includes costs for services not included in subparagraph (A) of this paragraph as determined in paragraphs (1) - (4) of this subsection. An allowable cost per unit of service is determined for each contracted provider cost report for the administration and facility cost area. The allowable costs per unit of service for each contracted provider cost report are arrayed. The units of service for each contracted provider cost report in the array are summed until the median unit of service is reached. The corresponding expense to the median unit of service is determined and is multiplied by 1.044.

(C) The attendant cost area, and the administration and facility cost area are summed to determine the cost per unit of service.

(8) For Interveners I, II, and III, payment rates are developed based on rates determined for other programs that provide similar services. If payment rates are not available from other programs that provide similar services, payment rates are determined using a pro forma approach in accordance with §355.105(h) of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures). Interveners I, II, and III are not considered attendants for purposes of the Attendant Compensation Rate Enhancement described in §355.112 of this title, and providers are not eligible to receive direct care add-ons to the Intervener I, II, or III rates.

(9) Assisted living services payment rates are determined using a pro forma approach in accordance with §355.105(h) of this title. The rates are adjusted periodically for inflation. The room and board payments for waiver clients receiving assisted living services are covered in the reimbursement for these services and will be paid to providers from the client's Supplemental Security Income, less a personal needs allowance.

(10) Pre-enrollment assessment services and case management services payment rates are determined by modeling the salary for a Case Manager staff position. This rate is periodically updated for inflation.

(11) The orientation and mobility services payment rate is determined by modeling the salary for an Orientation and Mobility Specialist staff position. This rate is updated periodically for inflation.

(12) The employment readiness payment rates will initially be determined using a pro forma approach in accordance with §355.105(h) of this chapter. Once cost report data for this service are available, HHSC will calculate the methodological rate for employment readiness as a weighted median cost of the service from the most recently examined Medicaid cost report, adjusted for anticipated programmatic and staffing requirements, and inflated from the cost reporting year to the prospective rate year. The employment readiness rates will be rebased every biennium from the most recent projected cost report data. Adopted rates will be limited within available appropriations.

(13) [(42)] HHSC may adjust reimbursement if new legislation, regulations, or economic factors affect costs, according to §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs).

(d) - (h) (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 January 7, 2025.

TRD-202500013

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Earliest possible date of adoption: February 23, 2025

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## SUBCHAPTER F. REIMBURSEMENT METHODOLOGY FOR PROGRAMS SERVING PERSONS WITH MENTAL ILLNESS OR INTELLECTUAL OR DEVELOPMENTAL DISABILITY

### 1 TAC §355.723, §355.725

#### STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out HHSC's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Texas Human Resources Code Chapter 32.

The amendments affect Texas Government Code Chapter 531 and Texas Human Resources Code Chapter 32.

§355.723. *Reimbursement Methodology for Home and Community-Based Services and Texas Home Living Programs.*

(a) Prospective payment rates. The Texas Health and Human Services Commission (HHSC) sets payment rates to be paid prospectively to Home and Community-based Services (HCS) and Texas Home Living (TxHmL) providers.

(b) Levels of need.

(1) Variable rates. Rates vary by level of need (LON) for the following services:

- (A) employment readiness;
- (B) [(A)] host home/companion care (HH/CC);
- (C) [(B)] individualized skills and socialization;
- (D) [(C)] residential support services (RSS); and
- (E) [(D)] supervised living (SL).

(2) Non-variable rates. Rates do not vary by LON for the following services:

- (A) audiology;
- (B) behavioral support;
- (C) cognitive rehabilitative therapy (CRT);
- (D) community first choice personal assistance services/habilitation (CFC PAS/HAB);
- (E) community support services transportation (CSS);
- (F) dietary;
- (G) employment assistance (EA);
- (H) in-home respite;
- (I) in-home and out-of-home licensed vocational nurse (LVN);
- (J) in-home and out-of-home occupational therapy (OT);
- (K) out-of-home respite (OHR);
- (L) in-home and out-of-home physical therapy (PT);
- (M) in-home and out-of-home registered nurse (RN);
- (N) social work;
- (O) speech and language pathology [therapy];
- (P) supported employment (SE); and
- (Q) supported home living transportation (SHL).

(c) Recommended rates. The recommended payment rates are determined for each HCS and TxHmL service listed in subsections (b)(1) and (2) of this section by type and, for services listed in subsection (b)(1) of this section, by LON to include the following cost areas.

(1) Attendant compensation cost area. The determination of the attendant compensation cost area is calculated as specified in §355.112 of this chapter (relating to Attendant Compensation Rate Enhancement). The attendant compensation cost area includes personal attendant staffing costs (wages, benefits, modeled staffing ratios for attendant staff, direct care trainers, and job coaches).

(2) Other direct care cost area. The other direct care cost area includes other direct service staffing costs (wages and benefits for direct care and attendant supervisors). The other direct care cost area is determined by calculating a median from allowable other direct care costs for each service, weighed by units of service for the applicable service from the most recently examined HCS/TxHmL cost report adjusted for inflation from the cost reporting period to the prospective rate period as specified in §355.108 of this chapter (relating to Determination of Inflation Indices).

(A) For the following services, multiply the other direct care cost area as specified in this paragraph by 1.044:

- (i) EA;
- (ii) in-home respite;
- (iii) OHR in a camp;
- (iv) OHR in a respite facility;
- (v) OHR in a setting where HH/CC is provided;
- (vi) OHR in a setting that is not listed; and
- (vii) SE.

(B) For the following services, multiply the other direct care cost area as specified in this paragraph by 1.07:

- (i) employment readiness;
- (ii) [(i)] individualized skills and socialization;
- (iii) [(ii)] in-home and out-of-home individualized skills and socialization;
- (iv) [(iii)] OHR in an individualized skills and socialization facility;
- (v) [(iv)] OHR in a setting with SL or RSS is provided;
- (vi) [(v)] RSS; and
- (vii) [(vi)] SL.

(3) Administration and operations cost area. The administration and operation cost area includes:

- (A) administration and operation costs; and
- (B) professional consultation and program support costs, including:
  - (i) allowable costs for required case management and service coordination activities; and
  - (ii) service-specific transportation costs.

(4) Projected costs. Projected costs are determined by allowable administrative and operations costs from the most recently audited cost report adjusted for inflation from the cost reporting period to the prospective rate period as specified in §355.108 of this chapter. The steps to determine projected costs are as follows.

(A) Step 1. Determine total projected administration and operation costs and projected units of service by service type using cost reports submitted by HCS and TxHmL providers in accordance with §355.722 of this subchapter (relating to Reporting Costs by Home and Community-based Services (HCS) and Texas Home Living (TxHmL) Providers).

(B) Step 2. Determine the HH/CC coordinator component of the HH/CC rate as follows: This component is determined by summing total reported HH/CC coordinator wages and allocated payroll taxes and benefits from the most recently available audited HCS cost report, inflating those costs to the rate period, and dividing the resulting product by the total number of host home units of service reported on that cost report.

(C) Step 3. Determine total HH/CC coordinator dollars as follows. Multiply the HH/CC coordinator component of the HH/CC rate from subparagraph (B) of this paragraph by the total number of HH/CC units of service reported on the most recently available, reliable audited HCS cost report database.

(D) Step 4. Determine total projected administration and operation costs after offsetting total HH/CC coordinator dollars as follows. Subtract the total HH/CC coordinator dollars from subparagraph (C) of this paragraph from the total projected administration and operation costs from subparagraph (A) of this paragraph.

(E) Step 5. Determine projected weighted units of service for each HCS and TxHmL service type as follows.

(i) SL and RSS in HCS. Projected weighted units of service for SL and RSS equal projected SL and RSS units of service times a weight of 1.00.

