ADOPTED RULES

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 351. COORDINATED PLANNING AND DELIVERY OF HEALTH AND HUMAN SERVICES

The Texas Health and Human Services Commission (HHSC) adopts amendments to §351.4, concerning Health and Human Services Commission Executive Council; §351.11, concerning Reports on Efforts to Streamline and Simplify Delivery of Services; §351.504, concerning Caseload Reduction Plan for Adult Protective Services; §351.507, concerning Adverse Licensing, Listing, or Registration Decisions by Health and Human Services Agencies; §351.701, concerning Unrelated Donor Umbilical Cord Blood Bank Program; §351.751, concerning Integrated eligibility services call centers; §351.801, concerning Authority and General Provisions; §351.807, concerning Behavioral Health Advisory Committee; §351.809, concerning Drug Utilization Review Board; §351.811, concerning Intellectual and Developmental Disability System Redesign Advisory Committee; and §351.841, concerning Joint Committee on Access and Forensic Services.

The amendments to §§351.4, 351.11, 351.504, 351.507, 351.701, 351.751, 351.801, 351.807, 351.809, 351.811, and 351.841 are adopted without changes to the proposed text as published in the November 15, 2024, issue of the *Texas Register* (49 TexReg 9087). These rules will not be republished.

HHSC withdraws the proposed amendments to §351.821, concerning Value-Based Payment and Quality Improvement Advisory Committee; §351.823, concerning e-Health Advisory Committee; §351.825, concerning Texas Brain Injury Advisory Council; and §351.827, concerning Palliative Care Interdisciplinary Advisory Council.

BACKGROUND AND JUSTIFICATION

House Bill (H.B.) 4611, 88th Legislature, Regular Session, 2023, made certain non-substantive revisions to Subtitle I, Title 4, Texas Government Code, which governs HHSC, Medicaid, and other social services as part of the Texas Legislature's ongoing statutory revision program. These adopted amendments update citations in the rules to the Texas Government Code sections that become effective on April 1, 2025.

COMMENTS

The 31-day comment period ended December 16, 2024. During this period, HHSC did not receive any comments regarding the proposed rules.

SUBCHAPTER A. GENERAL PROVISIONS

1 TAC §§351.4, 351.11, 351.504, 351.507, 351.701, 351.751

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Chapters 521, 523, 525, 542, 546, and 549.

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

Filed with the Office of the Secretary of State on February 4, 2025.

TRD-202500374
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: April 1, 2025
Proposal publication date: November 15, 2024
For further information, please call: (512) 221-9021

♦ ♦ ♦

SUBCHAPTER B. ADVISORY COMMITTEES
DIVISION 1. COMMITTEES

1 TAC §§351.801, 351.807, 351.809, 351.811, 351.841

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Chapters 521, 523, 525, 542, 546, and 549.

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

Filed with the Office of the Secretary of State on February 4, 2025.

TRD-202500375

Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: April 1, 2025
Proposal publication date: November 15, 2024
For further information, please call: (512) 221-9021

♦ ♦ ♦

CHAPTER 353. MEDICAID MANAGED CARE
SUBCHAPTER O. DELIVERY SYSTEM AND PROVIDER PAYMENT INITIATIVES

1 TAC §353.1309

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §353.1309, concerning Texas Incentives for Physicians and Professional Services.

The amendment to §353.1309 is adopted without changes to the proposed text as published in the November 15, 2024, issue of the *Texas Register* (49 TexReg 9110). The rule will not be republished.

BACKGROUND AND JUSTIFICATION

The amendment makes modifications to the Texas Incentives for Physicians and Professional Services (TIPPS) program to provide additional details concerning the pay-for-performance model established for Component Two of the program, beginning in State Fiscal Year (SFY) 2026. The rule amendment changes how certain TIPPS funds will be redistributed to certain physician groups participating in TIPPS if a physician group fails to earn those funds due to a failure to achieve performance requirements for Component Two of TIPPS.

HHSC sought and received authorization from the Centers for Medicare and Medicaid Services (CMS) to create TIPPS as part of the financial and quality transition from the Delivery System Reform Incentive Payment (DSRIP) program. Directed payment programs authorized under 42 Code of Federal Regulations (C.F.R.) §438.6(c), including TIPPS, are expected to continue to evolve over time to advance quality goals or objectives the program is intended to impact. HHSC previously amended the TIPPS rule to shift the program structure in SFY 2026 to provide that Component Two will be paid to physician groups based on a pay-for-performance model using achievement of quality measures and paid through a scorecard. Health Related Institution (HRI) and Indirect Medical Education (IME) physician groups are eligible for Component Two payments.

HHSC amends the program rule to allow for the redistribution of Component Two funds if a physician group does not meet the performance requirements. Under this rule amendment, if a physician group does not meet the performance requirements for Component Two, the funds that are not earned by that physician group will be redistributed among other physician groups in the same Service Delivery Area (SDA) and class (HRI or IME), based on how much those physician groups have already earned for Component Two. If no physician group in the same SDA and class earned funds under Component 2, the funds will be distributed across all physician groups in that SDA, based on how much those physician groups have already earned for Component Two. If there are no physician groups in that SDA that earned Component Two funds, the unearned funds will be distributed across all HRI and IME physician groups participating in TIPPS, based on how much those physician groups have already earned for Component Two.

Multiple providers requested that HHSC amend the rule to allow the redistribution of unearned funds in the manner set forth in the amendment.

COMMENTS

The 21-day comment period ended on December 6, 2024.

During this period, HHSC did not receive any comments regarding this proposed rule.

STATUTORY AUTHORITY

The adoption of the amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner with broad rulemaking authority; 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 and to administer federal Medicaid funds in Texas; 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; and Texas Government Code §533.002, which authorizes HHSC to implement the Medicaid managed care program.

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

Filed with the Office of the Secretary of State on February 7, 2025.

TRD-202500450
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: February 27, 2025
Proposal publication date: November 15, 2024
For further information, please call: (737) 230-0550

♦ ♦ ♦

CHAPTER 354. MEDICAID HEALTH SERVICES
SUBCHAPTER A. PURCHASED HEALTH SERVICES
DIVISION 33. ADVANCED TELECOMMUNICATIONS SERVICES

1 TAC §354.1430, §354.1434

The executive commissioner of the Texas Health and Human Services Commission (HHSC) adopts amendments to §354.1430, concerning Definitions, and §354.1434, concerning Home Telemonitoring Benefits and Limitations.

The amendment to §354.1430 is adopted with changes to the proposed text as published in the October 25, 2024, issue of the *Texas Register* (49 TexReg 8509). This rule will be republished.

The amendment to §354.1434 is adopted without changes to the proposed text as published in the October 25, 2024, issue of the *Texas Register* (49 TexReg 8509) and will not be republished.

BACKGROUND AND JUSTIFICATION

The amendments implement Texas Government Code §531.001(4-a) and §531.02164, amended by House Bill 2727, 88th Legislature, Regular Session, 2023.

To implement Texas Government Code §531.02164, the amendments add federally qualified health centers and rural health clinics as Medicaid providers of home telemonitoring services. To implement Texas Government Code §531.001(4-a), the amendment to §354.1430 clarifies the term "home telemonitoring services" is synonymous with "remote patient monitoring." Texas Government Code §531.02164(c)(5) requires home telemonitoring providers to establish a plan of care with outcome measures for each recipient, and to share the plan and outcome measures with the recipient's physician. Texas Government Code §531.02164(2)(B) also reduces the eligibility criteria for the service from two or more risk factors to at least one risk factor.

COMMENTS

The 31-day comment period ended November 25, 2024.

During this period, HHSC received comments regarding the proposed rules from one commenter, the American Telemedicine Association Action. A summary of the comment relating to the rules and HHSC's response follows.

Comment: The commenter expressed support of the amendments to §354.1430 and §354.1434, noting that the amendments are a "rational step forward for telehealth policy in Texas." The commenter further noted their strong support for the change as it "eases access to high quality and affordable healthcare." The commenter also encourages reimbursement rates that are fair to providers and reflect the cost savings to the health care system using telehealth technologies.

Response: HHSC thanks the commenter for the letter of support and acknowledges the recommendation regarding reimbursement. HHSC did not make any changes to the rules as a result of these comments.

HHSC updated a reference to the Texas Government Code in §354.1430(9) from §531.001(4-d) to §521.0001. The update implements H.B. 4611, 88th Legislature, Regular Session, 2023, which makes non-substantive revisions to the Texas Government Code that make the statute more accessible, understandable, and usable.

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which requires the executive commissioner of HHSC to adopt rules necessary to carry out the commission's duties under Chapter 531; Texas Human Resources Code §32.021(c), which requires the executive commissioner to adopt rules necessary for the proper and efficient operation of the medical assistance program; and Texas Government Code §531.02164(b), which requires the executive commissioner to adopt rules for the provision and reimbursement of home telemonitoring services under Medicaid as provided under §531.02164.

§354.1430. Definitions.

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

(1) Audio-only--An interactive, two-way audio communication that uses only sound and meets the privacy requirements of the Health Insurance Portability and Accountability Act. Audio-only includes the use of telephonic communication.

(2) Behavioral health services--This term includes mental health and substance use disorder services.

(3) Declaration of state of disaster--An executive order or proclamation by the governor declaring a state of disaster in accordance with Texas Government Code §418.014.

(4) Federally qualified health center--This term has the meaning assigned by Texas Government Code §531.02164.

(5) Home telemonitoring service--This term has the meaning assigned by Texas Government Code §531.001 and is synonymous with "remote patient monitoring."

(6) Hospital--This term has the meaning assigned by Texas Government Code §531.02164.

(7) In-Person--Within the physical presence of another person. In-person does not include interacting with a client via a telemedicine medical service or a telehealth service.

(8) Non-behavioral health service--Any health service that is not a behavioral health service.

(9) Platform--This term has the meaning assigned by Texas Government Code §521.0001.

(10) Rural health clinic--This term has the meaning assigned by Texas Government Code §531.02164.

(11) Telehealth service--This term has the meaning assigned by Texas Occupations Code §111.001.

(12) Telemedicine medical service--This term has the meaning assigned by Texas Occupations Code §111.001.

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

Filed with the Office of the Secretary of State on February 7, 2025.

TRD-202500449
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: February 27, 2025
Proposal publication date: October 25, 2024
For further information, please call: (512) 438-2910

♦ ♦ ♦

TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 23. SINGLE FAMILY HOME PROGRAM

The Texas Department of Housing and Community Affairs (the Department) adopts, without changes to the text previously published in the *Texas Register* on November 22, 2024, (49 TexReg 9438), the repeal of 10 TAC Chapter 23, Single Family HOME Program Rule. The repeals will not be republished. The purpose of the repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

The Department has analyzed this proposed rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal would be in effect, the proposed repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity, administration of the HOME Program.

2. The repeal does not require a change in work that would require the creation of new employee positions, nor is the proposed repeal significant enough to reduce work load to a degree that any existing employee positions are eliminated.

3. The repeal does not require additional future legislative appropriations.

4. The repeal does not result in an increase in fees paid to the Department, nor a decrease in fees paid to the Department.

5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, the administration of the Single Family HOME Program.

7. The repeal will not increase or decrease the number of individuals subject to the rule's applicability.

8. The repeal will not negatively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated this repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed chapter would be an updated and more germane rule. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson has also determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENT AND STAFF REASONED RESPONSE. The Department accepted public comment between November 22, 2024, and December 27, 2024. No comment was received.

The Board adopted the final order adopting the repeal on February 6, 2025.

SUBCHAPTER A. GENERAL GUIDANCE

10 TAC §23.1, §23.2

STATUTORY AUTHORITY. The repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed repealed chapter affects no other code, article, or statute.

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

Filed with the Office of the Secretary of State on February 6, 2025.

TRD-202500417
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: February 26, 2025
Proposal publication date: November 22, 2024
For further information, please call: (512) 475-3959

♦ ♦ ♦

SUBCHAPTER B. AVAILABILITY OF FUNDS, APPLICATION REQUIREMENTS, REVIEW AND AWARD PROCEDURES, GENERAL ADMINISTRATIVE REQUIREMENTS, AND RESALE AND RECAPTURE OF FUNDS

10 TAC §§23.20 - 23.29

STATUTORY AUTHORITY. The repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed repealed chapter affects no other code, article, or statute.

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

Filed with the Office of the Secretary of State on February 6, 2025.

TRD-202500418
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: February 26, 2025
Proposal publication date: November 22, 2024
For further information, please call: (512) 475-3959

♦ ♦ ♦

SUBCHAPTER C. HOMEOWNER RECONSTRUCTION ASSISTANCE PROGRAM

10 TAC §§23.30 - 23.32

STATUTORY AUTHORITY. The repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed repealed chapter affects no other code, article, or statute.

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

Filed with the Office of the Secretary of State on February 6, 2025.

TRD-202500419
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: February 26, 2025
Proposal publication date: November 22, 2024
For further information, please call: (512) 475-3959

♦ ♦ ♦

SUBCHAPTER D. CONTRACT FOR DEED PROGRAM

10 TAC §§23.40 - 23.42

STATUTORY AUTHORITY. The repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed repealed chapter affects no other code, article, or statute.

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

Filed with the Office of the Secretary of State on February 6, 2025.

TRD-202500420
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: February 26, 2025
Proposal publication date: November 22, 2024
For further information, please call: (512) 475-3959

♦ ♦ ♦

SUBCHAPTER E. TENANT-BASED RENTAL ASSISTANCE PROGRAM

10 TAC §§23.50 - 23.52

STATUTORY AUTHORITY. The repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed repealed chapter affects no other code, article, or statute.

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

Filed with the Office of the Secretary of State on February 6, 2025.

TRD-202500421
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: February 26, 2025
Proposal publication date: November 22, 2024
For further information, please call: (512) 475-3959

♦ ♦ ♦

SUBCHAPTER F. SINGLE FAMILY DEVELOPMENT PROGRAM

10 TAC §§23.60 - 23.62

STATUTORY AUTHORITY. The repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed repealed chapter affects no other code, article, or statute.

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

Filed with the Office of the Secretary of State on February 6, 2025.

TRD-202500422
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: February 26, 2025
Proposal publication date: November 22, 2024
For further information, please call: (512) 475-3959

♦ ♦ ♦

SUBCHAPTER G. HOMEBUYER ASSISTANCE WITH NEW CONSTRUCTION (HANC)

10 TAC §§23.70 - 23.72

STATUTORY AUTHORITY. The repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed repealed chapter affects no other code, article, or statute.

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

Filed with the Office of the Secretary of State on February 6, 2025.