(ii) Individualized skills and socialization and employment readiness in HCS and TxHmL. Projected weighted units of service for individualized skills and socialization and employment readiness equal projected individualized skills and socialization and employment readiness units of service times a weight of 0.25.

(iii) HH/CC in HCS. Projected weighted units of service for HH/CC equal projected HH/CC units of service times a weight of 0.50.

(iv) SHL in HCS, high medical needs support in HCS, and CSS in TxHmL. For each service, projected weighted units of service equal projected units of service times a weight of 0.30.

(v) Respite in HCS and TxHmL. Projected weighted units of service for respite equal projected respite units of service times a weight of 0.20.

(vi) SE in HCS and TxHmL. Projected weighted units of service for SE equal projected units of service times a weight of 0.25.

(vii) Behavioral support in HCS and TxHmL. Projected weighted units of service for behavioral support equal projected behavioral support units of service times a weight of 0.18.

(viii) Audiology, CRT, OT, PT, and speech and language pathology [therapy] in HCS and TxHmL. Projected weighted units of service for audiology, CRT, OT, PT, and speech and language pathology [therapy] equal projected audiology, CRT, OT, PT, and speech and language pathology [therapy] units of service times a weight of 0.18.

(ix) Social work in HCS. Projected weighted units of service for social work equal projected social work units of service times a weight of 0.18.

(x) In-home and out-of-home nursing [Nursing] in HCS and TxHmL and high medical needs nursing in HCS. Projected weighted units of service for nursing and high medical needs nursing equal projected nursing and high medical needs nursing units of service times a weight of 0.25.

(xi) EA in HCS and TxHmL. Projected weighted units of service for EA equal projected EA units of service times a weight of 0.25.

(xii) Dietary in HCS and TxHmL. Projected weighted units of service for dietary equal projected dietary units of service times a weight of 0.18.

(F) Step 6. Calculate the total projected weighted units of service by summing the projected weighted units of service from subparagraph (E) of this paragraph.

(G) Step 7. Calculate the percent of total administration and operation costs to be allocated to the service type by dividing the projected weighted units for the service type from subparagraph (E) of this paragraph by the total projected weighted units of service from subparagraph (F) of this paragraph.

(H) Step 8. Calculate the total administration and operation cost to be allocated to the service type by multiplying the percent of total administration and operation costs allocated to the service type from subparagraph (G) of this paragraph by the total administration and operation costs after offsetting total HH/CC coordinator dollars from subparagraph (D) of this paragraph.

(I) Step 9. Calculate the administration and operation cost component per unit of service for each HCS and TxHmL service type by dividing the total administration and operation cost to be allo-

cated to that service type from subparagraph (H) of this paragraph by the projected units of service for that service type from subparagraph (A) of this paragraph.

(J) Step 10. The final recommended administration and operation cost area per unit of service for each HCS and TxHmL service type is calculated as follows.

(i) For the following services, multiply the administration and operation cost area from this subparagraph by 1.044:

- (I) CFC PAS/HAB;
- (II) CSS;
- (III) EA;
- (IV) in-home individualized skills and socialization;
- (V) in-home respite;
- (VI) OHR in a camp;
- (VII) OHR in a respite facility;
- (VIII) OHR in a setting where HH/CC is provided;
- (IX) OHR in a setting that is not listed;
- (X) SE; and
- (XI) SHL.

(ii) For the following services, multiply the administration and operation cost area from this subparagraph by 1.07:

- (I) employment readiness;
- (II) [(+) ] individualized skills and socialization;
- (III) [(H)] in-home and out-of-home individualized skills and socialization;
- (IV) [(HH)] OHR in an individualized skills and socialization facility;
- (V) [(+V)] RSS; and
- (VI) [(+V)] SL.

(5) The facility cost area. The facility cost area includes the following:

(A) room and board costs, including rent, mortgage interest, depreciation expenses, property taxes, property insurance, and food costs as defined in §355.103 of this chapter (relating to Specifications for Allowable and Unallowable Costs), unless excluded if unallowable under Federal Medicaid rules; and

(B) non-room and board costs not already reimbursed through the monthly amount collected from the individual receiving services as defined in 26 TAC §565.27(a).

(6) The facility cost area is determined by calculating a median cost for each service using allowable facility costs, weighted by units of service for the applicable service from the most recently audited cost report, adjusted for inflation from the cost reporting period to the prospective rate period as specified in §355.108.

(A) For the following services, multiply the facility cost component by 1.044:

- (i) HH/CC;
- (ii) OHR in a camp;

- (iii) OHR in a respite facility; and
- (iv) OHR in a setting where HH/CC is provided.

(B) For the following services, multiply the facility cost component by 1.07:

- (i) employment readiness;
- (ii) [(+) ] individualized skills and socialization;
- (iii) [(+)] in-home and out-of-home DH;
- (iv) [(+)] OHR in a DH or individualized skills and socialization facility;
- (v) [(+)] OHR in a setting where SL or RSS are provided;
- (vi) [(+)] RSS; and
- (vii) [(+)] SL.

(d) Recommended payment rates are determined for each service by the following.

(1) CFC PAS/HAB. The recommended payment rate is calculated by summing the attendant compensation cost area and the administration and operations cost area as defined in subsection (c) of this section. The recommended rate for CFC PAS/HAB does not include a cost component for other direct care staffing costs.

(2) CRT. The recommended payment rate is developed based on payment rates determined for other programs that provide similar services. If payment rates are not available from other programs that provide similar services, payment rates are determined using a pro forma analysis in accordance with §355.105(h) of this chapter (relating to General Reporting and Documentation Requirements, Methods, and Procedures).

(3) Employment readiness. The recommended rates will initially be determined using a pro forma approach in accordance with §355.105(h) of this chapter. Once cost report data for this service are available, the recommended rates will be calculated by summing the attendant compensation cost area, other direct care cost area, the administration and operations component, and the facility cost component as defined in subsection (c) of this section. Rates are adjusted for anticipated programmatic and staffing requirements for each level of need and inflated from the cost reporting year to the prospective rate year. Adopted rates will be limited within available appropriations.

(4) [(+) ] HH/CC. The recommended payment rate is determined by summing the direct care worker component, HH/CC coordinator cost area, administration and operations component, and facility cost area. The direct care worker component is calculated using the median of allowable direct care worker costs, weighted by HH/CC units of service from the most recently examined cost report database. The result is adjusted for each LON. The HH/CC coordinator cost area and administration and operations components are calculated as determined in subsection (c) of this section. The facility cost area is calculated as determined in subsection (c) of this section but does not include room and board costs as defined in subsection (c)(5)(A) of this section. If HHSC lacks reliable cost report data, the rate is developed based on payment rates determined for other programs that provide similar services. If payment rates are not available from other programs that provide similar services, payment rates are determined using a pro forma analysis in accordance with §355.105(h) of this chapter.

(5) [(4)] In-home respite. The recommended payment rate is calculated by summing the attendant compensation cost area and the administration and operations component as defined in subsection (c) of this section.

(6) [(5)] Individualized skills and socialization. The recommended payment cost areas are adjusted using modeled staffing ratios to establish recommended rates for on-site and off-site rates by LON. The recommended rates are calculated by summing the attendant compensation cost area, other direct care cost area, the administration and operations component, and the facility cost component as defined in subsection (c) of this section. Transportation costs are calculated as a standalone component separate from the administration and operations component for off-site services. The enhanced staffing level one rate is equal to the LON 8 individualized skills and socialization off-site recommended rate. The enhanced staffing level two rate is modeled and assumes a one-staff-to-one-individual staffing ratio.

(7) [(6)] In-home and out-of-home nursing [Nursing] services provided by an RN, in-home and out-of-home nursing services provided by an LVN, in-home and out-of-home physical therapy, in-home and out-of-home occupational therapy, speech and language pathology [speech/language therapy], behavioral support services, audiology services, dietary services, EA, SE, and transition assistance services are determined based on §355.725 of this subchapter (relating to Reimbursement Methodology for Common Waiver Services in Home and Community-based Services (HCS) and Texas Home Living (TxHmL)).

(8) [(7)] OHR. The recommended payment cost areas may be adjusted using modeled direct care worker hour-per-unit ratios for similar services to calculate OHR rates that vary by setting where the service is provided. The recommended payment rates are calculated by summing the attendant compensation cost area, other direct care cost area, the administration and operations component, and the facility cost component as defined in subsection (c) of this section.

(9) [(8)] SHL and CSS. The recommended payment rates for SHL and CSS are calculated by summing the attendant compensation cost area and the administration and operations cost area as defined in subsection (c) of this section.

(10) [(9)] SL and RSS. The recommended payment cost areas are adjusted using modeled direct care worker hour-per-unit ratios updated by actual hours reported on the most recently audited cost report to calculate variable rates by LON. The recommended rates are calculated by summing the attendant compensation cost area, other direct care cost area, and the administration and operations component as defined in subsection (c) of this section. The facility cost area is calculated as determined in subsection (c) of this section but does not include room and board costs defined in subsection (c)(5)(A) of this section.

(11) [(10)] Social work. The recommended payment rate is calculated using the weighted median social worker hourly cost from the most recently audited cost report, and the administration and operations cost component as determined in subsection (c) of this section. If HHSC lacks reliable cost report data, the rate is developed based on payment rates determined for other programs that provide similar services. If payment rates are not available from other programs that provide similar services, payment rates are determined using a pro forma analysis in accordance with §355.105(h) of this chapter.

(e) Other sources of cost information. If HHSC has determined that there is not sufficient reliable cost report data from which to set reimbursements and reimbursement ceilings for waiver services, reimbursements and reimbursement ceilings will be developed by using rates for similar services from other Medicaid programs, data from surveys, cost report data from other similar programs, consultation with other service providers or professionals experienced in delivering contracted services, and similar sources. If HHSC has insufficient cost data, the recommended payment rate for each service is developed

based on payment rates determined for other programs that provide similar services. If payment rates are not available from other programs that provide similar services, payment rates are determined using a pro forma analysis in accordance with §355.105(h) of this chapter.

(f) Refinement and adjustment. Refinement and adjustment of the rate components and model assumptions will be considered, as appropriate, by HHSC. All adopted rates are limited to available levels of appropriated state and federal funds as defined in §355.201 of this chapter (relating to Establishment and Adjustment of Reimbursement Rates for Medicaid).

§355.725. *Reimbursement Methodology for Common Waiver Services in Home and Community-based Services (HCS) and Texas Home Living (TxHmL).*

(a) Common waiver services. For in-home and out-of-home nursing services provided by a registered nurse (RN), in-home and out-of-home nursing services provided by a licensed vocational nurse (LVN), in-home and out-of-home physical therapy, in-home and out-of-home occupational therapy, speech and language pathology [speech/language therapy], behavioral support services, audiology services, dietary services, employment assistance, and supported employment, an allowable cost per unit of service is calculated for each contracted provider in accordance with §355.723 of this title (relating to Reimbursement Methodology for Home and Community-Based Services (HCS) and Texas Home Living (TxHmL) Programs). This adjusted allowable cost per unit of service may be combined into an array with the allowable cost per unit of service of similar services provided by other programs in determining rates for these services in accordance with §355.502 of this title (relating to Reimbursement Methodology for Common Services in Home and Community-Based Services Waivers).

(b) Requisition fees. Requisition fees are reimbursements paid to the HCS and TxHmL contracted providers for their efforts in acquiring adaptive aids, medical supplies, dental services, and minor home modifications for HCS and TxHmL participants. Requisition fee reimbursement for adaptive aids, medical supplies, dental services, and minor home modifications will vary based on the actual cost of the adaptive aid, medical supply, dental service, and minor home modification. Reimbursements are determined using a method based on modeled projected expenses which are developed by using data from surveys; cost report data from similar programs; consultation with other service providers and/or professionals experienced in delivering contracted services; and/or other sources.

(c) Requisition fees unallowable costs. The actual cost of adaptive aids, medical supplies, dental services, and home modifications is not allowable for cost reporting purposes. Allowable labor costs associated with acquiring adaptive aids, medical supplies, dental services, and home modifications should be reported in the cost report. Any item purchased for participants in this program and reimbursed through a voucher payment system is unallowable. Refer to §355.103(b)(20)(K) of this title (relating to Specifications for Allowable and Unallowable Costs).

(d) Transition assistance services. The reimbursement for transition assistance services will be determined in accordance with §355.502(e) of this title.

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 January 7, 2025.  
TRD-202500014



**SUBCHAPTER J. PURCHASED HEALTH SERVICES**  
**DIVISION 16. MEDICAID PROFESSIONAL SERVICES**

**1 TAC §355.8301**

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes new §355.8301, concerning the Nurse Residency Program, in new Division 16, Medicaid Professional Services.

**BACKGROUND AND PURPOSE**

The purpose of the proposed new rule is to implement a Nurse Residency Program (NRP) to support increased retention of nurses through post-graduation and post-licensure residencies at Health-Related Institutions (HRIs). The proposed new rule describes the participation requirements and structure of the NRP.

Payments will be based on the number of registered nurses and licensed vocational nurses in formal nursing residencies using separate weighting factors as a fraction of the upper payment limit (UPL) for related fee-for-service (FFS) claims. The proposed new rule also describes the methodology used by HHSC to determine the amounts of the payments. HHSC will submit this program to the Centers for Medicare & Medicaid Services (CMS) for approval under the Texas state plan. The program is expected to be funded by intergovernmental transfers.

Currently, Texas has no Medicaid programs covering additional payments for post-graduation and post-licensure nursing residencies, and there are no similar national programs. HHSC is proposing this new rule based on the success of a CMS pilot program for advanced practice nurses that indicated nursing residencies beyond the minimum training for licensure improved nurse retention.

**Conceptual Framework**

*Eligibility:* Participating HRIs who choose to enroll in the program may be eligible for payments.

*Reconciliation:* HHSC will follow the methodology described in proposed new §355.8301(f) to reconcile the amount of non-federal funds expended under this section.

**SECTION-BY-SECTION SUMMARY**

Proposed new §355.8301(a) establishes the NRP and describes the goals of the program.

Proposed new §355.8301(b) defines key terms used in the section.

Proposed new §355.8301(c) describes the requirements of participation in the program, including the application process.

Proposed new §355.8301(d) describes the payment methodology used in the program and the process for collecting the non-federal share of the program funding. No state general revenue

funds are available for the program, and the non-federal share will be comprised of intergovernmental transfer funds.

Proposed new §355.8301(e) describes the notice requirements if there are changes in the operational organization of the participating entity.

Proposed new §355.8301(f) describes the process for reconciliation of intergovernmental transfer amounts and refunds if applicable.

Proposed new §355.8301(g) describes the timing for the distribution of NRP payments.