TRD-202500423
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: February 26, 2025
Proposal publication date: November 22, 2024
For further information, please call: (512) 475-3959

♦ ♦ ♦

CHAPTER 23. SINGLE FAMILY HOME PROGRAM

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 23, Single Family HOME Program Rule. Sections 23.22, and 23.24 - 23.29 are adopted with changes to the text previously published in the *Texas Register* on November 22, 2024, (49 TexReg 9441) and will be republished. Sections 20.1, 20.2, 23.20, 23.21, 23.23, 23.30, 23.31, 23.40, 23.41, 23.50, 23.51, 23.60, 23.61, 23.70, and 23.71 are adopted without changes and will not be republished. The purpose of the new chapter is to update the rule to implement a more germane rule and better align administration to state and federal requirements.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the new rule would be in effect:

1. The new rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to administration of the Department's Single Family HOME Program activities, including Homeowner Reconstruction Assistance, Contract for Deed, Tenant-Based Rental Assistance, Single Family Development, and Homebuyer Assistance with New Construction.

2. The new rule does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.

3. The new rule does not require additional future legislative appropriations.

4. The new rule will not result in an increase in fees paid to the Department, nor a decrease in fees paid to the Department.

5. The new rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.

6. The new rule will not expand or repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, the administration of the Department's Single Family HOME Program.

7. The new rule will not increase or decrease the number of individuals subject to the rule's applicability.

8. The new rule will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this new rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, §2306.111.

1. The Department has evaluated this new rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. There are approximately 60 rural communities currently participating in construction activities under the Single Family HOME Program that are subject to the new rule for which no economic impact of the rule is projected during the first year the rule is in effect.

3. The Department has determined that because the new rule serves to clarify and update existing requirements and does not establish new requirements for which there would be an associated cost, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new rule does not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the new rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the new rule has no economic effect on local employment because the rule serves to clarify and update existing requirements and does not establish new requirements or activities that may positively or negatively impact local economies.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that participation in the Single Family HOME Program is at the discretion of the local government or other eligible subrecipi-

ents, there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Bobby Wilkinson, Executive Director, has determined that, for each year of the first five years the new rule is in effect, the public benefit anticipated as a result of the rule will be an updated and more germane rule. There will not be any economic cost to any individuals required to comply with the new section because the HOME Program provides reimbursement to those entities that are subject to the rule for the cost of compliance with the rule.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson has also determined that for each year of the first five years the new rule is in effect, enforcing or administering the rule does not have any foreseeable implications related to costs or revenues of the state or local governments because the Single Family HOME Program is a federally funded program, and participation in the program, which may include provision of matching funds, is voluntary.

SUMMARY OF PUBLIC COMMENT AND STAFF REASONED RESPONSE. The Department accepted public comment between November 22, 2024 and December 27, 2024. Comments regarding the proposed repeal were accepted in writing and by e-mail with comment received from Karen Walker of Langford Community Management Services. The commenter expressed support for certain changes and posed questions for clarification on others. The Department does recommend changes in response to public comment as shown below.

Comment 1:

§23.23. General Threshold Criteria.

Commenter agrees that requiring waivers of customary fees to be documented as HOME Program Match is a benefit to the Program. Commenter states that fees are often waived, but since the waivers were not mandatory, the waivers were not always reported as HOME Match. Commenter also agrees that increasing the required cash reserves for Applicants for HOME Funds provides necessary protection for the Program participants and Administrators.

Reasoned Response: Staff appreciates the commenter's feedback. No changes are recommended in response to this comment.

§23.25. Reservation System Participant Agreement.

Commenter states that paragraph (b) needs clarification. Commenter interprets the rule to mean that no more than five Reservations may be submitted in each county and seeks clarification about Administrators with overlapping jurisdictions.

Reasoned Response: The rule as proposed is clear that the limitation is for each Reservation System Participation (RSP) Administrator. When one RSP Administrator shares jurisdiction with another RSP Administrator, their RSP Agreements are separate and apart, so the limitation only applies to each Administrator, not the HOME Program overall. No changes are recommended in response to this comment.

Commenter disagrees with the clarification made to paragraph (d) related to transferability of Match. They state that Match contributed to a project in excess of the requirement should be able to be utilized to meet the Match requirement for a separate project, and state that this is how they have interpreted the existing rule.

Reasoned Response: The updated rule adds clarifying language; however, the application of the rule is unchanged. The Match requirement must be met on an Activity-by-Activity basis and cannot be shared amongst Activities. This is necessary so that each Activity is comparable, as well as ensuring that Match may be tracked for contract compliance, and to ensure correct reporting of Match to HUD. No changes are recommended in response to this comment.

§23.27. Project Cost Limitations.

Commenter agrees with the changes related to project cost limitations for construction costs and mitigation costs. Commenter questions whether the increase in the limitation for soft costs proposed in paragraph (f) applies to activities under the Homeowner Reconstruction Assistance (HRA) Program, and if not, whether soft costs are still included as an eligible cost for HRA. Commenter questions whether existing allowances for third-party soft costs will be carried over to the new rule.

Reasoned Response: Staff has carefully reviewed §23.27(f) and is recommending changes in response to this comment to clarify the soft cost allowability for Reconstruction or New Construction in absence of an acquisition or refinance component. Staff also updated the amount of funds available for soft costs for Reconstruction and New Construction both with and without an acquisition or refinancing component, and included a provision for third-party soft costs as exists in the rule being replaced.

The Board adopted the final order adopting the new rule on February 6, 2025.

SUBCHAPTER A. GENERAL GUIDANCE

10 TAC §23.1, §23.2

STATUTORY AUTHORITY. The new sections are approved pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the new rule affects no other code, article, or statute. The rule, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the Department's legal authority.The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 6, 2025.

TRD-202500429
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: February 26, 2025
Proposal publication date: November 22, 2024
For further information, please call: (512) 475-3959

♦ ♦ ♦

SUBCHAPTER B. AVAILABILITY OF FUNDS, APPLICATION REQUIREMENTS, REVIEW AND AWARD PROCEDURES, GENERAL ADMINISTRATIVE REQUIREMENTS, AND RESALE AND RECAPTURE OF FUNDS

STATUTORY AUTHORITY. The new sections are approved pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the new rule affects no other code, article, or statute. The rule, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the Department's legal authority.

§23.22. Application Review Process.

(a) Contract award review process for open Application cycles. An Application received by the Department in response to an open Application cycle NOFA will be assigned a "Received Date." An Application will be prioritized for review based on its "Received Date." Application acceptance dates may be staggered under an open Application cycle to prioritize Applications which propose to serve areas identified in Tex. Gov't Code §2306.127 as priority for certain communities. An Application with outstanding administrative deficiencies under §23.24 of this Chapter, may be suspended from further review until all administrative deficiencies have been cured or addressed to the Department's satisfaction. Applications that have completed the review process may be presented to the Board for approval with priority over Applications that continue to have administrative deficiencies at the time Board materials are prepared, regardless of "Received Date." If all funds available under a NOFA are awarded, all remaining Applicants will be notified and the remaining Applications will not be processed.

(b) Reservation System Participant review process. An Application for a Reservation System Participant (RSP) Agreement shall be reviewed and if approved under Chapter 1, Subchapter C of this Title, as amended or superseded, concerning Previous Participation Review of Department Awards, and not denied under §23.24 of this Chapter, will be drafted and processed in the order in which it was accepted to be executed and made effective.

(c) Administrative deficiency review process. The administrative deficiency process allows staff to request that an Applicant provide clarification, correction, or non-material missing information to resolve inconsistencies in the original Application or to assist staff in evaluating the Application. Staff will request such information via a deficiency notice. Staff will send the deficiency notice via an email or if an email address is not provided in the Application, by facsimile to the Applicant. Responses must be submitted electronically to the Department. A review of the Applicant's response may reveal that issues initially identified as an administrative deficiency are actually determined to be beyond the scope of an administrative deficiency process, meaning that they are in fact matters of a material nature not susceptible to being resolved. Department staff may, in good faith, provide an Applicant confirmation that an administrative deficiency response has been received or that such response is satisfactory. Communication from staff that the response was satisfactory does not establish any entitlement to points, eligibility status, or to any presumption of having fulfilled any requirements. Final determination regarding the sufficiency of documentation submitted to cure an administrative deficiency as well as the distinction between material and non-material missing information are reserved for the Executive Director or authorized designee, and Board, as applicable.

(d) An Applicant may not change or supplement any part of an Application in any manner after submission to the Department, and may not add any set-asides, except in response to a direct request from the Department to remedy an administrative deficiency or by amendment of an Application after the Board approval of a HOME award. An administrative deficiency may not be cured if it would, in the Department's determination, substantially change an Application, or if the Applicant provides any new unrequested information to cure the deficiency.

(e) The time period for responding to a deficiency notice commences on the first day following the deficiency notice date. If an administrative deficiency is not resolved to the satisfaction of the Department by 5:00 p.m., central time, on the 14th day following the date of the deficiency notice, the application may be terminated. The Department may accept a corrected Board Resolution submitted after the deficiency deadline on the condition that the corrected Board Resolution resolves the deficiencies to the satisfaction of the Department, but the Board Resolution must be received and deemed satisfactory by the Department before the RSP Agreement or Contract start date. Applicants that have been terminated may reapply.

§23.24. Contract Benchmarks and Limitations.

(a) Contract Award Funding Limits. Limits on the total amount of a Contract award will be established in the NOFA.

(b) Contract Award Terms. Homeowner Reconstruction Assistance awards will have a Contract term of not more than 21 months, exclusive of any applicable affordability period or loan term. Single Family Development awards will have a Contract term of not more than 24 months, exclusive of any applicable affordability period or loan term. Tenant-Based Rental Assistance awards will have a Contract term of not more than 36 months.

(c) Contract Award Benchmarks. Administrators must have attained environmental clearance for the contractually required number of Households served within six months of the effective date of the Contract. Contract Administrators must submit to the Department complete Activity setup information for the Commitment of Funds of all contractually required Households in accordance with the requirements herein within nine months from the effective date of the Contract. All remaining funds will be deobligated and reallocated in accordance with Chapter 1 of this Title relating to Reallocation of Financial Assistance.

(d) Voluntary deobligation. The Administrator may fully deobligate funds in the form of a written request signed by the signatory, or successor thereto, of the Contract. The Administrator may partially deobligate funds under a Contract in the form of a written request from the signatory if the letter also deobligates the associated number of targeted Households, funds for administrative costs, and Match and the partial deobligation would not have impacted the award of the Contract. Voluntary deobligation of a Contract does not limit an Administrator's ability to participate in an open application cycle.

(e) The Department may request information regarding the performance or status under a Contract prior to a Contract benchmark or at various times during the term of a Contract. Administrator must respond within the time limit stated in the request. Prolonged or repeated failure to respond may result in suspension of funds and ultimately in termination of the Contract by the Department.

(f) Pre-Contract Costs.

(1) The Administrator may be reimbursed for eligible administrative and Activity soft costs incurred before the effective date of the Contract in accordance with 24 CFR §92.212 and at the sole discretion of the Department.

(2) A Community Housing Development Organization may be reimbursed for Predevelopment Costs as defined in this Chapter for an Activity funded under Single Family Development.

(3) In no event will the Department reimburse expenses incurred more than six months prior to Governing Board approval of the Administrator's award.

(g) Amendments to Contract awards will be processed in accordance with Chapter 20 of this Title, relating to Single Family Programs Umbrella Rule.

§23.25. Reservation System Participant (RSP) Agreement.

(a) Terms of Agreement. The term of an RSP Agreement will not exceed 36 months. Execution of an RSP Agreement does not guarantee the availability of funds under a reservation system. Reservations submitted under an RSP agreement will be subject to the provisions of this Chapter in effect as of the date of submission by the Administrator.

(b) Limits on Number of Reservations. Except for Activities submitted under the Disaster set-aside, RSP Administrators may have no more than five Reservations per county within the RSP's Service Area submitted to the Department for approval at any given time, except that Tenant-Based Rental Assistance Reservations submitted for approval under an RSP Agreement is limited to 30 at any given time.

(c) Extremely Low-Income Households. Except for Households submitted under the Disaster set-aside, each RSP will be required to serve at least one extremely low-income Household out of every four Households submitted and approved for assistance. For purposes of this subsection, extremely low-income is defined as families that are either at or below 30 percent AMFI for the county in which they will reside or have an income that is lower than the statewide 30 percent income limit without adjustments to HUD limits.

(d) Match. Administrators must meet the Match requirement per Activity approved for assistance. Match may not be transferred from one Activity to another Activity.

(e) Completion of Construction. For Activities involving construction, construction must be complete within 12 months from the Commitment of Funds for the Activity, unless amended in accordance with subsection (g) of this section.

(f) Household commitment contract term. The term of a Household commitment contract may not exceed 12 months, except that the Household commitment contract term for Tenant-Based Rental Assistance may not exceed 24 months. Household commitment contracts may commence after the end date of an RSP Agreement only in cases when the Administrator has submitted a Reservation on or before the termination date of the RSP Agreement.

(g) Amendments to Household commitment contracts may be considered by the Department provided the approval does not conflict with the federal regulations governing use of these funds, or impact federally imposed obligation or expenditure deadlines.

(1) The Executive Director's authorized designee may approve an amendment that extends the term of a Household commitment contract by not more than six months, except that the term of a Household commitment contract for Tenant-Based Rental Assistance may not be extended to exceed a total Household commitment contract term of 24 months.

(2) The Executive Director's authorized designee may approve one or more amendments to a Household commitment contract to:

(A) extend the Construction Completion Date by not more than six months;

(B) extend the term of rental subsidy up to a total term of 24 months;

(C) extend the draw period by not more than three months after the Construction Completion Date or termination of rental subsidy; or

(D) to increase Activity funds within the limitations set forth in this Chapter.

(3) The Executive Director may approve amendments to a Household commitment contract, except amendments to extend the contract term of a Household Commitment contract by more than 12 months.

(h) Pre-agreement costs. The Administrator may be reimbursed for eligible administrative and Activity soft costs incurred before the effective date of the RSP Agreement in accordance with 24 CFR §92.212 and at the sole discretion of the Department. In no event will the Department reimburse expenses incurred more than six months prior to the effective date of the RSP Agreement.

(i) Administrator must remain in good standing with the Department, the state of Texas, and HUD. If an Administrator is not in good standing, participation in the Reservation System will be suspended and may result in termination of the RSP Agreement.

§23.26. General Administrative Requirements.

Unless otherwise provided in this Chapter, the Administrator or Developer must comply with the requirements described in paragraphs (1) - (21) of this section, for the administration and use of HOME funds:

(1) Complete training, as applicable.

(2) Provide all applicable Department Housing Contract System access request information and documentation requirements.

(3) Establish and maintain sufficient records at its regular place of business and make available for examination by the Department, HUD, the U.S. General Accounting Office, the U.S. Comptroller, the State Auditor's Office of Texas, the Comptroller of Public Accounts, or any of their duly authorized representatives, throughout the applicable record retention period.