**FISCAL NOTE**

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years the proposed rule is in effect, there is a possibility of fiscal implications to state government for payments to state-owned HRIs. However, participation in the Nurse Residency Program is voluntary and the non-federal share of the payments under the program will be provided by the state-owned HRIs participating in the program through intergovernmental transfers (IGTs). HHSC will then draw down the federal matching funds to issue the program payments. A fiscal impact to the state-owned HRIs may only occur if a state-owned HRI chooses to provide IGT to support the payments and such participation may yield a positive total fiscal impact to the state-owned HRIs. There is insufficient information to provide an estimate at this time because HHSC does not know which state-owned HRIs will choose to participate in the program. No general revenue will be used for payments made under this program.

There will be no fiscal impact on 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 rule will create a government program;
- (2) implementation of the proposed rule will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;
- (4) the proposed rule will not affect fees paid to HHSC;
- (5) the proposed rule will create a new rule;
- (6) the proposed rule will not expand, limit, or repeal existing rules;
- (7) the proposed rule will not change the number of individuals subject to the rules; and
- (8) the proposed rule will positively 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, or micro businesses, or rural communities to comply with the proposed rule because participation in the program is optional.

**LOCAL EMPLOYMENT IMPACT**

The proposed rule will not affect a local economy. There is no anticipated negative impact on local employment.

**COSTS TO REGULATED PERSONS**

Texas Government Code §2001.0045 does not apply to the rule because the rule does not impose a cost on regulated persons.

#### PUBLIC BENEFIT AND COSTS

Victoria Grady, Director of Provider Finance, has determined that for each year of the first five years the rule is in effect, the public will benefit from the adoption of the rule. The anticipated public benefit will be improved health outcomes because of reduced nursing turnover at participating institutions that care for Medicaid patients.

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 participation in the program is optional.

#### TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist without government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

#### PUBLIC HEARING

A public hearing is scheduled for Tuesday, February 11, 2025, at 9:00 a.m. (Central Standard Time) online to receive public comments on the proposal. Persons requiring further information, special assistance, or accommodations should email [AcuteCareSupplementalPayments@hhs.texas.gov](mailto:AcuteCareSupplementalPayments@hhs.texas.gov).

Persons interested in attending may register for the public hearing at:

<https://attendee.gotowebinar.com/register/6525886726681148255>.

After registering, a confirmation email will be sent with information about joining the webinar.

HHSC will broadcast the public hearing. The broadcast will be archived for access on demand and can be accessed at <https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings>.

#### PUBLIC COMMENT

Written comments on the proposal may be submitted to HHSC, Mail Code H400, P.O. Box 13247, Austin, Texas 78711-3247, or by email to [AcuteCareSupplementalPayments@hhs.texas.gov](mailto:AcuteCareSupplementalPayments@hhs.texas.gov).

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be post-marked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 25R009" in the subject line.

#### STATUTORY AUTHORITY

The new section is authorized by Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas

Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for Medicaid payments under Texas Human Resources Code, Chapter 32.

The new section implements Texas Government Code Chapter 531 and Texas Human Resources Code Chapter 32. This proposal does not affect any other statutes, articles, or codes.

#### §355.8301. Nurse Residency Program.

(a) Introduction. This section establishes the Nurse Residency Program (NRP), wherein the Texas Health and Human Services Commission (HHSC) directs payments to eligible health-related institutions (HRIs) that serve Texas Medicaid fee-for-service patients. This section also describes the methodology used by HHSC to calculate and administer such payments. A provider is eligible for a payment under this section only if HHSC submits, and the Centers for Medicare & Medicaid Services (CMS) approves, a state plan amendment permitting HHSC to make payments under this section to eligible HRIs participating in the program.

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

(1) Fee-for-service (FFS)--A system of health insurance payment in which HHSC pays a fee to a health care provider through the contracted Medicaid claims administrator directly for each service rendered. For Texas Medicaid purposes, FFS excludes any service rendered under a managed care program through a managed care organization.

(2) Health-Related Institution (HRI)--A public institution named in Texas Education Code §63.002.

(3) Intergovernmental transfer (IGT)--A transfer of public funds from another state agency or a non-state governmental entity to HHSC.

(4) Medicaid payment gap--The difference between what commercial insurers are estimated to pay for the services and what Medicaid actually paid for the same services from the most recent FFS upper payment limit (UPL) demonstration.

(5) Nurse trainee--A graduate of an accredited Registered Nurse (RN) or Licensed Vocational Nurse (LVN) training program who is engaging in a preceptorship through an entity participating in the Nurse Residency Program.

(6) Nurse Residency Program--A formal Practice Transition Accreditation Program (PTAP) accredited onboarding program or preceptorship for a nurse trainee to observe and develop skills in the practice of nursing. This training must be directly overseen by a preceptor. The clinical portion must be at least 3 months in duration for LVN preceptorships and at least 6 months in duration for RN preceptorships or as otherwise specified by the PTAP.

(7) Participating entity--A healthcare organization that:

(A) fulfills the participation requirements in subsection (c) of this section; and

(B) meets the requirements for an eligible institution in subsection (d)(1) of this section.

(8) Preceptor--A licensed RN or LVN who practices in the clinical setting and directly supervises clinical learning experiences for a nurse trainee in that setting. A clinical preceptor assists in the evaluation of the nurse trainee during the experiences and in acclimating the student to the role of nurse. A clinical preceptor facilitates nurse

trainee learning according to the facility policy for clinical preceptorship.

(9) Program period--A period for which a participating entity may receive the NRP amounts described in this section. Each program period is equal to a state fiscal year (SFY) beginning September 1 and ending August 31 of the following year. The initial program period begins May 1, 2025, and ends August 31, 2025.

(10) Sponsoring governmental entity--A state or non-state governmental entity that agrees to transfer to HHSC some or all of the non-federal share of program expenditures under Subchapter J of this chapter.

(11) Total program value--The maximum amount available under the NRP for a program period, as determined by HHSC.

(c) Participation requirements. As a condition of participation, all eligible institutions participating in the program must allow for the following:

(1) An eligible institution must submit a properly completed enrollment application by the due date determined by HHSC. The enrollment period must be no less than 15 business days, and the final date of the enrollment period is at least nine days prior to the IGT notification.

(2) The participating entity is required to submit all requested information about the entity's residency programs consistent in a manner specified by HHSC.

(d) Payments for a participating entity.

(1) Eligible institutions. Payments under this subsection are limited to HRIs that have a Nurse Residency Program as defined in subsection (b) of this section. Eligible institutions must be enrolled in Medicaid and participate in Texas Medicaid FFS.

(2) Non-federal share of program payments. The non-federal share of the payments is funded through IGTs from sponsoring governmental entities. No state general revenue is available to support the program.

(A) HHSC must receive the non-federal portion of program payments for NRP through a method approved by HHSC.

(B) A participating entity under this subsection must designate a single local governmental entity to provide the non-federal share of the payment through a method determined by HHSC. If the single local governmental entity transfers less than the full non-federal share of an eligible institution's payment amount calculated in any paragraph under this subchapter, HHSC recalculates that specific participating entity's payment based on the amount of the non-federal share transferred.

(C) HHSC communicates suggested IGT responsibilities. Suggested IGT responsibilities are based on the maximum dollars to be available under the program for the program period as determined by HHSC. HHSC also communicates estimated revenues based on HHSC's suggested IGT responsibilities that each enrolled entity could earn through the NRP for the program period.

(D) HHSC issues an IGT notification to specify the date the IGT is requested to be transferred at least 14 business days before IGT transfers are due. HHSC publishes the IGT deadlines and all associated dates on the HHSC website.

(3) Payment Methodology. HHSC sums the professional services FFS Medicaid payment gap for all billed Medicaid claims from associated provider NPIs, not including anesthesia, dental, or pharmacy

codes, or radiology codes billed separately as professional or technical components. HHSC then:

(A) multiplies by a fixed weighting factor determined by the percentage of RNs participating in the program as compared to all RNs and LVNs participating in the program, and then multiplies the product by the number of RNs in residency during the program period for Component 1; and

(B) multiplies by a second fixed weighting factor determined by the percentage of LVNs participating in the program as compared to all LVNs and RNs participating in the program, and then multiplies the product by the number of LVNs in residency during the program period for Component 2.

(e) Changes in operation. If a participating entity closes voluntarily or ceases to provide services, the entity must notify the HHSC Provider Finance Department by email, hand delivery, United States (U.S.) mail, or special mail delivery within 10 business days after closing or ceasing to provide services. Notification is considered to have occurred when the HHSC Provider Finance Department receives the notice.

(f) Reconciliation. HHSC reconciles the amount of the non-federal funds actually expended under this section during the program period with the amount of funds transferred to HHSC by a sponsoring governmental entity for that same period. If the amount of non-federal funds actually expended under this section is less than the amount transferred to HHSC, HHSC refunds the balance proportionally to how it was received.

(g) The two payments under this section will be made on a semi-annual basis.

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 January 10, 2025.

TRD-202500054

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: February 23, 2025

For further information, please call: (737) 230-0550



## **TITLE 22. EXAMINING BOARDS**

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

#### **CHAPTER 131. ORGANIZATION AND ADMINISTRATION**

##### **SUBCHAPTER A. SCOPE AND DEFINITIONS**

###### **22 TAC §131.2**

The Texas Board of Professional Engineers and Land Surveyors (Board) proposes an amendment to 22 Texas Administrative Code, Chapter 131, regarding the Organization and Administration of the Board, specifically §131.2, relating to Definitions.



## BACKGROUND AND SUMMARY

Texas Occupations Code §1001.311 authorizes the Board to license an applicant that is not a resident of the State of Texas if the applicant holds a licensed issued by another jurisdiction and has met substantially equivalent licensure requirements to those in Texas. The Board is proposing rules to clearly set the procedure and requirements for licensure for applicants from other US states and territories, as well as international applicants licensed in a country that has a licensure agreement with Texas.

## SECTION-BY-SECTION SUMMARY

The proposed rule amends §131.2 by adding necessary definitions for the reciprocal licensure process.

## FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Mr. Lance Kinney, Ph.D., P.E., Executive Director, 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 rules.

Mr. 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.

## LOCAL EMPLOYMENT IMPACT STATEMENT

Mr. 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

Mr. Kinney has determined that for each year of the first five-year period the proposed rule is in effect, the public benefit will be allowing qualified applicants with licenses in another jurisdiction to have a streamlined reciprocal licensure process.

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

Mr. Kinney 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 because no addition requirements are part of the proposed rule.

## 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. 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.

## 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 is 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 increase the number of individuals subject to the rule's applicability.
7. 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 rules 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, by email to [rules@pels.texas.gov](mailto:rules@pels.texas.gov), sent by mail to 1917 S. Interstate 35, Austin, Texas 78741, or faxed to his attention at (512) 440-0417.

## STATUTORY AUTHORITY

The proposed rule is proposed pursuant to Texas Occupations Code §§1001.201 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 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. In addition, §1001.311 allow for the licensure of nonresidents.

### *§131.2. Definitions.*

In applying the Texas Engineering Practice Act, the Professional Land Surveying Practices Act, and the board rules, the following definitions shall prevail unless the word or phrase is defined in the text for a partic-

ular usage. Singular and masculine terms shall be construed to include plural and feminine terms and vice versa.

(1) ABET - ABET, Inc., formerly the Accreditation Board for Engineering and Technology.

(2) Acts - The Texas Engineering Practice Act, Texas Occupations Code Chapter 1001, and the Professional Land Surveying Practices Act, Texas Occupations Code Chapter 1071.

(3) Advisory Opinion - A statement of policy issued by the board that provides guidance to the public and regulated community regarding the board's interpretation and application of Chapter 1001, Texas Occupations Code, and/or board rules related to the practice of engineering.

(4) Agency or Board - Texas Board of Professional Engineers and Land Surveyors.

(5) ANSAC/ABET - Applied and Natural Science Accreditation Commission of ABET. Previously the Applied Science Accreditation Commission (ASAC) of ABET.

(6) Applicant - A person applying for a license or registration to practice professional engineering or land surveying or a firm applying for a certificate of registration to offer or provide professional engineering or land surveying services.

(7) Application - The forms, information, and fees necessary to obtain a license, registration, or certification issued by the Board.

(8) Complainant - Any party who has filed a complaint with the board against a person or entity subject to the jurisdiction of the board.

(9) Construction estimate - As used in §1071.004, a depiction of a possible easement route for planning purposes.

(10) Contested case - A proceeding, including but not restricted to rate making and licensing, in which the legal rights, duties, or privileges of a party are to be determined by an agency after an opportunity for adjudicative hearing pursuant to the Administrative Procedure Act, Chapter 2001, Texas Government Code.

(11) Direct supervision - The control over and detailed professional knowledge of the work prepared under the engineer or land surveyor's supervision. Direct Supervision entails that the engineer or land surveyor personally makes decisions or personally reviews and approves proposed decisions prior to their implementation and has control over the decisions either through physical presence or the use of communications devices. Direct Supervision entails that a land surveyor be able to give instructions for research of adequate thoroughness to support collection of relevant data, the placement of all monuments, and the preparation and delivery of all surveying documents.

(12) EAC/ABET - Engineering Accreditation Commission of ABET.

(13) EAOR number - An engineering advisory opinion request file number assigned by the executive director to a pending advisory opinion in accordance with this chapter.

(14) Electronic Seal - For the purposes of this Chapter, an electronic seal is a digital representation of a licensee or registrant's seal including, but not limited to, a digital scan of a physical seal.

(15) Electronic Signature - For the purposes of this Chapter, an electronic signature is a digital representation of a licensee or registrant's signature including, but not limited to, a digital scan of a physical signature.

(16) Engineering - The profession in which a knowledge of the mathematical, physical, engineering, and natural sciences gained by education, experience, and practice is applied with judgment to develop ways to utilize, economically, the materials and forces of nature for the benefit of mankind.

(17) Engineering Act - The Texas Engineering Practice Act, Texas Occupations Code Chapter 1001.

(18) ETAC/ABET - Engineering Technology Accreditation Commission of ABET.

(19) Firm - Any business entity that engages or offers to engage in the practice of professional engineering or land surveying in this state. The term includes but is not limited to companies, corporations, partnerships, or joint stock associations, and for engineering also includes sole practitioners and sole proprietorships.

(20) Good Standing - (License or Registration) - A license or registration that is current, eligible for renewal, and has no outstanding fees or payments.

(21) Gross negligence - Any deliberate conduct, or pattern of conduct, whether by act or omission that demonstrates a disregard or indifference to the rights, health, safety, welfare, and property of the public or clients. Gross negligence may result in financial loss, injury or damage to life or property, but such results need not occur for the establishment of such conduct.

(22) International NCEES Record - An official complication of professional credentials issued by NCEES as part of an international application process. The record includes academic credentials, exam or assessment information, employment information, professional references, and other information pertinent to licensure.

(23) [(22)] License - The legal authority permitting the holder to actively practice engineering or land surveying. Also, a certificate issued by the board showing such authority.

(24) [(23)] License Holder - Any person whose license or registration to practice engineering or land surveying is current.

(25) [(24)] Misconduct - The violation of any provision of the Texas Engineering Practice Act, the Professional Land Surveying Act, or board rules.

(26) Mobility Agreement / Mutual Recognition Agreement - an agreement signed and adopted by the Board and another licensing jurisdiction or recognized licensing organization that sets out requirements and procedures for licensure between the two bodies.