(4) For non-Single Family Development Contracts, develop and establish written procurement procedures that comply with federal, state, and local procurement requirements including:

(A) Develop and comply with written procurement selection criteria and committees, including appointment of a procurement officer to manage any bid process;

(B) Develop and comply with a written code of conduct governing employees, officers, or agents engaged in administering HOME funds;

(C) Ensure consultant or any procured service provider does not participate in or direct the process of procurement for services. A consultant cannot assist in their own procurement before or after an award is made;

(D) Ensure that procedures established for procurement of building construction contractors do not include requirements for the provision of general liability insurance coverage in an amount to exceed the value of the contract and do not give preference for contractors in specific geographic locations;

(E) Ensure that building construction contractors are procured in accordance with State and Federal regulations for single family HOME Activities;

(F) To the extent that a set of architectural plans are generated and used by an Administrator for more than one Single Family Housing Unit, the Department will reimburse only for the first time a set of architectural plans is used, unless any subsequent site specific fees

are paid to a Third Party architect or licensed engineer for the reuse of the plans on that subsequent specific site, as demonstrated by a contract with the third-party;

(G) Ensure that professional service providers (consultants) are procured using an open competitive procedure and are not procured based solely on the lowest priced bid; and

(H) Ensure that any Request for Proposals or Invitation for Bid include:

(i) an equal opportunity disclosure and a notice that bidders are subject to search for listing on the Excluded Parties List;

(ii) bidders' protest rights and an outline of the procedures bidders must take to address procurement related disputes;

(iii) a conflict of interest disclosure;

(iv) a clear and accurate description of the technical requirements for the material, product, or service to be procured. The description must include complete, adequate, and realistic specifications;

(v) for sealed bid procedures, disclose the date, time and location for public opening of bids and indicate a fixed-price contract;

(vi) must not have a term of services greater than five years; and

(vii) for competitive proposals, disclose the specific election/evaluation criteria.

(5) In instances where a potential conflict of interest exists, follow procedures to submit required documentation to the Department sufficient to submit an exception request to HUD for any conflicts prohibited by 24 CFR §92.356. The request submitted to the Department must include a disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict by newspaper publication, a description of how the public disclosure was made, and an attorney's opinion that the conflict does not violate state or local law. No HOME funds will be committed to or reserved to assist a Household impacted by the conflict of interest regulations until HUD has granted an exception to the conflict of interest provisions.

(6) Perform environmental clearance procedures, as required, before acquiring any Property or before performing any construction activities, including demolition, or before the occurrence of the loan closing, if applicable.

(7) Develop and comply with written Applicant intake and selection criteria for program eligibility that promote and comply with Fair Housing requirements and the State's One Year Action Plan.

(8) Complete Applicant intake and Applicant selection. Notify each Applicant Household in writing of either acceptance or denial of HOME assistance within 60 days following receipt of the intake application.

(9) Determine the income eligibility of a Household using the "Annual Income" as defined at 24 CFR §5.609, by using the list of income included in HUD Handbook 4350.3 (or most recent version), and excluding from income those items listed in HUD's Updated List of Federally Mandated Exclusions from Income. The Single Family HOME Program will implement the applicable requirements of the Housing Opportunity Through Modernization Act (HOTMA) not later than January 1, 2026.

(10) Complete an updated income eligibility determination of a Household if the date of certification is more than six months prior to the Date of Assistance.

(11) For single family Activities involving construction, perform initial inspection in accordance with Chapter 20 of this Title (relating to Single Family Programs Umbrella Rule). Property inspections must include photographs of the front, back, and side elevations of the housing unit and at least one picture of each of the kitchen, family room, each bedroom and each bathroom. The inspection must be signed and dated by the inspector and the Administrator. The photographs submitted with the initial inspection should evidence the deficiencies noted on the initial inspection and must clearly show the entire property, including other buildings located on the property.

(12) Submit a substantially complete request for the Commitment or Reservation of Funds, loan closing preparation, and for disbursements. Administrators must upload all required information and verification documentation in the Housing Contract System. Requests determined to be substantially incomplete will not be reviewed and may be disapproved by the Department. Expenses for which reimbursement is requested must be documented as incurred. If the Department identifies administrative deficiencies during review, the Department will allow a cure period of 14 calendar days beginning at the start of the first day following the date the Administrator or Developer is notified of the deficiency. If any administrative deficiencies remain after the cure period, the Department, in its sole discretion, may disapprove the request. Disapproved requests will not be considered sufficient to meet the performance benchmark and shall not constitute a Reservation of Funds.

(13) Submit signed program documents timely as may be required for the completion of a Commitment or Reservation of Funds, and for closing preparation of the loan or grant documents. Department reserves the right to cancel or terminate Activities when program documents are not executed timely, in the Department's sole and reasonable discretion.

(14) Not proceed or allow a contractor to proceed with construction, including demolition, on any Activity or development without first completing the required environmental clearance procedures, preconstruction conference and receiving notice to proceed, if applicable, and execution of grant agreement or loan closing with the Department, whichever is applicable.

(15) Submit any Program Income received by the Administrator or Developer to the Department within 14 days of receipt; any fund remittance to the Department, including refunds, must include a written explanation of the return of funds, the Contract number, name of Administrator or Developer, Activity address and Activity number, and must be sent to the Department's accounting division.

(16) Submit required documentation for project completion reports no later than 60 days after the completion of the Activity, unless this term is extended though amendment.

(17) For Contract awards, submit certificate of Contract Completion within 14 days of the Department's request.

(18) Submit to the Department reports or information regarding the operations related to HOME funds provided by the Department.

(19) Submit evidence with the final draw for construction related activities that the builder has provided a one-year warranty specifying at a minimum that materials and equipment used by the contractor will be new and of good quality unless otherwise required, the work will be free from defects other than those inherent in the work as specified, and the work will conform to the requirements of the contract documents.

(20) Provide the Household all warranty information for work performed by the builder and any materials purchased for which a manufacturer or installer's warranty is included in the price.

(21) If required by state or federal law, place the appropriate bonding requirement in any contract or subcontract entered into by the Administrator or Developer in connection with a HOME award. Failure to include the bonding requirement in subcontracts may result in termination of the RSP Agreement.

§23.27. Project Cost Limitations.

(a) Direct Activity Costs for construction, exclusive of Match funds, are limited to the amounts described in this section; however, not more than once per year, the Board in its sole discretion, may increase or decrease by up to five percent of the limitation for Direct Activity Costs. Total Activity costs may not exceed HUD Subsidy Limits. Dollar amounts in a Household commitment contract are set at the time of Contract execution and may not be adjusted through this process. Current limit amounts under this section will be reflected on the Department's website.

(b) Reconstruction and New Construction of site-built housing: the lesser of $150 per square foot of conditioned space or $175,000; or for Households of five or more Persons that require a four-bedroom unit, the lesser of $150 per square foot of conditioned space, or $200,000; and

(c) Direct Activity Costs for acquisition and placement of a unit of Manufactured Housing, including demolition or removal of existing housing and exclusive of Match funds, is limited to $125,000.

(d) Direct Activity Costs for conversion of a Contract for Deed, including closing costs paid from HOME funds, is limited to $40,000.

(e) In addition to the Direct Activity Costs allowable under subsections (b) and (c) of this section, additional funds in the amount of $15,000 may be used to pay for each of the following, as applicable:

(1) Necessary environmental mitigation as identified during the Environmental review process;

(2) Installation of an aerobic septic system; and

(3) Homeowner requests for accessibility features.

(f) Activity soft costs eligible for reimbursement for Activities of the following types are limited to:

(1) Acquisition or refinance in conjunction with New Construction of site-built housing or placement of an MHU: no more than $2,500 per housing unit;

(2) Replacement with an MHU: no more than $10,000 per housing unit;

(3) Reconstruction or New Construction of site-built housing: $15,000 per housing unit; and

(4) Reasonable and necessary third-party costs incurred in connection with required housing counseling, appraisals, title reports or insurance, tax certificates, recording fees, surveys, and first year hazard and flood insurance.

(g) Project Cost Limitations for Tenant-Based Rental Assistance Activities are limited as described in Subchapter E of this Chapter.

(h) Projects Costs must not exceed the federal subsidy limit, unless waived by HUD.

(i) Unless waived by HUD, the purchase price of acquired property and the post-improvement value of the unit may not exceed the limitations set forth in 24 CFR §92.254. Compliance with the purchase price limitation must be evidenced prior to loan closing with an as-built appraisal.

(j) Administrative Cost Limitations.

(1) Funds for administrative costs are limited to no more than five percent of the Direct Activity Costs, exclusive of Match funds, for HRA.

(2) Funds for administrative costs are limited to no more than eight percent of the Direct Activity Costs, exclusive of Match funds, for CFD and HANC.

(3) For TBRA, Administrators must select one method under which funds for administrative costs and Activity soft costs may be reimbursed prior to execution of an RSP agreement or at Application for an award of funds. All costs must be reasonable and customary for the Administrator's Service Area. Applicants and Administrators may choose from one of the following options, and in any case funds for Administrative costs may be increased by an additional one percent of Direct Activity Costs if Match is provided in an amount equal to five percent or more of Direct Activity Costs:

(A) Funds for Administrative costs are limited to four percent of Direct Activity Costs, excluding Match funds, and Activity soft costs are limited to $1,200 per Household assisted. Activity soft costs may reimburse expenses for costs related to determining Household income eligibility, including recertification, and conducting Housing Quality Standards (HQS) inspections. All costs must be reasonable and customary for the Administrator's Service Area; or

(B) Funds for Administrative costs are limited to ten percent of Direct Activity Costs, excluding Match funds, and Administrator may not be reimbursed for Activity soft costs.

§23.28. Design and Quality Requirements.

(a) Each Single Family Housing Unit constructed with HOME funds must meet the design and quality requirements as described in paragraphs (1)- (6) of this subsection, and plans must be certified by a licensed architect or engineer:

(1) Current applicable International Residential Code, local codes, ordinances, and zoning ordinances in accordance with 24 CFR §92.251(a);

(2) Requirements in Chapters 20 and 21 of this Title;

(3) Units must Include the following amenities: Wired with RG-6 COAX or better and CAT3 phone cable or better to each bedroom and living room; Blinds or window coverings for all windows; Disposal and Energy-Star or equivalently rated dishwasher (must only be provided as an option to each Household); Oven/Range; Exhaust/vent fans (vented to the outside) in bathrooms; Energy-Star or equivalently rated lighting in all rooms, which may include LED bulbs. The living room and each bedroom must contain at least one ceiling lighting fixture and wiring must be capable of supporting ceiling fans; and Paved off-street parking for each unit to accommodate at least one mid-sized car and access to on-street parking for a second car;

(4) Units must contain no less than two bedrooms. Each Single Family Housing Unit must contain complete physical facilities and fixtures for living, sleeping, eating, cooking, and sanitation;

(5) Each bedroom must be no less than 100 square feet; have a length or width no less than 8 feet; be self-contained with a door; have at least one window that provides exterior access; and have at least one closet that is not less than two feet deep and three feet wide and high enough to contain at least five feet of hanging space; and

(6) Units must be no less than 800 total net square feet for a two bedroom Single Family Housing Unit; no less than 1,000 total net square feet for a three bedroom and two bathroom Single Family Housing Unit; and no less than 1,200 total net square feet for a four bedroom and two bathroom Single Family Housing Unit.

(7) An exception to paragraphs (2) - (6) may be requested by the Household and approved by the Division Director prior to submission of the Activity. A request for an exception must include the specific feature or design requirement for which the exception is requested, and must include justification for the exception.

(b) Units selected by Households assisted under the Tenant-Based Rental Assistance Program must meet the applicable federal requirements for the HOME Program as of the date of initial occupancy and any subsequent inspection.

§23.29. Resale and Recapture Provisions.

(a) Recapture is the primary method the Department will use to recoup HOME funds under 24 CFR §92.254(a)(5)(ii).

(b) To ensure continued affordability, the Department has established the recapture provisions described in paragraphs (1) - (4) of this subsection and further defined in 24 CFR §92.254(a)(5)(ii).

(1) In the event that a federal affordability period is required and the assisted property is rented, leased, or no member of the Household has it as the Principal Residence, the entire HOME investment is subject to recapture. The Department will include any loan payments previously made when calculating the amount subject to recapture. Loan forgiveness is not the same thing as loan payments for purposes of this subsection.

(2) In the event that a federal affordability period is required and the assisted property is sold, including through a short sale, deed in lieu of foreclosure, or foreclosure, prior to the end of the affordability period, the Department will recapture the available amount of net proceeds based on the requirements of 24 CFR §92.254, and as outlined in the State's One Year Action Plan.

(3) The Household can sell the unit to any willing buyer at any price. In the event of sale to a qualified low-income purchaser of a HOME-assisted unit, the qualified low-income purchaser may assume the existing HOME loan and assume the recapture obligation entered into by the original buyer if no additional HOME assistance is provided to the low-income purchaser. In cases in which the subsequent homebuyer needs HOME assistance in excess of the balance of the original HOME loan, the HOME subsidy (the direct subsidy as described in 24 CFR §92.254) to the original homebuyer must be recaptured. A separate HOME subsidy must be provided to the new homebuyer, and a new affordability period must be established based on that assistance to the buyer.

(4) If there are no net proceeds from the sale, no repayment will be required of the Household and the balance of the loan shall be forgiven as outlined in the State's applicable One Year Action Plan.

(c) The Department has established the resale provisions described in paragraphs (1) - (7) of this subsection, only in the event that the Department must impose the resale provisions of 24 CFR §92.254(a)(i).

(1) Resale is defined as the continuation of the affordability period upon the sale or transfer, rental or lease, refinancing, and no member of the Household is occupying the property as their Principal Residence.

(2) In the event that a federal affordability period is required and the assisted property is rented or leased, or no member of the Household has it as the Principal Residence, the HOME investment must be repaid.

(3) In the event that a federal affordability period is required and the assisted property is sold or transferred in lieu of foreclosure to a qualified low-income buyer at an affordable price, the HOME loan balance shall be transferred to the subsequent qualified buyer and the affordability period shall remain in force to the extent allowed by law.

(4) The resale provisions shall remain in force from the date of loan closing until the expiration of the required affordability period.

(5) The Household is required to sell the home at an affordable price to a reasonable range of low-income homebuyers that will occupy the home as their Principal Residence. Affordable to a reasonable range of low-income buyers is defined as targeting Households that have income between 70 and 80 percent AMFI and meet all program requirements.

(A) The seller will be afforded a fair return on investment defined as the sum of down payment and closing costs paid from the initial seller's cash at purchase, closing costs paid by the seller at sale, the principal payments only made by the initial homebuyer in excess of the amount required by the loan, and any documented capital improvements in excess of $500.

(B) Fair return on investment is paid to the seller at sale once first mortgage debt is paid and all other conditions of the initial written agreement are met. In the event there are no funds for fair return, then fair return does not exist. In the event there are partial funds for fair return, then the appropriate partial fair return shall remain in force.

(6) The appreciated value is the affordable sales price less first mortgage debt less fair return.

(A) If appreciated value is zero, or less than zero, then no appreciated value exists.

(B) The initial homebuyer's investment of down payment and closing costs divided by the Department's HOME investment equals the percentage of appreciated value that shall be paid to the initial homebuyer or persons as otherwise directed by law. The balance of appreciated value shall be paid to the Department.

(7) The property qualified by the initial Household will be encumbered with a lien for the full affordability period.