(27) Model Law Engineer (MLE) - a designation on an NCEES Record indicating that an engineer has met the NCEES standard for licensure, including an EAC/ABET accredited engineering degree, a minimum of four years of creditable and acceptable engineering experience, passage of both the FE and PE examinations, and no disciplinary action.

(28) [(25)] NAFTA - North American Free Trade Agreement. NAFTA is related to the practice and licensure of engineering through mutual recognition of registered/licensed engineers by jurisdictions of Canada, Texas, and the United Mexican States.

(29) [(26)] NCEES - National Council of Examiners for Engineering and Surveying.

(30) NCEES Record - An official verified compilation of professional credentials issued by NCEES, designed to simplify the licensure process for engineers and surveyors who want to practice in multiple states or territories. The record includes academic transcripts,

exam results, employment history, professional references, and other information pertinent to licensure.

(31) [(27)] Person - Any individual, firm, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than a governmental agency.

(32) [(28)] Professional engineering - Professional service which may include consultation, investigation, evaluation, planning, designing, or direct supervision of construction, in connection with any public or private utilities, structures, buildings, machines, equipment, processes, works, or projects wherein the public welfare, or the safeguarding of life, health, and property is concerned or involved, when such professional service requires the application of engineering principles and the interpretation of engineering data.

(33) [(29)] Professional Engineering Services - Services which meet the definition of the practice of engineering as defined in the Act, §1001.003, and which are required by statute or rule to be performed by or under the direct supervision of a licensed engineer. A service shall be conclusively considered a professional engineering service if it is delineated in that section; other services requiring a professional engineer by contract, or services where the adequate performance of that service requires an engineering education, training, or experience in the application of special knowledge or judgment of the mathematical, physical or engineering sciences to that service are also considered a professional engineering service.

(34) [(30)] Professional Surveying - The practice of land, boundary, or property surveying or other similar professional practices.

(35) [(31)] Recognized institution of higher education - An institution of higher education as defined in §61.003, Education Code; or in the United States, an institution recognized by one of the six regional accrediting associations, specifically, the New England Association of Schools and Colleges, the North Central Association Commission on Accreditation and School Improvement, the Northwest Association of Schools and Colleges, the Southern Association of Colleges and Schools, the Western Association of Schools and Colleges, or the Middle States Association of Colleges & Schools; or, outside the United States, an institution recognized by the Ministry of Education or the officially recognized government education agency of that country; or a program accredited by ABET.

(36) [(32)] Registration - The legal authority permitting the holder to actively practice engineering or land surveying. Also, a certificate issued by the board showing such authority.

(37) [(33)] Respondent - The person or party that is the subject of a complaint filed with the board.

(38) [(34)] Responsible charge - Synonymous with the term "direct supervision"; used interchangeably with "direct supervision".

(39) [(35)] Responsible supervision - An earlier term synonymous with the term "direct supervision;" the term is still valid and may be used interchangeably with "direct supervision" when necessary.

(40) [(36)] Seal - An embossed, stamped, or electronic design authorized by the Board that authenticates, confirms, or attests that a person is authorized to offer and practice engineering or land surveying services to the public in the State of Texas and has legal consequence when applied.

(41) [(37)] Sole Practitioner - A firm that consists of an individual license holder with no other employees.

(42) [(38)] Supervision of Engineering Construction - As used in §1001.407 of the Act, includes the periodic observation of

materials and completed work to determine general compliance with plans, specifications and design and planning concepts. Supervision of engineering construction does not include the construction means and methods; responsibility for the superintendence of construction processes, site conditions, operations, equipment, personnel; or the maintenance of a safe place to work or any safety in, on or about the site.

(43) [(39)] Surveying Act - the Professional Land Surveying Practices Act, Texas Occupations Code Chapter 1071.

(44) [(40)] Surveying Report - Survey drawing, written description, and/or separate narrative depicting the results of a land survey performed and conducted pursuant to this Act.

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

Filed with the Office of the Secretary of State on January 8, 2025.

TRD-202500032

Lance Kinney

Executive Director

Texas Board of Professional Engineers and Land Surveyors

Earliest possible date of adoption: February 23, 2025

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



## **TITLE 37. PUBLIC SAFETY AND CORRECTIONS**

### **PART 5. TEXAS BOARD OF PARDONS AND PAROLES**

#### **CHAPTER 148. SEX OFFENDER CONDITIONS OF PAROLE OR MANDATORY SUPERVISION**

##### **37 TAC §§148.41 - 148.43, 148.45, 148.48, 148.50 - 148.55**

The Texas Board of Pardons and Paroles proposed amendments to 37 TAC Chapter 148, §§148.41, 148.42, 148.43, 148.45, 148.48, 148.50, 148.51, 148.52, 148.53, 148.54, 148.55 concerning sex offender conditions of parole or mandatory supervision. The amendments to §§148.45, 148.47, 148.48 and 148.50 are proposed to provide edits for uniformity and consistency throughout the rules; and to clarify Board requirements concerning ex parte consultations and witnesses in the sex offender conditions hearing process.

Marsha Moberley, Chair of the Board, determined that for each year of the first five-year period the proposed amendments are in effect, no fiscal implications exist for state or local government as a result of enforcing or administering these sections.

Ms. Moberley also has determined that during the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments to these sections will be the effective administration of sex offender conditions hearings. There will be no effect on small businesses, micro-businesses or rural areas. There is no anticipated economic cost to persons required to comply with the amended rules as proposed. The amendments will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; does not create

a new regulation; does not expand, limit, or repeal an existing regulation; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy.

An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an economic effect on micro-businesses, small businesses, or rural communities as defined in Texas Government Code, Section 2006.001(2).

Comments should be directed to Bettie Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, Texas 78701, or by e-mail to [bettie.wells@tdcj.texas.gov](mailto:bettie.wells@tdcj.texas.gov). Written comments from the general public should be received within 30 days of the publication of this proposal.

The amended rules are proposed under §§508.036(b), 508.0441, 508.045, and 508.228, Government Code. Section 508.036(b) authorizes the Board to adopt rules relating to the decision-making processes used by the Board and parole panels. Section 508.0441 authorizes the Board to adopt reasonable rules as proper or necessary relating to the eligibility of an offender for release to parole or mandatory supervision and to act on matters of release to parole or mandatory supervision. Section 508.045 authorizes a parole panel to grant or deny parole, revoke parole or mandatory supervision, and conduct revocation hearings. Section 508.228 authorizes a parole panel to impose sex offender conditions after a hearing for offenses where a sex offense occurred during the commission of the offense.

No other statutes, articles, or codes are affected by these amendments.

*§148.41. Public Hearings.*

(a) All hearings on matters not confidential or privileged by law, or both, shall be open to the public.

(b) Appropriate federal and state constitutional provisions, statutes, regulations, and judicial precedent establishing the confidential or privileged nature of the information presented shall be given effect by the Hearing Officer.

(c) To give effect to subsection (b) of this section [this provision], the Hearing Officer shall have the authority to close the hearing to the extent necessary to protect against the improper disclosure of confidential and/or privileged information.

*§148.42. Authority of Hearing Officers.*

- (a) A Hearing Officer shall have the following authority:
- (1) to administer oaths;
  - (2) to examine witnesses;
  - (3) to rule on the admissibility of evidence;
  - (4) to rule on motions and objections;
  - (5) to recess any hearing from time to time and place to place;
  - (6) to reopen, upon request of a parole panel, or reconvene, or both, any hearing;
  - (7) to issue on behalf of the Board subpoenas and other documents authorized by and signed by a Board Member in accordance with statutory authority;

(8) to maintain order and decorum throughout the course of any proceedings;

(9) to collect documents and exhibits comprising the record of the hearing;

(10) to prepare the report of the hearing for [to] the parole panel to make final [for] disposition of the case; and

(11) to determine the weight to be given to particular evidence or testimony and to determine the credibility of witnesses.

(b) If a Hearing Officer fails to complete an assigned case, another Hearing Officer may complete the case without the necessity of duplicating any duty or function performed by the previous Hearing Officer.

*§148.43. Ex Parte Consultations.*

Unless required for the disposition of matters authorized by law, Hearing Officers, Board Members, and Parole Commissioners assigned to render a decision [in a matter] may not [communicate,] directly or indirectly, initiate, permit, nor consider communications in connection with any issue of fact or law with any party, except on notice and opportunity for all parties to participate.

*§148.45. Witnesses.*

(a) The Hearing Officer may determine whether a witness may be excused under the rule that excludes witnesses from the hearing.

(1) In no event shall the Hearing Officer exclude from the hearing a party under the authority of this section. For these purposes, the term "party" means the definition in §141.111 of this title (relating to Definition of Terms) and includes:

- (A) the releasee;
- (B) the releasee's attorney; and

(C) no more than one representative of the Division who has acted or served in the capacity of supervising, advising, or agent officer in the case.

(2) When [In the event that it appears to the satisfaction of] the Hearing Officer determines that an individual who is present at the hearing and intended to be called by a party as a witness has no relevant, probative, noncumulative testimony to offer on any material issue of fact or law, then the Hearing Officer, in their his sound discretion, may determine that such individual should not be placed under the rule and excluded from the hearing.

(b) All witnesses who testify in person are subject to cross-examination unless the Hearing Officer specifically finds good cause for lack of confrontation and cross-examination.

(c) Witnesses personally served with a subpoena and who fail to appear at the hearing may present testimony by written statement[; and] upon a favorable good cause determination [determined] by the Hearing Officer[; may present testimony by written statement].

*§148.48. Record.*

(a) The record in any case includes all pleadings, motions, and rulings; evidence received or considered; matters officially noticed; questions and offers of proof, objections, and rulings on them; all relevant Division documents, staff memoranda, or reports submitted to or considered by the Hearing Officer involved in making the decision; and any decision, opinion, or report by the Hearing Officer presiding at the hearing.

(b) All hearings shall be electronically recorded in their entirety.

(c) The hearing record is made a part of the official parole record maintained by the [TDCJ Parole] Division. All requests for copies of the hearing report or hearing recording shall be addressed to the [TDCJ Parole] Division.

§148.50. *Procedure after Waiver of Hearing.*

(a) The parole panel may accept a waiver of the hearing provided that a waiver of the hearing includes the following:

(1) information that the releasee was served with written notice of the following:

(A) notice of the right to a hearing, the purpose of which is to determine whether sex offender conditions may be imposed as a special condition of the release;

(B) notice of the right to full disclosure of the evidence;

(C) notice that the releasee has the opportunity to be heard in person and to present witnesses and documentary evidence;

(D) notice that the releasee has the right to confront and cross-examine witnesses unless the parole panel or designee of the Board specifically finds good cause is shown;

(E) notice that the matter will be heard by an impartial decision-maker; and

(F) the opportunity to waive in writing the right to a hearing.

(2) information the Division relied upon to identify the releasee as a sex offender.

(b) After reviewing the waiver of the right to a sex offender condition hearing and receipt of supporting documentation of evidence of the releasee's sexually [sexual] deviant behavior in the offense for which the releasee is currently on supervision, the parole panel or designee of the Board must determine that, by a preponderance of the evidence, the releasee constitutes a threat to society by reason of their [his/her] lack of sexual control. The parole panel shall make final disposition of the case by taking one of the following actions:

(1) impose sex offender conditions; or

(2) deny the imposition of sex offender conditions.

§148.51. *Scheduling of Hearing.*

Upon request, the Board or the Board's scheduling staff shall schedule the hearing unless:

(1) fewer than seven (7) calendar days have elapsed from the time the releasee received notice; or

(2) information has not been presented to the Board or the Board's scheduling staff that the releasee was served with the following:

(A) notice of the right to a hearing, the purpose of which is to determine whether sex offender conditions may be imposed as a special condition of the release;

(B) notice of the right to full disclosure of the evidence;

(C) notice that the releasee has the opportunity to be heard in person and to present witnesses and documentary evidence;

(D) notice that the releasee has the right to confront and cross-examine witnesses unless the parole panel or designee of the Board [Hearing Officer] specifically finds good cause is shown;

(E) notice that the matter will be heard by an impartial decision-maker; and

(F) opportunity to waive in writing the right to a hearing.

§148.52. *Hearing.*

(a) The designee of the Board shall conduct the hearing for the purpose of determining whether sex offender conditions may be imposed as a special condition of release.

(b) The designee of the Board must determine, as shown by a preponderance of the evidence, that the releasee constitutes a threat to society by reason of their [his/her] lack of sexual control.

(c) At the close of the hearing, or within a reasonable time thereafter, the designee of the Board shall collect, prepare, and forward to the parole panel:

(1) all documents;

(2) a summary report of the hearing with a written statement as to the evidence relied upon to make a finding or no finding that the releasee constitutes a threat to society by reason of their [his/her] lack of sexual control; and

(3) the recording of the hearing.

§148.53. *Final Board Disposition.*

(a) After reviewing the evidence in the summary report of the hearing, the parole panel shall make final disposition of the case by taking one of the following actions:

(1) impose sex offender conditions; or

(2) deny imposition of the sex offender condition [conditions].

(b) The releasee or attorney shall be notified in writing of the Board's disposition and provided a copy of the summary report of the hearing and notice of the right to submit a petition to reopen the hearing.

§148.54. *Releasee's Motion to Reopen Hearing.*

(a) The releasee or releasee's attorney shall have 30 days from the date of the parole panel's decision to request a reopening of the case for any substantial error in the process.

(b) A request to reopen the hearing submitted later than 30 days from the date of the parole panel's decision will not be considered unless under exceptional circumstances including but not limited to:

(1) a judicial order requiring a hearing;

(2) the initial decision was made without the opportunity for a hearing or waiver.

(c) Any such request for reopening made under this section must be in writing and delivered to the Board or placed in the United States mail and addressed to the Texas Board of Pardons and Paroles, General Counsel, 8610 Shoal Creek Blvd., Austin, Texas 78757.

(d) On transmittal, a parole panel designated by the Chair other than the original parole panel shall dispose of the motion by:

(1) granting [of] the motion and ordering that the hearing be reopened for a stated specified and limited purpose;

(2) denial of the motion; or

(3) reversal of the parole panel decision previously entered.

(e) The releasee and attorney, if any, shall be notified in writing of the parole panel's decision.

(f) When a releasee's motion to reopen the hearing under this section is granted, the releasee shall be deemed to have consented to

such further reasonable delay in the final disposition of their [his or her] case as shall be required for the procedure under §148.55 of this title (relating to Procedure after Motion to Reopen Is Granted; Time; Rights of the Releasee; Final Disposition).

§148.55. *Procedure after Motion to Reopen Is Granted; Time; Rights of the Releasee; Final Disposition.*

(a) When the parole panel disposes of a releasee's motion to reopen under §148.54 of this title (relating to Releasee's Motion to Reopen Hearing) by granting the [said] motion to reopen the hearing, the case shall be disposed of or referred to a parole panel or designee of the Board for final disposition in accordance with this section and the previous disposition of the case made by the parole panel under §148.53 of this title (relating to Final Board Disposition), shall be set aside, and shall be of no force and effect.