(d) In the event the housing unit transfers by devise, descent, or operation of law upon the death of the assisted homeowner, forgiveness of installment payments under the loan may continue until maturity or the penalty amount for noncompliance under the conditional grant agreement may be waived, if the new Household qualifies for assistance in accordance with this subchapter. If the new Household does not qualify for assistance in accordance with this Chapter, forgiveness of installment payments will cease and repayment of scheduled payments under the loan will commence and continue until maturity or payment of a penalty amount under the conditional grant agreement may be required in accordance with the terms of the conditional grant agreement.

(e) Forgiveness of installment payments under the loan may continue until maturity or the penalty amount under conditional grant agreement may be waived by the Department if the housing unit is sold by the decedent's estate to a purchasing Household that qualifies for assistance in accordance with this Chapter.

(f) Grants subject to conditional grant agreements are not subject to the entire penalty amount in the event the property is no longer the Principal Residence of any Household member.

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

Filed with the Office of the Secretary of State on February 6, 2025.

TRD-202500430
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: February 26, 2025
Proposal publication date: November 22, 2024
For further information, please call: (512) 475-3959

♦ ♦ ♦

SUBCHAPTER C. HOMEOWNER RECONSTRUCTION ASSISTANCE PROGRAM

10 TAC §23.30, §23.31

STATUTORY AUTHORITY. The new sections are approved pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the new rule affects no other code, article, or statute. The rule, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the Department's legal authority.

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

Filed with the Office of the Secretary of State on February 6, 2025.

TRD-202500431
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: February 26, 2025
Proposal publication date: November 22, 2024
For further information, please call: (512) 475-3959

♦ ♦ ♦

SUBCHAPTER D. CONTRACT FOR DEED PROGRAM

10 TAC §23.40, §23.41

STATUTORY AUTHORITY. The new sections are approved pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the new rule affects no other code, article, or statute. The rule, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the Department's legal authority.

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

Filed with the Office of the Secretary of State on February 6, 2025.

TRD-202500432
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: February 26, 2025
Proposal publication date: November 22, 2024
For further information, please call: (512) 475-3959

♦ ♦ ♦

SUBCHAPTER E. TENANT-BASED RENTAL ASSISTANCE PROGRAM

10 TAC §23.50, §23.51

STATUTORY AUTHORITY. The new sections are approved pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the new rule affects no other code, article, or statute. The rule, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the Department's legal authority.

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

Filed with the Office of the Secretary of State on February 6, 2025.

TRD-202500433
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: February 26, 2025
Proposal publication date: November 22, 2024
For further information, please call: (512) 475-3959

♦ ♦ ♦

SUBCHAPTER F. SINGLE FAMILY DEVELOPMENT PROGRAM

10 TAC §23.60, §23.61

STATUTORY AUTHORITY. The new sections are approved pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the new rule affects no other code, article, or statute. The rule, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the Department's legal authority.

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

Filed with the Office of the Secretary of State on February 6, 2025.

TRD-202500434
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: February 26, 2025
Proposal publication date: November 22, 2024
For further information, please call: (512) 475-3959

♦ ♦ ♦

SUBCHAPTER G. HOMEBUYER ASSISTANCE WITH NEW CONSTRUCTION (HANC)

10 TAC §23.70, §23.71

STATUTORY AUTHORITY. The new sections are approved pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the new rule affects no other code, article, or statute. The rule, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the Department's legal authority.

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

Filed with the Office of the Secretary of State on February 6, 2025.

TRD-202500435
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: February 26, 2025
Proposal publication date: November 22, 2024
For further information, please call: (512) 475-3959

♦ ♦ ♦

TITLE 16. ECONOMIC REGULATION

PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 401. ADMINISTRATION OF STATE LOTTERY ACT

The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §§401.101 (Lottery Procurement Procedures), 401.102 (Protests of the Terms of a Formal Competitive Solicitation), 401.103 (Protests of Contract Award), 401.104 (Contract Monitoring Roles and Responsibilities), 401.153 (Qualifications for License), 401.158 (Suspension or Revocation of License), 401.160 (Standard Penalty Chart), 401.301 (General Definitions), 401.302 (Scratch Ticket Game Rules), 401.304 (Draw Game Rules (General)), 401.355 (Restricted Sales), and 401.501 (Lottery Security) without changes to the proposed text as published in the December 6, 2024, issue of the *Texas Register* (49 TexReg 9855). The rules will not be republished.

The rule amendments are the result of the Commission's recent rule review conducted in accordance with Texas Government Code §2001.039, as well as the agency's recent review by the Texas Sunset Advisory Commission. Among the more significant changes, this proposal addresses issues identified as rulemaking gaps in the September 2024 Sunset Advisory Commission Staff Report With Commission Decisions (Sunset Report). Specifically, the Sunset Report noted that there was "[n]o clarification as to whether internet sales of lottery products are prohibited" (addressed in Rules 401.153(b)(12), 401.158(b)(27), 401.160(h), and 401.355(a)), and "[n]o explanation of what it means for a person to 'engage in a business exclusively as a (lottery) sales agent' for purposes of licensure" (addressed in Rule 401.153(b)(13)).

The rule amendments also clarify procurement procedures and the time period a bidder or proposer has to respond to an appeal of certain protest decisions issued by the agency in procurements; update several definitions; update a provision in the scratch ticket game rule to make it more consistent with the draw game rule; update the scratch and draw ticket prize claim processes; and update the language regarding lottery security to state that several divisions of the Commission are responsible for developing and maintaining security plans and procedures, and confirming that these plans and procedures are protected from required public disclosure as allowed under the Texas Public Information Act.

The amendments to Rule 401.101 clarify the rules governing the Invitation for Bid (IFB) procurement method by reorganizing the section and by adding language that describes the process used for IFBs. The amendments also clarify certain differences between the Request for Proposals (RFP) and IFB procurement methods.

The amendments to Rule 401.102 add language stating that the email address designated by the vendor for correspondence in the procurement will also serve as the email address for notice of proceedings and decisions under this section.

The amendments to Rule 401.103(g) clarify the time period a successful bidder or proposer has to respond to an appeal of an agency determination of a vendor's protest to a contract award resulting from a competitive solicitation. Also, the proposal adds language stating that the email address designated by the vendor for correspondence in the procurement will also serve as the email address for notice of proceedings and decisions under this section.

The amendments to Rule 401.104 clarify that the agency may assign designated personnel to monitor contract compliance and facilitate historically underutilized business participation, in addition to the existing divisions within the agency that handle these matters.

The amendments to Rule 401.153(b)(12) clarify that an application for a sales agent license will be denied if the applicant intends to sell lottery tickets via the internet, and the amendments to Rule 401.153(b)(13) reiterate the prohibition in the State Lottery Act that an application for a sales agent license will be denied if the applicant intends to engage in business exclusively as a Texas Lottery ticket sales agent (as defined in the proposed amendments). These changes address gaps that were identified by the Sunset Report.

The amendments to Rule 401.153 also add a provision that, based upon consideration of the factors in Rule 401.160(g), the director may determine a person or organization whose license

has been revoked, surrendered or denied is not eligible to apply for another license for one year.

The amendments to Rule 401.158(b)(23) make it an express violation to require a purchaser to buy additional items when paying for lottery tickets with a debit card and the amendments to Rule 401.158(b)(27) make it an express violation to sell lottery tickets over the internet.

The amendments to Rule 401.160 update the penalty chart and correspond with the proposed amendments to Rules 401.158(b)(23) and (27) referenced above.

The amendments to Rule 401.301(1), (4), (51), and (55) make minor updates to multiple definitions to increase the clarity of those definitions. The amendments also add a definition of "Present at the terminal" that was deleted in a non-substantive rule amendment in August 2020. The purpose of re-inserting the definition, in combination with the related amendment to Rule 401.304(b)(3), is to dispel any misconception that the deletion was substantive and make clear that all aspects of a sales transaction under Rule 401.304 must take place at the retail location.

The amendments to Rule 401.302(a)(1) add language from Rule 401.304(b)(3) (Draw Game Rules (General)) regarding the requirement that all aspects of a ticket purchase must take place at a licensed retail location, to make Rule 401.302 more consistent with Rule 401.304. The amendments to Rule 401.302(e)(6) and (f)(2) update the rule by requiring all scratch ticket prize claim processes to be made in accordance with Commission procedures and deleting requirements that are inapplicable to mobile prize claims.

The amendments to Rule 401.304(b)(3) add language that was deleted in a non-substantive rule amendment in 2020 to reiterate and clarify that no part of a draw game ticket sale may take place away from the terminal. The amendments to Rule 401.304(d)(3) update the rule by requiring all draw ticket prize claim processes to be made in accordance with Commission procedures and deleting requirements that are inapplicable to mobile prize claims.

The amendments to Rule 401.355(a) clarify that retailers shall not sell lottery tickets via the internet, a gap that was identified by the Sunset Report, and the amendments to Rule 401.355(b) update a cross-reference.

The amendments to Rule 401.501 update the language regarding lottery security to state that several divisions of the Commission are responsible for developing and maintaining security plans and procedures, including information security, gaming security, and facility security as required by the State Lottery Act to ensure the integrity and security of the lottery games, and confirming that these plans and procedures are protected from required public disclosure as allowed under the Texas Public Information Act.

The Commission received no comments on the proposed amendments during public comment period.

SUBCHAPTER A. PROCUREMENT

16 TAC §§401.101 - 401.104

These amendments are adopted under Texas Government Code §466.015(c), which authorizes the Commission to adopt rules governing the operation of the lottery, and §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

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

Filed with the Office of the Secretary of State on February 6, 2025.

TRD-202500424
Bob Biard
General Counsel
Texas Lottery Commission
Effective date: February 26, 2025
Proposal publication date: December 6, 2024
For further information, please call: (512) 344-5392

♦ ♦ ♦

SUBCHAPTER B. LICENSING OF SALES AGENTS

16 TAC §§401.153, 401.158, 401.160

These amendments are adopted under Texas Government Code §466.015(c), which authorizes the Commission to adopt rules governing the operation of the lottery, and §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

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

Filed with the Office of the Secretary of State on February 6, 2025.

TRD-202500425
Bob Biard
General Counsel
Texas Lottery Commission
Effective date: February 26, 2025
Proposal publication date: December 6, 2024
For further information, please call: (512) 344-5392

♦ ♦ ♦

SUBCHAPTER D. LOTTERY GAME RULES

16 TAC §§401.301, 401.302, 401.304

These amendments are adopted under Texas Government Code §466.015(c), which authorizes the Commission to adopt rules governing the operation of the lottery, and §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

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

Filed with the Office of the Secretary of State on February 6, 2025.

TRD-202500426

Bob Biard
General Counsel
Texas Lottery Commission
Effective date: February 26, 2025
Proposal publication date: December 6, 2024
For further information, please call: (512) 344-5392

♦ ♦ ♦

SUBCHAPTER E. RETAILER RULES

16 TAC §401.355

These amendments are adopted under Texas Government Code §466.015(c), which authorizes the Commission to adopt rules governing the operation of the lottery, and §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

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

Filed with the Office of the Secretary of State on February 6, 2025.

TRD-202500427
Bob Biard
General Counsel
Texas Lottery Commission
Effective date: February 26, 2025
Proposal publication date: December 6, 2024
For further information, please call: (512) 344-5392

♦ ♦ ♦

SUBCHAPTER G. LOTTERY SECURITY

16 TAC §401.501

These amendments are adopted under Texas Government Code §466.015(c), which authorizes the Commission to adopt rules governing the operation of the lottery, and §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

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

Filed with the Office of the Secretary of State on February 6, 2025.

TRD-202500428
Bob Biard
General Counsel
Texas Lottery Commission
Effective date: February 26, 2025
Proposal publication date: December 6, 2024
For further information, please call: (512) 344-5392

♦ ♦ ♦

CHAPTER 402. CHARITABLE BINGO OPERATIONS DIVISION

The Texas Lottery Commission (Commission) adopts the repeal of existing 16 TAC §§402.301 (Bingo Card/Paper) and 402.303 (Pull-tab or Instant Bingo Dispensers); the addition of new 16 TAC §§402.301 (Approval of Pull-Tab Bingo Tickets), 402.302 (Pull-Tab Bingo Manufacturing Requirements), 402.303 (Pull-Tab Bingo Sales and Redemption), 402.304 (Pull-Tab Bingo Record Keeping), 402.305 (Pull-Tab Bingo Styles of Play), 402.306 (Bingo Card/Paper Definitions), 402.307 (Bingo Card/Paper Approval), 402.308 (Bingo Card/Paper Manufacturing Requirements), 402.309 (Bingo Card/Paper Record Keeping), 402.310 (Bingo Card/Paper Styles of Play), and 402.311 (Pull-Tab or Instant Bingo Dispensers); and the amendments to 16 TAC §§402.102 (Bingo Advisory Committee), 402.103 (Training Program), 402.200 (General Restrictions on the Conduct of Bingo), 402.201 (Prohibited Bingo Occasion), 402.202 (Transfer of Funds), 402.203 (Unit Accounting), 402.210 (House Rules), 402.212 (Promotional Bingo), 402.300 (Pull-Tab Bingo), 402.324 (Card-Minding Systems--Approval of Card-Minding Systems), 402.325 (Card-Minding Systems--Licensed Authorized Organizations Requirements), 402.326 (Card-Minding Systems--Distributor Requirements), 402.334 (Shutter Card Bingo Systems - Approval of Shutter Card Bingo Systems), 402.400 (General Licensing Provisions), 402.401 (Temporary License), 402.402 (Registry of Bingo Workers), 402.404 (License Classes and Fees), 402.411 (License Renewal), 402.443 (Transfer of a Grandfathered Lessor's Commercial Lessor License), 402.500 (General Records Requirements), 402.502 (Charitable Use of Net Proceeds Recordkeeping), 402.600 (Bingo Reports and Payments), 402.601 (Interest on Delinquent Tax), 402.602 (Waiver of Penalty, Settlement of Prize Fees, Penalty and/or Interest), 402.702 (Disqualifying Convictions), 402.703 (Audit Policy), 402.706 (Schedule of Sanctions), and 402.707 (Expedited Administrative Penalty Guideline) without changes to the proposed text as published in the November 15, 2024, issue of the *Texas Register* (49 TexReg 9156). The rules will not be republished.

The Commission adopts the addition of new 16 TAC §402.105 (Postmarks, Timely Filing of Forms, Reports, Applications and Payment of Taxes and Fees); and the amendments to 16 TAC §§402.100 (Definitions) and 402.101 (Advisory Opinions) with changes to the proposed text as published in the November 15, 2024, issue of the *Texas Register* (49 TexReg 9156). The rules will be republished.

The amendments recommended for adoption include several changes to the proposed version made in response to public comment. These changes are a logical outgrowth of the published proposal that do not affect any new persons who were not affected by and on notice of the published proposal, and thus do not require republication.

In response to public comments, Rule 402.100(9), defining "premises," has been modified to include the grandfathering provision from Tex. Occ. Code §2001.403(b), which allows for more than one premises under a common roof or over a common foundation for licensees in existence on or before May 23, 1997. Also, new Rule 402.105(c)(1), regarding the timely filing of forms, reports, applications and payment of taxes and fees, has been modified to allow for contract carriers in addition to common carriers.