(b) The purpose of the further proceedings before the parole panel or designee of the Board under this section shall be as specified by the parole panel in its order granting the releasee's motion to reopen pursuant to §148.54 of this title.

(c) When the parole panel or designee of the Board convenes the reopening of the hearing, it shall have before it the entire record previously compiled in the case, including:

(1) the record, report, and decision of the hearing under §148.52 of this title (relating to Hearing) collected or prepared by the parole panel or designee of the Board originally assigned to the case;

(2) any amendments, supplements, or modifications of the record, report, or decision as developed through prior reopenings of the case;

(3) the releasee's motion to reopen the hearing pursuant to §148.54 of this title; and

(4) any transmittal submitted to the parole panel with the recommendation from Board staff. Any transmittal submitted to the parole panel by the General Counsel constitutes legal advice that [which] is confidential under law[.] and shall not be released to the public as part of the hearing packet.

(d) At the conclusion of the proceedings before the parole panel or designee of the Board, or within a reasonable time thereafter, the parole panel shall make final disposition of the case by taking one of the following actions in any manner warranted by the evidence:

(1) continue the parole panel's action; or

(2) withdraw the imposition of the special conditions [condition].

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 January 13, 2025.

TRD-202500072

Bettie Wells

General Counsel

Texas Board of Pardons and Paroles

Earliest possible date of adoption: February 23, 2025

For further information, please call: (512) 406-5478



## CHAPTER 150. MEMORANDUM OF UNDERSTANDING AND BOARD POLICY STATEMENTS

### SUBCHAPTER A. PUBLISHED POLICIES OF THE BOARD

#### 37 TAC §150.55

The Texas Board of Pardons and Paroles proposes amendments to 37 TAC Chapter 150, §150.55 concerning Conflict of Interest Policy. The amendments to §150.55 are proposed to provide edits for clarity and to correct titles.

Marsha Moberley, Chair of the Board, determined that for each year of the first five-year period the proposed amendments are in effect, no fiscal implications exist for state or local government as a result of enforcing or administering these sections.

Ms. Moberley also has determined that during the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments to this section will be to promote consistency and uniformity in the Board's rules. There will be no effect on small businesses, micro-businesses or rural areas. There is no anticipated economic cost to persons required to comply with the amended rules as proposed. The amendments will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; does not create a new regulation; does not expand, limit, or repeal an existing regulation; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy.

An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an economic effect on micro-businesses, small businesses, or rural communities as defined in Texas Government Code, Section 2006.001(2).

Comments should be directed to Bettie Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, Texas 78701, or by e-mail to [bettie.wells@tdcj.texas.gov](mailto:bettie.wells@tdcj.texas.gov). Written comments from the general public should be received within 30 days of the publication of this proposal.

The amended rules are proposed under Subtitle B, Ethics, Chapter 572 and Sections §§508.0441 and 508.035, Government Code. Subtitle B, Ethics, Chapter 572 is the ethics policy of this state for state officers or state employees. Section 508.0441 requires the Board to implement a policy which, clearly defines under what circumstances a Board member or parole commissioner should disqualify themselves on parole or mandatory supervision decisions. Section 508.035, Government Code requires the Presiding Officer to establish policies and procedures to further the efficient administration of the business of the Board.

No other statutes, articles, or codes are affected by these amendments.

§150.55. *Conflict of Interest Policy.*

(a) Section 1--Policy.

(1) It is the policy of the Board that no Board Member or Parole Commissioner shall have any interest, financial or otherwise, direct or indirect; or engage in any business transaction or professional activity or incur any obligation [~~obligations~~] of any nature that is in substantial conflict with the proper discharge of their duties in the public interest. In implementing this policy, they are provided the following standards of conduct, disclosure, and disqualification to be observed in the performance of their official duties.

(2) A Board Member or Parole Commissioner shall respect and comply with the law and not allow their family, social, or other relationships to influence their conduct, decisions, or judgment.

(b) Section 2--Disclosure.

(1) A Board Member or Parole Commissioner shall submit generally, and on a case-by-case basis, written notice to the Presiding Officer (Chair) of any substantial interest held by the Board Member or Parole Commissioner in a business entity doing business with the Board of Criminal Justice, TDCJ, or the Board.

(2) A Board Member or Parole Commissioner having a personal or private interest in any measure, proposal, or decision pending before the Board (including parole and discretionary mandatory supervision release decisions) shall immediately notify the Chair in writing of such interest. The Chair shall publicly disclose the Board Member's or Parole Commissioner's interest to the Board in a meeting of the Board. The Board Member or Parole Commissioner shall not vote or otherwise participate in the decision. The disclosure shall be entered into the minutes or official record of the meeting.

(3) A Board Member or Parole Commissioner shall consider the possibility that they have a conflict of interest before making any decision or vote.

(4) If a Board Member or Parole Commissioner is uncertain whether any part of the conflict-of-interest policy applies to them in a specific matter, they shall request the General Counsel of the Board to determine whether a disqualifying conflict of interest exists.

(c) Section 3--Standards of Conduct.

(1) No Board Member or Parole Commissioner shall accept or solicit any gift, favor, or service that may reasonably tend to influence them in the discharge of their official duties or that they know or should know is being offered with the intent to influence their official conduct.

(2) No Board Member or Parole Commissioner shall accept employment or engage in any business or professional activity which they might reasonably expect would require or induce them to disclose confidential information acquired by reason of their official position [~~duties~~].

(3) No Board Member or Parole Commissioner shall accept other employment or compensation that could reasonably be expected to impair their independence of judgment in the performance of their official duties.

(4) No Board Member or Parole Commissioner shall make personal investments that could reasonably be expected to create a substantial conflict between their private interest and the public interest.

(5) No Board Member or Parole Commissioner shall intentionally or knowingly solicit, accept, or agree to accept any benefit for

having exercised their official powers or performed their official duties in favor of another.

(d) Section 4--~~Recusal and~~ Disqualification.

(1) Recusal [~~Disqualification~~]. A Board Member shall recuse himself from voting on all clemency matters, and a Board Member or Parole Commissioner shall recuse himself from voting on all decisions to release on parole or discretionary mandatory supervision, and decisions to continue, modify, or revoke parole or mandatory supervision when:

(A) they know that individually or as a fiduciary, they have an interest in the subject matter before them; or

(B) the Board Member or Parole Commissioner or their spouse is related by affinity or consanguinity within the third degree to a person who is the subject of the decision before them.

(2) Disqualification [~~Recusal~~]. A Board Member shall disqualify himself from voting on all clemency matters, and a Board Member or Parole Commissioner shall disqualify himself from voting on all decisions to release on parole or discretionary mandatory supervision, and decisions to continue, modify, or revoke parole or mandatory supervision when:

(A) their impartiality might reasonably be questioned;

(B) they have a personal bias or prejudice concerning the subject matter or person in the decision before them; or

(C) they were a complainant, a material witness, or served as counsel for the state or the defense in the prosecution of the subject of the parole decision or revocation decision before them.

(e) Section 5--Documentation.

(1) A Board Member or Parole Commissioner shall notify the Chair and General Counsel in writing when they recuse or disqualify [~~or recuse~~] themselves from voting;

(2) A Board Member or Parole Commissioner shall provide the specific reason for disqualification or recusal;

(3) A Board Member or Parole Commissioner shall document the recusal or disqualification on the minute sheet of the offender's file; and

(4) A Board Member or Parole Commissioner shall place the written notification in the offender's file.

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 January 13, 2025.

TRD-202500073

Bettie Wells

General Counsel

Texas Board of Pardons and Paroles

Earliest possible date of adoption: February 23, 2025

For further information, please call: (512) 406-5478