The Commission has also amended Rule 402.101(a)(3) to state that the Commission's authority to approve advisory opinions granted by Tex. Occ. Code §2001.059 "may be" (rather than "is") delegated to the Charitable Bingo Operations director or his

or her designee. This amendment was not included in the published proposal but is being added by the Commission, not in response to public comments, but to reflect the Commission's recent directive to bring all bingo advisory opinions to the board for approval. That direction was given in response to the Texas Sunset Advisory Commission Staff Report with Commission Decisions (Sunset Report), which adopted a recommendation to "[m]odify [the] statute to remove the commission's authority to delegate approval authority for bingo advisory opinions." The Commission intends to approve all opinions, but the rule still allows for a delegation to the bingo director in the event the Commission is unable to hold a public meeting within the 60-day statutory deadline to issue an opinion. If the Legislature enacts the recommended statutory change, this rule will be further amended, as necessary, to reflect the new law. This amendment does not materially alter the issues raised in the proposal or affect any persons who were not already on notice of the proposal and, thus, does not require republication. This amendment relates entirely to an internal process of the Commission and does not impact the rights or privileges of the public.

The repeals, new rules, and amendments are the result of the Commission's recent rule review conducted in accordance with Texas Government Code §2001.039, as well as the agency's recent review by the Texas Sunset Advisory Commission. Among the more significant changes, this proposal addresses issues identified as rulemaking gaps in the Sunset Report. Specifically, the Sunset Report noted that there was "[n]o clarification of what classifies as a bingo hall's 'premises'..." (addressed in Rule 402.100), "[n]o clarification that bingo products may not be purchased using a credit card..." (addressed in Rule 402.200), "[n]o clarification of how certain grandfathered bingo licenses may be transferred" (addressed in Rule 402.443), and "[n]o definition of what constitutes a repeat violation..." (addressed in Rule 402.706). The Sunset Report also recommended considering a licensee's compliance history in audit determinations (addressed in Rule 402.703) and eliminating warnings for serious offenses and repeat violations of less serious offenses (addressed in Rules 402.706 and 402.707).

This proposal also amends aspects of the Bingo Advisory Committee (BAC) to ensure that it complies with the Bingo Enabling Act (BEA); breaks two comprehensive rules on pull-tabs and bingo paper into multiple smaller rules for ease of reference; creates a single standard for determining when a form, report, application, or payment has been mailed to the Commission; clarifies and updates agency processes; eliminates references to terms, laws, and processes that are no longer in place; and conforms the rules to the BEA.

The new Rule 402.105 establishes a single standard for determining the timeliness of filings by licensees. A form, report, application, or payment will be deemed filed or paid based on the postmark or receipt mark date, or, if filed electronically, the day that it was filed. Currently, there are different standards throughout the rules depending on the type of document or payment filed. The different standards will be deleted in this rulemaking and replaced by this single rule. This new rule was modeled on a similar rule adopted by the Comptroller of Public Accounts used to determine the timeliness of tax payments and related forms.

The new Rules 402.301, 402.302, 402.303, 402.304 and 402.305 are necessary to break the current Rule 402.300, regarding pull-tab bingo tickets, into smaller rules for ease of reference. There are no changes to the rule language from the current version.

The new Rules 402.306, 402.307, 402.308, 402.309, and 402.310 are necessary to break the current Rule 402.301, regarding bingo card/paper, into smaller rules for ease of reference. The Rules 402.306 and 402.310 also contain amendments allowing break-open bingo games to be pre-called, and will properly categorize braille and loteria cards as bingo equipment that require approval by the Commission. There are no other changes to the rule language from the current version.

The new Rule 402.311, regarding pull-tab or instant bingo dispensers, is currently at Rule 402.303 and needs to be moved to break Rule 402.300 into multiple parts. There are no changes to the rule language from the current version.

The amendments to Rule 402.100 include a definition of "premises" that conforms with the BEA. This change addresses a gap that was identified by the Sunset Report.

The amendments to Rule 402.101 change a reference to the bingo operations director from "his" to "his or her," provide that the issuance of an opinion "may be" delegated to the director, and eliminate the requirement that the general counsel approve a bingo advisory opinion before it is issued.

The amendments to Rule 402.102 eliminate the appointment of a substitute member to the BAC if a member from one of the required interest groups cannot be appointed; clarify that a member serves at the pleasure of the Commission or until they resign or are unable to serve; provide for virtual meetings; and clarify the BAC's annual reporting deadline and reappointment process.

The amendments to Rule 402.103 clarify that conductors may only choose an on-site bingo training program if one is available. The amendments also codify the agency's practice that non-regular conductors are not subject to training requirements.

The amendments to Rule 402.200 correct a typo and specify that formal complaints to the Commission must be in writing. The amendments also codify a prior bingo advisory opinion that organizations may not accept credit payments for bingo products. This change addresses a gap that was identified by the Sunset Report.

The amendments to Rule 402.201 codify the long-standing Commission practice and process of issuing cease-and-desist letters and copying local law enforcement in substantiated cases of illegal bingo.

The amendments to Rule 402.202 delete a reference to the timely submission of a transfer of funds form. This rule is no longer necessary due to the new rule on timeliness of submissions at Rule 402.105.

The amendments to Rule 402.203 delete a reference that allows the sale of pull-tab bingo tickets between organizations with the prior written consent of the Commission. The authority for an organization to sell certain bingo products to another organization with the prior approval of the Commission comes from Bingo Enabling Act §2001.407(f). That section does not provide for the sale of pull-tabs.

The amendments to Rule 402.210 require organizations to prohibit any person from offering to sell bingo products or offering to award bingo prizes to persons outside of a bingo occasion via a telecommunications device.

The amendments to Rule 402.212 clarify that approval for a promotional bingo event will only be issued if the request complies with all the requirements of the rule.

The amendments to Rule 402.300 are necessary to break the current Rule 402.300, regarding pull-tab bingo tickets, into smaller rules for ease of reference. There are no changes to the rule language from the current version.

The amendments to Rule 402.324 eliminate all references to the Commission's testing lab and require manufacturers to provide any forms and documentation necessary to ensure that their card-minding systems comply with required standards.

The amendments to Rule 402.325 provide that the voided receipts organizations are required to attach to the bingo occasion report must include all payments (cash or otherwise) for pre-sales.

The amendments to Rule 402.326 delete an obsolete reference to "dedicated modem phone lines."

The amendments to Rule 402.334 provide that a manufacturer must provide any software necessary to determine if its shutter card bingo system meets rule requirements.

The amendments to Rule 402.400 provide that the Commission will not return a license application when the applicant has failed to respond to a request for more information within 21 days.

The amendments to Rule 402.401 clarify that a regular organization that surrenders its regular license may retain up to 12 unused temporary licenses so long as their dates-of-use are designated within 10 days of the surrender. The amendments also correct references to two forms.

The amendments to Rule 402.402 eliminate the requirement for an applicant to list his or her race on an application for the worker registry.

The amendments to Rule 402.404 eliminate unnecessary references to "regular" licenses.

The amendments to Rule 402.411 allow the division to "provide" renewal notices rather than "mail" them, and delete a reference to the timely submission of license renewal applications, which is no longer necessary due to the proposed new Rule 402.105.

The amendments to Rule 402.443 provide that a grandfathered license held by a legal entity is not considered to be transferred due to changes to the legal entity so long as the entity's taxpayer number remains the same. This rule codifies the Commission's practice on the transfer of grandfathered lessor licenses and conforms with a previously issued Office of the Attorney General Opinion. This change addresses a gap that was identified by the Sunset Report.

The amendments to Rule 402.500 codify the Commission's practice that bingo operations must use cash basis accounting.

The amendments to Rule 402.502 eliminate unnecessary language related to the kinds of documentation that may be relied on to prove charitable distributions were properly made.

The amendments to Rule 402.600 delete references to the timely submission of bingo reports and payments. These references are no longer necessary due to the new rule on timeliness of all submissions at Rule 402.105.

The amendments to Rule 402.601 provide that a credit of $100 or less entered by an organization or lessor on its quarterly report will be accessible for viewing in the Bingo Service Portal, rather than preprinted on the quarterly report.

The amendments to Rule 402.602 eliminate waivers of penalties and interest due to the late payment of prize fees. Penalties and interest for late prize fee payments come from BEA §2001.504. That section does not provide for a waiver of the penalty and interest, in contrast to BEA §2001.451(k) which explicitly allows the director to waive net proceeds and charitable distribution requirements. The difference between those provisions indicates that the legislature did not intend to give the director the ability to waive penalties and interest for the late payment of prize fees.

The amendments to Rule 402.702 eliminate a reference to a statute that no longer exists.

The amendments to Rule 402.703 provide that a licensee's compliance history shall be considered as a risk factor in audit determinations. This change addresses a gap that was identified by the Sunset Report.

The amendments to Rule 402.706 eliminate warnings for first time violations of serious offenses or repeat violations of lesser offenses. The amendments also provide a definition of "repeat violation." This change addresses a gap that was identified by the Sunset Report.

The amendments to Rule 402.707 change the bingo operations director's pronoun from "his" to "his or her"; reiterate that formal complaints must be in writing; and eliminate warnings for repeat offenses. This change addresses a gap that was identified by the Sunset Report.

On December 4, 2024, the Commission held a public hearing to receive public comments on the proposed rules. No one from the public appeared at the hearing and no comments were received at the hearing.

On December 3, 2024, the Commission received written comments from Stephen Fenoglio on behalf of Texas Charity Advocates (TCA) and the Bingo Interest Group (BIG) in the form of a red-lined version of the rule proposal document. At the December 4, 2024 meeting of the BAC, Mr. Fenoglio elaborated on the written comments orally. In the following responses, TCA/BIG's written and oral comments have been combined and treated as a single public comment.

COMMENT: Rule 402.100(9), defining "premises," does not include the grandfathering provision from Tex. Occ. Code 2001.403(b), which allows for more than one premises under a common roof or over a common foundation for licensees in existence on or before May 23, 1997. TCA/BIG appreciates that the definition specifically excludes a virtual location or place.

RESPONSE: Staff agrees and has incorporated this comment into the adopted version.

COMMENT: Rule 402.102(n)(3), regarding the Bingo Advisory Committee's annual workplan, should be amended to include the following: "The workplan shall allow the BAC to review and comment on other states' laws." TCA/BIG comments that "...the Sunset Advisory Commission observed correctly that it makes no sense that the BAC cannot comment on other states' bingo activities..." and that there is no prohibition against it in the Bingo Enabling Act or the Rules.

RESPONSE: Staff does not recommend changing the rule at this time because the Sunset Report recommended modifications to the Bingo Enabling Act to "...ensure the BAC can fully advise the commission on all aspects of bingo by prohibiting the commission from restricting bingo-related topics the committee can discuss." The Commission looks forward to statutory guidance and will adhere to any direction that is provided by the Legislature.

COMMENT: New Rule 402.105, regarding the timely filing of forms, reports, applications, and payments, should allow for contract carriers as well as common carriers.

RESPONSE: Staff agrees and has incorporated this comment into the adopted version.

COMMENT: Regarding Rule 402.200(q) prohibiting the use of credit payments in bingo, TCA/BIG would like staff to explain what is meant by: "...regardless of how the transaction is structured."

RESPONSE: This rule is being amended in response to the Sunset Report's note that there is "[n]o clarification that bingo products may not be purchased using a credit card despite a 2017 bingo advisory opinion stating as much." The language of this amendment is taken verbatim from that opinion, 2017-0816-0004. "Regardless of how the transaction is structured" was likely included because the opinion request presented several hypothetical situations involving different payment structures. The intent of the language is to make it clear that credit payments will not be allowed under any circumstances. Staff does not recommend any changes to the proposed language in response to this comment.

COMMENT: Rule 402.201(b), relating to the agency's handling of complaints regarding illegal bingo, should be changed from "...will issue a cease and desist letter and copy local law enforcement..." to "...shall issue..." because "...'shall' is a stronger verb..." TCA/BIG would also like to require the agency to copy "...Facebook, Tiktok, Instagram, or other social media platform if the location is known."

RESPONSE: Staff does not recommend any changes based on this comment. There is no substantive difference between "will" and "shall" - both verbs require the agency to notify local law enforcement. As for notifying social media companies, the agency does not have unlimited resources to respond to complaints of online gambling. The Commission has reached out to social media companies in the past when it had their contact information available and it will continue to do so, but the agency should not require itself to establish and maintain those contacts in perpetuity. Illegal bingo is a crime and jurisdiction rests with local law enforcement, for which the agency has readily available contact information.

COMMENT: Rule 402.309(3)(A)'s requirement for organizations to maintain a disposable bingo card/paper sales summary showing a distributor's taxpayer number is unnecessary because that information is available on the Commission's website. TCA/BIG also recommends adding "for four years" to the requirement to maintain a perpetual inventory in (3)(C). They also comment that in subsection (3)(D), the Commission should be required to witness an organization's destruction of bingo cards/paper within 30 days of an organization's notification.

RESPONSE: Staff does not recommend any changes based on these comments. These record keeping requirements were discussed during the rule review process and staff determined that all of the required information in the rule was necessary to maintain the integrity of the audit process. The addition of "...for four years..." to (3)(C) is unnecessary because a 4-year maintenance requirement is already present in (4) for "[a]ll records identified in this subsection...." Staff does not recommend changing subsection (3)(D). The Charitable Bingo Operations Division will provide a staff member to witness the destruction of bingo paper/cards as soon as is practicable, but it should not bind itself by rule to a 30-day deadline that may be inappropriate due to any number of factors.

COMMENT: Rule 402.402(a)(9), the definition of "salesperson" should be amended to allow those employees to record sales of bingo cards and pull-tabs.

RESPONSE: Staff does not recommend amending this rule at this time. This comment is unique among the others in that it (1) addresses an issue that was not discussed at all during the rule review process and (2) appears only in TCA/BIG's written comment, without any explanation or mention in their oral comment. The current rule provides that only a cashier may record bingo card and pull-tab sales. Staff does not have any information to support an amendment, but we welcome discussion of this issue at future BAC meetings.

COMMENT: TCA/BIG supports the language used in Rule 402.443 regarding the transfer of a grandfathered lessor's commercial lessor license.

RESPONSE: No response necessary.

COMMENT: TCA/BIG's written comment on Rule 402.500(e), regarding the requirement to use cash basis accounting, states: "Do we care? The SEC mandates all publicly traded companies to use accrual accounting, not cash basis accounting." Their oral comment on the item was "My clients' conclusion was we like the cash accounting the way it is... So, after much discussion, they agreed to keep the language as it is."

RESPONSE: The agency declines to make any changes to the rule as proposed. The written comment was not formally withdrawn, but it appears from the oral comment that TCA/BIG has no issues with the rule as drafted.

COMMENT: Regarding Rule 402.600, Bingo Reports and Payments, TCA/BIG's written comment notes that "There are times when the Commission's system will not accept quarterly filings." Their oral comment included the following: "I've asked [the bookkeepers] for the specific example, and I haven't gotten one yet other than, '[w]ell, we've had this problem before.'"

RESPONSE: Staff does not recommend any changes to this rule because this comment does not suggest any issues with the rule language. The Charitable Bingo Operations Division will continue to collaborate with the BAC on improvements to the Bingo Service Portal in accordance with the Sunset Report.

COMMENT: TCA/BIG disagrees with the modifications to the Standard Administrative Penalty Chart in Rule 402.706 that eliminate warnings for first time offenses of Category 1 and 2 violations. They note that "[t]hese changes are designed to take money from the charities, even if an honest mistake has been made." They appreciate that the current rule - which allows for a warning - gives the bingo director the discretion to be more lenient on a case-by-case basis.

RESPONSE: Staff does not recommend making any changes to the rule based on this comment. The Sunset Report recommended that the agency revise its schedule of sanctions to better align penalties with the severity of the violation. The Sunset Report states: "Specifically, CBOD should...consider eliminating $0 penalties for the most serious violations." The agency appreciates the Texas Sunset Advisory Commission's review and is implementing its rulemaking recommendations. The new penalties start at $250 and they are not "designed to take money from the charities," but to deter violations.

SUBCHAPTER A. ADMINISTRATION

The amendments are adopted under Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act, and Texas Government Code §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

§402.100. Definitions.

The following words and terms, when used in this chapter and Texas Occupations Code, Chapter 2001, shall have the following meanings, unless the context clearly indicates otherwise.

(1) State law--Texas statutes and reported court cases.

(2) Calendar week--A period of seven consecutive days commencing with Sunday and ending with Saturday.

(3) Calendar year--A period of 12 consecutive months commencing with January 1 and ending with December 31.

(4) Commission--The Texas Lottery Commission, the agency created by H.B. 54, 72nd Leg., 1st C.S. (1991), as amended by H.B. 1587 and H.B. 1013, 73rd Leg. R.S., 1993.

(5) Conductor--A licensed authorized organization.

(6) Director--The Director of the Charitable Bingo Operations Division, commonly known as the bingo division, of the Commission.

(7) Operator--A natural person designated pursuant to authority of the Bingo Enabling Act.

(8) 24-hour period--A period of 24 consecutive hours commencing at 12:00 midnight.

(9) Premises--The area subject to the direct control of and actual use by a licensed authorized organization or group of authorized organizations to conduct bingo. There may not be more than one premises under a common roof or over a common foundation, except under a license that was in existence on or before May 23, 1997. A premises must have an address. The term does not include a virtual location or place.

§402.101. Advisory Opinions.

(a) Time Period.

(1) The Commission shall respond to an advisory opinion request not later than the 60th day after the later date of when the Commission receives the written request containing sufficient facts or receives the additional information pursuant to a request for additional information to provide an answer on which the requestor may rely. However, if the Commission requests an attorney general opinion on a matter that is the subject of an advisory opinion request the deadlines are tolled until 30 days following the issuance of the attorney general opinion.

(2) The Commission shall notify the person making the request of the date the advisory opinion request is received and of the advisory opinion number.

(3) The authority granted by Occupations Code, §2001.059, may be delegated to the Charitable Bingo Operations Director or his or her designee. The Commission by separate order may delegate to an employee of the Commission the authority granted.

(4) The Commission retains the authority to issue advisory opinions pursuant to Occupations Code, §2001.059. The delegation of authority merely augments the Commission's ability to perform the duties and functions of the Commission with respect to issuing advisory opinions.

(b) Request for an Advisory Opinion.

(1) An officer, bingo chairperson, or authorized representative of a license holder or an attorney, accountant, or bookkeeper employed or retained by a license holder may request from the Commission an advisory opinion regarding compliance with this chapter and the rules of the Commission.

(2) A person requesting an advisory opinion shall do so by sending the request in writing addressed to Advisory Opinion, Charitable Bingo Operations Division, Texas Lottery Commission, and P.O. Box 16630, Austin, Texas 78761-6630 or by e-mail to Advisory.Opinion@lottery.state.tx.us.

(3) A request for an advisory opinion shall describe a specified factual situation. The request shall make clear that it is a request for an advisory opinion under Occupations Code, §2001.059, and state in sufficient detail all facts upon which the request for opinion is based to permit the Commission to provide a response to the request and shall contain the name and address of the person requesting the opinion. The request may be accompanied by supporting legal arguments and citations of law or rules as the requesting person deems pertinent. Any other person may also submit legal arguments, citations of law or rules, or legal briefs within 30 days of the date of the request for opinion.

(c) Request for Additional Information.

(1) If the Commission determines that the request for an advisory opinion does not contain sufficient facts to provide an answer, the Commission shall request additional written information from the requestor not later than ten calendar days after the request for advisory opinion was received by the Commission.

(2) If no additional information is supplied to the Commission within ten calendar days of the date of the Commission's request and the Commission determines that the request does not contain sufficient facts to provide an answer, then no opinion can be issued and the advisory opinion request file will be closed. In this instance, the requestor will be given a statement that no opinion can be expressed with regard to a given fact situation due to the failure to supply additional information.

(3) The response to a Commission request for additional information shall be addressed to Advisory Opinion, The Charitable Bingo Operations Division, Texas Lottery Commission, and P.O. Box 16630, Austin, Texas 78761-6630 or by e-mail to Advisory.Opinion@lottery.state.tx.us in order to permit the Commission to provide a response to the request.

(d) Subject of an Advisory Opinion.

(1) The Commission may refuse to issue an advisory opinion on a matter that the Commission knows to be in active litigation including a contested administrative case.

(2) An advisory opinion cannot resolve a disputed question of fact other than to provide a response which refers to the applicable statutes and rules.

(e) Response.

(1) A request for an advisory opinion that contains sufficient facts shall initially be referred to any appropriate personnel within the Charitable Bingo Operations Division for review and written comment.

(2) If the Commission determines that a request for an advisory opinion has already been answered by the Commission, then the

Commission may provide a written response to the requestor that cites the prior advisory opinion.

(3) The Commission may publish the response on its website.

(4) The response shall clearly state that the opinion is advisory in nature and is restricted to the fact situation identified in the opinion.

(5) A requestor may rely upon an advisory opinion if the conduct is substantially consistent with the opinion and the facts stated in the request.

(6) The Commission cannot grant nor confer legal authority beyond the statute or rule which is the subject of the request for advisory opinion.

(7) A previously issued advisory opinion not in accord with the current Commission statutes and rules may be modified or revoked, but in such an instance the modification or revocation shall operate prospectively only.

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

Filed with the Office of the Secretary of State on February 7, 2025.

TRD-202500439
Bob Biard
General Counsel
Texas Lottery Commission
Effective date: February 27, 2025
Proposal publication date: November 15, 2024
For further information, please call: (512) 344-5392

♦ ♦ ♦

16 TAC §402.105

The new rule is adopted under Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act, and Texas Government Code §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

§402.105. Postmarks, Receipt Marks, Timely Filing of Forms, Reports, Applications and Payment of Fees.

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

(1) Common carrier--A person who provides transportation of persons or property to members of the general public for compensation in the normal course of business.

(2) Receipt mark--An official mark printed by a common carrier recording the date and place of mailing.

(3) United States Postal Service postmark--An official mark printed over a postage stamp by the United States Postal Service, canceling the stamp and recording the date and place of mailing. A postmark does not include dates recorded on postage purchased over the internet, pre-metered stamps, or postage from postage meters unless an actual postmark is generated.

(b) General Provisions.

(1) All forms, reports, and applications required to be submitted to the commission shall be filed on or before the due date for filing the form, report, or application.

(2) All payments required to be remitted to the commission shall be paid on or before the due date for making such payments.

(3) If the due date falls on a Saturday, Sunday, or legal holiday, the due date is the next business day.

(4) If a form, report, application, or payment is postmarked or receipt-marked on or before the due date, it will be considered timely filed.

(c) Timely Filing or Payment- Postmark or Receipt Mark.

(1) To determine whether a form, report, or application has been timely filed, or a payment timely made, the date of the United States Postal Service postmark or a receipt mark showing when a report or payment was delivered to a common carrier or contract carrier will be prima facie evidence of the date the filing or payment was made, so long as the envelope, or common carrier or contract carrier documentation, reflects a valid commission address.

(2) If a report or payment is received through the United States Postal Service and does not have a postmark, or is received through a common carrier and does not have a receipt mark, the date of the filing or payment is presumed, in the absence of evidence supporting the assertion of a different filing date, to be:

(A) if received through the United States Postal Service, three days prior to the date on which the form, report, application, or payment is physically received by the commission, as evidenced by commission records; or

(B) if received through a common carrier, one day prior to the date on which the report or payment is physically received by the commission, as evidence by commission records.

(3) If a licensee penalized for late filing or late payment can provide a postmark or receipt mark complying with the requirements of timely filing and timely paying but, through no fault of the licensee, the form, report, application, or payment arrived after the due date, the filing or payment will be considered timely. The licensee's testimony that the form, report, application, or payment was sent will not be considered as evidence of timely filing or payment.

(4) A form, report, application, or payment that is submitted electronically will be considered filed or paid on the date it is received.

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

Filed with the Office of the Secretary of State on February 7, 2025.

TRD-202500440
Bob Biard
General Counsel
Texas Lottery Commission
Effective date: February 27, 2025
Proposal publication date: November 15, 2024
For further information, please call: (512) 344-5392

♦ ♦ ♦

SUBCHAPTER B. CONDUCT OF BINGO

16 TAC §§402.200 - 402.203, 402.210, 402.212

The amendments are adopted under Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act, and Texas Government Code §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

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

Filed with the Office of the Secretary of State on February 7, 2025.

TRD-202500441
Bob Biard
General Counsel
Texas Lottery Commission
Effective date: February 27, 2025
Proposal publication date: November 15, 2024
For further information, please call: (512) 344-5392

♦ ♦ ♦

SUBCHAPTER C. BINGO GAMES AND EQUIPMENT

16 TAC §402.301, §402.303

The repeals are adopted under Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act, and Texas Government Code §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

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

Filed with the Office of the Secretary of State on February 7, 2025.

TRD-202500438
Bob Biard
General Counsel
Texas Lottery Commission
Effective date: February 27, 2025
Proposal publication date: November 15, 2024
For further information, please call: (512) 344-5392

♦ ♦ ♦

16 TAC §§402.301 - 402.311

The new rules are adopted under Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act, and Texas Government Code §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

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

Filed with the Office of the Secretary of State on February 7, 2025.

TRD-202500443
Bob Biard
General Counsel
Texas Lottery Commission
Effective date: February 27, 2025
Proposal publication date: November 15, 2024
For further information, please call: (512) 344-5392

♦ ♦ ♦

16 TAC §§402.300, 402.324 - 402.326, 402.334

The amendments are adopted under Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act, and Texas Government Code §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

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

Filed with the Office of the Secretary of State on February 7, 2025.

TRD-202500444
Bob Biard
General Counsel
Texas Lottery Commission
Effective date: February 27, 2025
Proposal publication date: November 15, 2024
For further information, please call: (512) 344-5392

♦ ♦ ♦

SUBCHAPTER D. LICENSING REQUIREMENTS

16 TAC §§402.400 - 402.402, 402.404, 402.411, 402.443

The amendments are adopted under Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act, and Texas Government Code §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

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

Filed with the Office of the Secretary of State on February 7, 2025.

TRD-202500445
Bob Biard
General Counsel
Texas Lottery Commission
Effective date: February 27, 2025
Proposal publication date: November 15, 2024
For further information, please call: (512) 344-5392

♦ ♦ ♦

SUBCHAPTER E. BOOKS AND RECORDS

16 TAC §402.500, §402.502

The amendments are adopted under Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act, and Texas Government Code §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

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

Filed with the Office of the Secretary of State on February 7, 2025.

TRD-202500446
Bob Biard
General Counsel
Texas Lottery Commission
Effective date: February 27, 2025
Proposal publication date: November 15, 2024
For further information, please call: (512) 344-5392

♦ ♦ ♦

SUBCHAPTER F. PAYMENT OF TAXES, PRIZE FEES AND BONDS

16 TAC §§402.600 - 402.602

The amendments are adopted under Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act, and Texas Government Code §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

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

Filed with the Office of the Secretary of State on February 7, 2025.

TRD-202500447
Bob Biard
General Counsel
Texas Lottery Commission
Effective date: February 27, 2025
Proposal publication date: November 15, 2024
For further information, please call: (512) 344-5392

♦ ♦ ♦

SUBCHAPTER G. COMPLIANCE AND ENFORCEMENT

16 TAC §§402.702, 402.703, 402.706, 402.707

The amendments are adopted under Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act, and Texas Government Code §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

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

Filed with the Office of the Secretary of State on February 7, 2025.

TRD-202500448
Bob Biard
General Counsel
Texas Lottery Commission
Effective date: February 27, 2025
Proposal publication date: November 15, 2024
For further information, please call: (512) 344-5392

♦ ♦ ♦

TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 33. EARLY AND PERIODIC SCREENING, DIAGNOSIS, AND TREATMENT

SUBCHAPTER F. DENTAL SERVICES

25 TAC §33.70

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §33.70, concerning Dental Preventive and Treatment Services.

The amendment to §33.70 is adopted with changes to the proposed text as published in the October 25, 2024, issue of the *Texas Register* (49 TexReg 8523). This rule will be republished.

BACKGROUND AND JUSTIFICATION

The amendment to §33.70 is necessary to comply with House Bill (H.B.) 2056, 87th Legislature, Regular Session, 2021.

H.B. 2056 added a requirement for providers to be reimbursed for teledentistry dental services by amending Texas Government Code §531.0216 and §531.02162(b) and (c) and adding Texas Government Code §531.02172. The amendment to §33.70 implements teledentistry dental services under Medicaid in the Texas Health Steps Program.

The Texas State Board of Dental Examiners adopted rules in 2022 to regulate the practice of teledentistry. HHSC waited until the Texas State Board of Dental Examiners rules were adopted to propose the amendment to §33.70. While the Texas State Board of Dental Examiners rules were being adopted, HHSC analyzed which dental services and treatments, available through the Texas Health Steps Program, could safely and effectively be provided as a teledentistry dental service to clients enrolled in the program.

The amendment to §33.70 requires dental providers to perform dental services as described in the Texas Medicaid Provider Procedures Manual. The amendment allows dental providers to conduct an oral evaluation as a teledentistry dental service, as

defined in Texas Occupations Code §111.001, for established clients, using synchronous audiovisual technologies.

The amendment allows flexibility for an established client and the dentist to use synchronous audiovisual technologies to conduct an oral evaluation, and thereby, makes oral evaluations more easily available to and prevents unnecessary travel for clients in the Texas Health Steps Program.

COMMENTS

The 31-day comment period ended November 25, 2024.

During this period, HHSC did not receive any comments regarding the proposed rule.

HHSC made a minor editorial change to §33.70(b) to cite the more specific location of a cross-referenced rule by replacing "in this title" with "in this subchapter." These changes were not in response to a public comment.

STATUTORY AUTHORITY

The amendment to §33.70 is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.0216, which provides that the Executive Commissioner of HHSC shall adopt rules to develop and implement a system to reimburse providers of services under Medicaid for services performed using teledentistry dental services; Texas Government Code §531.02162, which provides that the Executive Commissioner of HHSC shall by rule establish policies that permit reimbursement under Medicaid for services provided through teledentistry dental services to children with special health care needs; and Texas Government Code §531.02172, which provides HHSC by rule shall require each health and human services agency that administers a part of the Medicaid program to provide Medicaid reimbursement for teledentistry dental services provided by a dentist licensed to practice dentistry in this state.

§33.70. Dental Preventive and Treatment Services.

(a) In addition to dental check-ups, which may include radiographs and other diagnostic tests, clients are eligible to receive the following dental services and treatment, as described in detail in the TMPPM:

(1) diagnostic;

(2) preventive;

(3) therapeutic (including orthodontic);

(4) emergency; and

(5) medically necessary treatment.

(b) Prior authorization may be required for certain services and documentation requirements must be met, as described in detail in the TMPPM. All dental services are subject to utilization review, as described in §33.72 of this subchapter (relating to Dental Utilization Reviews).

(c) THSteps dental providers are required to perform dental services as described in detail in the TMPPM.

(d) THSteps dental providers may conduct an oral evaluation as a teledentistry dental service, as defined in Texas Occupations Code §111.001, for established clients using synchronous audiovisual technologies.

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

Filed with the Office of the Secretary of State on February 3, 2025.

TRD-202500371
Karen Ray
Chief Counsel
Department of State Health Services
Effective date: March 3, 2025
Proposal publication date: October 25, 2024
For further information, please call: (512) 438-2910

♦ ♦ ♦

CHAPTER 37. MATERNAL AND INFANT HEALTH SERVICES

SUBCHAPTER P. SURVEILLANCE AND CONTROL OF BIRTH DEFECTS

25 TAC §37.301

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §37.301, concerning Purpose.

Section 37.301 is adopted without changes to the proposed text as published in the November 8, 2024, issue of the *Texas Register* (49 TexReg 8828). This rule will not be republished.

BACKGROUND AND JUSTIFICATION

House Bill (H.B.) 4611, 88th Legislature, Regular Session, 2023, made certain non-substantive revisions to Subtitle I, Title 4, Texas Government Code, which governs HHSC, Medicaid, and other social services as part of the legislature's ongoing statutory revision program. This adopted amendment updates citations in the rules to the Texas Government Code sections that become effective on April 1, 2025.

COMMENTS

The 31-day comment period ended December 9, 2024. During this period, HHSC did not receive any comments regarding the proposed rule.

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §1001.075, which authorize the Executive Commissioner of HHSC to adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code Chapter 1001.

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

Filed with the Office of the Secretary of State on February 3, 2025.

TRD-202500372

Cynthia Hernandez
General Counsel
Department of State Health Services
Effective date: April 1, 2025
Proposal publication date: November 8, 2024
For further information, please call: (512) 221-9021

♦ ♦ ♦

CHAPTER 103. INJURY PREVENTION AND CONTROL

25 TAC §103.1

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §103.1, concerning Purpose and Purview.

Section 103.1 is adopted without changes to the proposed text as published in the November 8, 2024, issue of the *Texas Register* (49 TexReg 8829). This rule will not be republished.

BACKGROUND AND JUSTIFICATION

House Bill (H.B.) 4611, 88th Legislature, Regular Session, 2023, made certain non-substantive revisions to Subtitle I, Title 4, Texas Government Code, which governs HHSC, Medicaid, and other social services as part of the legislature's ongoing statutory revision program. This adopted amendment updates citations in the rules to the Texas Government Code sections that become effective on April 1, 2025.

COMMENTS

The 31-day comment period ended December 9, 2024. During this period, HHSC did not receive any comments regarding the proposed rule.

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §1001.075, which authorize the Executive Commissioner of HHSC to adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code Chapter 1001.

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

Filed with the Office of the Secretary of State on February 3, 2025.

TRD-202500373
Cynthia Hernandez
General Counsel
Department of State Health Services
Effective date: April 1, 2025
Proposal publication date: November 8, 2024
For further information, please call: (512) 221-9021

♦ ♦ ♦

CHAPTER 221. MEAT SAFETY ASSURANCE

SUBCHAPTER B. MEAT AND POULTRY INSPECTION

25 TAC §§221.11 - 221.16

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), adopts amendments to §221.11, concerning Federal Regulations on Meat and Poultry Inspection; §221.12, concerning Meat and Poultry Inspection; §221.13, concerning Enforcement and Penalties; §221.14, concerning Custom Exempt Slaughter and Processing; Animal Share and Low-Volume Poultry or Rabbit Slaughter Operations; §221.15, concerning Inspection of Alternate Source Food Animals; and §221.16, concerning Fees. The amendments to §§221.11 - 221.16, are adopted without changes to the proposed text as published in the November 22, 2024, issue of the *Texas Register* (49 TexReg 9472) and therefore will not be republished.

BACKGROUND AND JUSTIFICATION

The purpose of the adopted amendments is to implement Senate Bill (S.B.) 691, 88th Legislature, Regular Session, 2023, that amended Texas Health and Safety Code Chapter 433, Subchapter A, by adding §433.0065, relating to an animal share exemption for certain meat and meat food products and providing for a civil penalty. The amendments also provide guidance regarding how producers may engage in the slaughtering, processing, labeling, and distribution of meat and meat food products produced for members of an animal share while remaining in compliance with state and federal laws and the regulatory requirements of 25 Texas Administrative Code (TAC) §221.14.

Additionally, the adoption implements S.B. 664, 88th Legislature, Regular Session, 2023, that amended Texas Health and Safety Code Chapter 431, Subchapter D, by adding §431.0805, that defines analogue and cell-cultured food products as distinguished from the definitions of "meat," "poultry," "meat food products," and "poultry food products." The amendments update, correct, improve, and clarify the rule language and incorporate plain language where appropriate.

COMMENTS

The 31-day comment period ended on December 23, 2024. During this period, DSHS did not receive any comments regarding the proposed amendments.

STATUTORY AUTHORITY

The amendments are authorized by Texas Health and Safety Code Chapters 431 and 433, which direct the Executive Commissioner of HHSC to adopt rules to implement legislation; Texas Government Code §531.0055 and Texas Health and Safety Code §1001.075, which authorize the Executive Commissioner of HHSC to adopt rules necessary for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code Chapter 1001.

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

Filed with the Office of the Secretary of State on February 5, 2025.

TRD-202500411

Cynthia Hernandez
General Counsel
Department of State Health Services
Effective date: February 25, 2025
Proposal publication date: November 22, 2024
For further information, please call: (512) 834-6760

♦ ♦ ♦

TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

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

The Texas Health and Human Services Commission (HHSC) adopts amendments to §260.61, concerning Process for Enrollment of an Individual; and §260.219, concerning Reporting Allegations of Abuse, Neglect, or Exploitation of an Individual.

The amendments to §260.61 and §260.219 are adopted without changes to the proposed text as published in the November 1, 2024, issue of the *Texas Register* (49 TexReg 8689). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

The amendments are necessary to comply with Texas Human Resources Code §48.051(b-1), added by House Bill (H.B.) 4696, 88th Legislature, Regular Session, 2023. Section 48.051 requires a person, including an officer, employee, agent, contractor, or subcontractor of a home and community support services agency (HCSSA) licensed under Texas Health and Safety Code Chapter 142, who has cause to believe that an individual receiving services from the HCSSA, is being or has been subjected to abuse, neglect, or exploitation (ANE), to immediately report it to HHSC.

A program provider in the Deaf Blind Multiple Disabilities (DBMD) Program must be licensed as a HCSSA. To comply with Section 48.051, the amendments change the current DBMD Program ANE reporting requirement from the Texas Department of Family and Protective Services (DFPS) to HHSC. Transferring the function relating to the intake of reports of ANE from DFPS to HHSC creates a more streamlined process because HHSC is currently responsible for investigating these reports in the DBMD Program.

Therefore, the amendments remove all references to DFPS, the DFPS Abuse Hotline toll-free telephone number, and the DFPS Abuse Hotline website and replace them with references to HHSC, the HHSC toll-free telephone number, and the HHSC online Texas Unified Licensure Information Portal. The amendment to §260.61 replaces a reference to Texas Administrative Code (TAC) Title 40, §49.309 that was administratively transferred to TAC Title 26, §52.117, relating to Complaint Process.

COMMENTS

The 31-day comment period ended December 2, 2024.

During this period, HHSC did not receive any comments regarding the proposed rules.

SUBCHAPTER B. ELIGIBILITY, ENROLLMENT, AND REVIEW
DIVISION 2. ENROLLMENT PROCESS, PERSON-CENTERED PLANNING, AND REQUIREMENTS FOR SERVICE SETTINGS

26 TAC §260.61

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021, which provides HHSC with the authority to administer the federal medical assistance program in Texas and to adopt rules and standards for program administration.

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

Filed with the Office of the Secretary of State on February 7, 2025.

TRD-202500451
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: February 27, 2025
Proposal publication date: November 1, 2024
For further information, please call: (512) 438-2910

♦ ♦ ♦

SUBCHAPTER D. ADDITIONAL PROGRAM PROVIDER PROVISIONS

26 TAC §260.219

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021, which provides HHSC with the authority to administer the federal medical assistance program in Texas and to adopt rules and standards for program administration.

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

Filed with the Office of the Secretary of State on February 7, 2025.

TRD-202500452

Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: February 27, 2025
Proposal publication date: November 1, 2024
For further information, please call: (512) 438-2910

♦ ♦ ♦

CHAPTER 306. BEHAVIORAL HEALTH DELIVERY SYSTEM

The Texas Health and Human Services Commission (HHSC) adopts amendments to §306.151, relating to Purpose; §306.152, relating to Application and Responsibility for Compliance; §306.153, relating to Definitions; §306.154, relating to Notification and Appeals Process for Local Mental Health Authority or Local Behavioral Health Authority Services; §306.161, relating to Screening and Assessment; §306.162, relating to Determining County of Residence; §306.163, relating to Most Appropriate and Available Treatment Options; §306.171, relating to General Admission Criteria for a State Hospital or a Facility with a Contracted Psychiatric Bed; §306.172, relating to Admission Criteria for Maximum-Security Units; §306.173, relating to Admission Criteria for an Adolescent Forensic Unit; §306.174, relating to Admission Criteria for Waco Center for Youth; §306.175, relating to Voluntary Admission Criteria for a State Hospital or a Facility with a Contracted Psychiatric Bed; §306.176, relating to Admission Criteria for a State Hospital or a Facility with a Contracted Psychiatric Bed for Emergency Detention; §306.177, relating to Admission Criteria Under Order of Protective Custody or Court-ordered Inpatient Mental Health Services; §306.178, relating to Voluntary Treatment Following Involuntary Admission; §306.191, relating to Transfers Between State Hospitals; §306.192, relating to Transfers Between a State Hospital and a State Supported Living Center; §306.193, relating to Transfers Between a State Hospital and an Out-of-State Facility; §306.194, relating to Transfers Between a State Hospital and Another Facility in Texas; §306.195, relating to Changing Local Mental Health Authorities or Local Behavioral Health Authorities; §306.201, relating to Discharge Planning; §306.202, relating to Special Considerations for Discharge Planning; §306.203, relating to Discharge of an Individual Voluntarily Receiving Inpatient Treatment; §306.204, relating to Discharge of an Individual Involuntarily Receiving Treatment; §306.205, relating to Pass or Furlough from a State Hospital or a Facility with a Contracted Psychiatric Bed; §306.207, relating to Post Discharge or Furlough: Contact and Implementation of the Recovery or Treatment Plan; and §306.221, relating to Screening and Intake Assessment Training Requirements at a State Hospital and a Facility with a Contracted Psychiatric Bed.

HHSC adopts new §306.155, relating to Local Mental Health Authority, Local Behavioral Health Authority, and Continuity of Care Liaison Responsibilities; §306.361, relating to Purpose; §306.363, relating to Application; §306.365, relating to Definitions; §306.367, relating to General Provisions; and §306.369, relating to Documentation Requirements.

HHSC adopts the repeal of §306.206, relating to Absence for Trial Placement.

Sections 306.151, 306.153 - 306.155, 306.162, 306.163, 306.171, 306.175 - 306.177, 306.191, 306.194, 306.195, 306.201 - 306.205, 306.207, 306.221, 306.361, 306.363, 306.365, 306.367, and 306.369 are adopted with changes to the proposed text as published in the September 13, 2024, issue of the *Texas Register* (49 TexReg 7192). These rules will be republished.

Sections 306.152, 306.161, 306.172 - 306.174, 306.178, 306.192, 306.193 and 306.206 are adopted without changes to the proposed text as published in the September 13, 2024, issue of the *Texas Register* (49 TexReg 7192). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

The Texas Health and Human Services Commission (HHSC) adopts amendments and the repeal of a rule in the Texas Administrative Code (TAC), Title 26 Chapter 306, Subchapter D relating to Mental Health Services--Admission, Continuity, and Discharge, and adopts new rules in 26 TAC Chapter 306, Subchapter H relating to Behavioral Health Services--Telecommunications. The adopted rules are necessary to implement Senate Bill (S.B.) 26, 88th Legislature, Regular Session, 2023 and House Bill (H.B.) 4, 87th Legislature, Regular Session, 2021.

S.B. 26 requires HHSC to adopt or amend existing rules to address a local mental health authority's (LMHA's) responsibility for ensuring the successful transition of patients determined ready for discharge from an HHSC mental health facility. This adoption also includes application to a local behavioral health authority (LBHA). To implement S.B. 26, the adopted rules:

Require state hospitals to participate in joint discharge planning with an LMHA or LBHA;

Require coordination between the LMHAs or LBHAs and the state hospital to determine appropriate community services for a patient;

Require an LMHA or LBHA to arrange for the provision of services upon discharge;

Require the LMHA's or LBHA's transition support services to complement joint discharge planning efforts;

Require each state hospital to designate at least one employee to provide transition support services for patients determined medically appropriate for discharge;

Require each state hospital to concentrate transition support services on patients admitted and discharged multiple times within 30 days, or patients who had a long-term stay (more than 365 consecutive days); and

Allow voluntary admission to an inpatient mental health facility, including a state hospital, only if space is available.

To implement H.B. 4, the adopted rules ensure that individuals receiving HHSC-funded behavioral health services have the option to receive services as telemedicine or telehealth services, including using an audio-only platform, to the extent it is clinically effective and cost-effective.

Additionally, the adopted rules clarify statutory requirements; add, remove, and update definitions; delete references to managed care organizations (MCOs); update Medicaid-related information; update and add cross-references; and make grammatical and editorial changes for understanding, accuracy, and uniformity.

COMMENTS

The 31-day comment period ended on October 14, 2024.

During this period, HHSC received comments regarding the proposed rules from one commenter, the Texas Council of Community Centers. A summary of comments relating to the rules and HHSC's responses follows.

Comment: A commenter recommended fully aligning the continuity of care (CoC) liaison responsibilities in §306.155 with the responsibilities outlined in the Performance Contract Notebook.

Response: HHSC agrees with the commenter that the proposed rule should align with the responsibilities outlined in the Performance Contract Notebook. HHSC will use the CoC liaison responsibilities listed in §306.155 to inform updates to the Performance Contract Notebook.

Comment: A commenter recommended amending §306.155(16) to allow uniform assessments completed within 10 days before a planned discharge to still apply in circumstances in which a planned discharge has been delayed.

Response: HHSC declines to revise the rule in response to the comment. Due to the potential for changes in mental health status, particularly in cases of delayed discharge, a uniform assessment must be conducted within ten business days before discharge. This rule reinforces the importance of using the most current clinical assessment and supports HHSC policy that an Adults Needs and Strengths Assessment or Child and Adolescent Needs and Strength be valid for only 10 days.

Comment: A commenter recommended HHSC consider discussing an increase of the seven-day timeframe detailed in §306.204(c)(3)(B), regarding a state hospital or facility with an HHSC-funded contracted psychiatric bed's responsibility to provide or pay for no more than a seven-day supply of an individual's medications.

Response: HHSC declines to revise the rule in response to the comment. Texas Health and Safety Code §574.081(c-2) currently provides that "[t]he executive commissioner may not adopt rules requiring a mental health facility to provide or pay for psychoactive medication for more than seven days after furlough or discharge."

HHSC revised §306.151 to spell out acronyms the first time used in the section to improve understanding.

HHSC revised §306.153(16), (66), and (75); §306.171(e); §306.175(a)(2)(A) and (B) and (b)(1); §306.175(e)(2), (g), and (h)(1); §306.176(d)(3) and (e); §306.177(c); §306.191(a), (b)(4), and (c); §306.194(a); §306.195(a)(1)(C), (a)(2)(B), (a)(3), (a)(4), and (b); §306.201(b), (c)(2), (c)(3)(A) and (B), (c)(4) - (6), (d)(1)(B), (d)(2) and (3), (e) and (e)(1), (g)(1), (h)(1)(B)(v) and (vii), and (k)(5); §306.202(c)(5)(B) and (c)(6)(A)(iii); §306.203(b)(2) and (d)(2)(C)(i)(II); §306.203(d)(2)(C)(i)(II); §306.205(d)(2)(B) and (C); §306.367(d)(4); and §306.369(b)(1) by making editorial changes to clarify the meaning of these rules referring to the "LAR."

HHSC revised §306.153(21) to update the Texas Government Code citation from §531.055 to Chapter 522, Subchapter D; §306.153(68) to update the Texas Government Code citation from §531.251 to §547.0051; and §306.361 to update the Texas Government Code citation from §531.02161 to §548.0002. The updates implement H.B. 4611, 88th Legislature, Regular Session, 2023, which makes non-substantive revisions to the Texas Government Code that make the statute more accessible, understandable, and usable.

HHSC revised §306.153(39) and §306.365(7) to add "or in-person" so that when the term "in-person" is used in a rule it has the same meaning as "in person."

HHSC revised §306.153(60), §306.155(5), §306.194(a), §306.201(c)(2), §306.201(d)(1)(C), §306.201(h)(3)(B)(ii) and (iii) to make punctuation changes to correct grammar and improve clarity.

HHSC revised §306.153(62) to change "Level" to "level" to use the spelling of "PASRR level I screening" used in 26 TAC §303.102 where the term in §306.153(62) is defined.

HHSC revised §306.154(c) to change the reference to 25 TAC §401.464 to 26 TAC §301.155 to align with the administrative transfer of the referenced rule.

HHSC revised §306.154(d) to clarify that an individual may obtain additional information and resources both on the HHSC website and by calling the Ombudsman.

HHSC revised §306.155(16) - (19) to clarify the requirement for a CoC liaison to schedule appointments in advance for needed programs and services in a new paragraph (17). HHSC then renumbered paragraphs (17) - (19) as paragraphs (18) - (20), which required revising §306.195(a)(1)(B) to change the reference to §306.155(19) to §306.155(20).

HHSC revised §306.162(b)(3) to clarify that the transferring LMHA or LBHA will hold a transfer meeting with the receiving LMHA or LBHA and the minor's LAR. This change improves the readability of this rule and clarifies the role of the transferring LMHA or LBHA.

HHSC revised §306.163(f)(2) to change the reference to 25 TAC §412.106(c)(2) to 26 TAC §301.111(c)(2) to align with the administrative transfer of the referenced rule.

HHSC revised §306.175(a)(3)(A) - (D) to change references to 25 TAC Chapter 404, Subchapter E, 25 TAC Chapter 405, Subchapter E, 25 TAC Chapter 414, Subchapter I, and 25 TAC Chapter 415, Subchapter F to 26 TAC Chapter 320, Subchapter A, 26 TAC Chapter 307, Subchapter I, 26 TAC Chapter 320, Subchapter B, and 26 TAC Chapter 320, Subchapter C, respectively.

HHSC revised §306.175(c)(1) by replacing "each individual" with "an individual" to correct the grammar and improve clarity.

HHSC revised §306.175(g)(2) to change the reference to 25 TAC Chapter 404, Subchapter E, to 26 TAC Chapter 320, Subchapter A to align with the administrative transfer of the referenced rules.

HHSC revised §306.176(a)(1) to clarify the rule that an individual of any age is transported to the state hospital or CPB by a peace officer or "by" emergency medical services personnel.

HHSC revised §306.176(e)(2) - (5) to list all of the written and oral explanations that must be provided to the individual or LAR in new subparagraphs (A) - (D) under subsection (e)(2). Included in these revisions, HHSC changed the reference to 25 TAC Chapter 404, Subchapter E, to 26 TAC Chapter 320, Subchapter A to align with the administrative transfer of the referenced rules.

HHSC revised §306.177(c) to clarify that it is the intake assessment that must include what is listed in paragraphs (1) and (2) of the rule. HHSC revised §306.177(c)(2) to clarify that a written and oral explanation is "provided to the individual or LAR." HHSC also changed proposed §306.177(c)(2) - (4) to (c)(2)(A) - (C) to move the list of all the written and oral explanations that must be provided under (c)(2). In new subparagraph (A), under (c)(2), HHSC changed the reference to 25 TAC Chapter 404,

Subchapter E, to 26 TAC Chapter 320, Subchapter A to align with the administrative transfer of the referenced rules.

HHSC revised §306.191(c) to add a parenthetical needed after the word "Bed" in the title of §306.175(a)(1).

HHSC revised §306.201(c)(4) to change "services and supports recommended" to "recommended services and supports." This change is needed to improve the readability of this rule.

HHSC revised §306.201(h)(2) to add "or LAR" in the rule after "An individual" to clarify that an individual or LAR may request additional records.

HHSC revised §306.201(k)(5) to change "refuse" to "refuses" and §306.202(g)(1)(C) to add "who is" in front of "discharged." These grammatical changes are needed to improve the readability of these rules.

HHSC revised §306.202(a) by removing "the" after "To prevent," and §306.202(g)(1)(C) to add "who is," in front of "discharged, to correct the grammar and clarify the rules.

HHSC revised §306.203(b) to reorganize the rule text to use active voice. The change is made to conform with the HHSC rule drafting guidelines.

HHSC revised §306.203(c)(2)(B) and (d)(1)(A), and §306.204(b)(2) and (3), to remove "time" in front of "period" to correct the grammar and clarify the rules.

HHSC revised §306.205(a)(1) to change "notifies" to "must notify" to clarify the rule imposes a requirement for the state hospital or contracted psychiatric bed (CPB) to notify the committing court of the individual's absence.

HHSC revised §306.205(a)(3)(B) to add a period at the end of the rule to correct the rule's formatting.

HHSC revised §306.207(c) to change "must identify" to "identifies" because the sentence is describing a certain situation as a precondition to the requirements for the designated LMHA or LBHA.

HHSC revised §306.221(a)(1)(B) to change the reference to 25 TAC Chapter 404, Subchapter E, to 26 TAC Chapter 320, Subchapter A. HHSC also revised §306.221(a)(2)(B) to change the reference to 25 TAC §404.165 to 26 TAC §320.29 to align with the administrative transfer of the referenced rule.

HHSC revised §306.361 to spell out "HHSC" to identify what the acronym means when used in §306.361 and §306.363.

HHSC revised §306.363 to spell out the acronyms "LMHA" and "LBHA" the first time used to identify what the acronyms mean when used in the rule. HHSC revised §306.363(3), (4), and (5) to add "HHSC-funded" in front of the references to a "substance use intervention provider" and a "substance use treatment provider." HHSC also revised §306.363 to make minor edits to change plural nouns to singular nouns per HHSC's rulemaking guidelines.

HHSC revised §306.365(11) to add "an HHSC-funded substance use intervention provider" as another type of "provider" in a new subparagraph (D), renumbered proposed (11)(D) to (11)(E), and added "an HHSC-funded" in front of the reference to a substance use treatment provider.

HHSC revised §306.367(b) and §306.369(c) to change "providers" to "provider" to use singular instead of plural per HHSC's rulemaking guidelines.

HHSC revised §306.367(d)(2) to use "in-person" instead of "in person" because "in-person" in this rule is used as a term to describe the type of service delivery.

HHSC revised §306.369(b) to replace "Prior to" with "Before" to clarify the meaning of the rule by using plain language.

SUBCHAPTER D. MENTAL HEALTH SERVICES--ADMISSION, DISCHARGE, AND CONTINUITY OF CARE

DIVISION 1. GENERAL PROVISIONS

26 TAC §§306.151 - 306.155

STATUTORY AUTHORITY

The amendments and new sections are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, §531.008, which requires the Executive Commissioner of HHSC to establish a division for administering state facilities, including state hospitals and state supported living centers, and §531.02161, which requires the Executive Commissioner of HHSC to, by rule, develop and implement a system that ensures behavioral health services may be provided using an audio-only platform to the extent permitted by state and federal law and to the extent it is cost-effective and clinically effective; Health and Safety Code §533.014 which requires the Executive Commissioner of HHSC to adopt rules relating to LMHA treatment responsibilities, §533.0356 which allows the Executive Commissioner to adopt rules governing LBHAs, §533A.0355 which requires the Executive Commissioner of HHSC to adopt rules establishing the roles and responsibilities of local intellectual and developmental disability authorities, §534.052 which requires the Executive Commissioner of HHSC to adopt rules necessary and appropriate to ensure the adequate provision of community-based services through LMHAs, §534.0535 which requires the Executive Commissioner of HHSC to adopt rules that require continuity of services and planning for patient care between HHSC facilities and LMHAs, and §552.001 which provides HHSC with authority to operate the state hospitals.

§306.151. Purpose.

(a) The purpose of this subchapter is to:

(1) provide requirements on admission, discharge, and continuity of care; and

(2) address the interrelated roles and responsibilities of state hospitals, facilities with contracted psychiatric beds (CPBs), local mental health authorities (LMHAs), local behavioral health authorities (LBHAs), and local intellectual and developmental disability authorities (LIDDAs) in the delivery of mental health and co-occurring substance use disorder (SUD) services to individuals.

(b) This subchapter establishes criteria for individuals receiving mental health services and SUD services and provides guidelines related to:

(1) clinically appropriate placement in an inpatient, residential, or community setting based on screening and assessment of the individual;

(2) timely access to evaluation and mental health, SUD, and other services in the least restrictive and most appropriate setting; and

(3) transitioning care between service types and providers for individuals receiving mental health or SUD services at state hospitals, CPBs, LMHAs, LBHAs, and LIDDAS, effectively and without interruption.

§306.153. Definitions.

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

(1) Absence--When an individual, previously admitted to a state hospital or CPB, and not discharged from the admitting facility, is physically away from the facility for any reason, including hospitalization, home visit, special activity, or unauthorized departure.

(2) Admission--Includes:

(A) an individual's acceptance to a state hospital or CPB for voluntary or involuntary inpatient or residential treatment services; or

(B) the acceptance of an individual in the mental health priority population into LMHA or LBHA services.

(3) Adolescent--An individual who is 13 years of age, but younger than 18 years of age.

(4) Adult--An individual who is at least 18 years of age or older.

(5) Advance directive--As used in this subchapter, includes:

(A) an instruction made under Texas Health and Safety Code Chapter 166; or

(B) a declaration for mental health treatment made in accordance with Civil Practice and Remedies Code Chapter 137.

(6) Alternate provider--An entity that provides mental health services or SUD services in the community but does not provide these services under contract with an LMHA or LBHA.

(7) APRN--Advanced practice registered nurse. A registered nurse licensed by the Texas Board of Nursing to practice as an advanced practice registered nurse as provided by Texas Occupations Code §301.152.

(8) Assessment--The administrative process a state hospital or CPB uses to gather information from an individual, including a medical history and the concerns for which the individual is seeking treatment, to determine whether the individual should be examined by a physician to determine if admission is clinically justified, as defined by Texas Health and Safety Code §572.0025(h)(2).

(9) Assessment professional--In accordance with Texas Health and Safety Code §572.0025(c) - (d), a staff member of a state hospital or CPB, whose responsibilities include conducting the intake assessment described in §306.175(g) of this subchapter (relating to Voluntary Admission Criteria for a State Hospital or a Facility with a Contracted Psychiatric Bed) and §306.176(e) of this subchapter (relating to Admission Criteria for a State Hospital or a Facility with a Contracted Psychiatric Bed for Emergency Detention), and who is:

(A) a physician licensed to practice medicine under Texas Occupations Code Chapter 155;

(B) a physician assistant licensed under Texas Occupations Code Chapter 204;

(C) an APRN licensed under Texas Occupations Code Chapter 301;

(D) a registered nurse licensed under Texas Occupations Code Chapter 301;

(E) a psychologist licensed under Texas Occupations Code Chapter 501;

(F) a psychological associate licensed under Texas Occupations Code Chapter 501;

(G) a licensed professional counselor licensed under Texas Occupations Code Chapter 503;

(H) a licensed social worker licensed under Texas Occupations Code Chapter 505; or

(I) a licensed marriage and family therapist licensed under Texas Occupations Code Chapter 502.

(10) Audio-only technology--A synchronous interactive, two-way audio communication that uses only sound and that conforms to privacy requirements of the Health Insurance Portability and Accountability Act. Audio-only includes the use of telephonic communication. Audio-only does not include audiovisual or in-person communication.

(11) Audiovisual technology--A synchronous interactive, two-way audio and video communication that conforms to privacy requirements under the Health Insurance Portability and Accountability Act. Audiovisual does not include audio-only or in-person communication.

(12) Business day--Any day except a Saturday, Sunday, or legal holiday listed in Texas Government Code §662.021.

(13) Capacity--An individual's ability to understand and appreciate the nature and consequences of a decision regarding the individual's medical treatment, and the ability of the individual to reach an informed decision in the matter.

(14) Child--An individual who is at least three years of age, but younger than 13 years of age.

(15) CoC liaison--Continuity of care liaison. A dedicated full-time staff member who is a QMHP-CS or LPHA that facilitates continuity of care.

(16) Continuity of care--Activities designed to ensure an individual is provided uninterrupted services during a transition between inpatient and outpatient services and that assist the individual and LAR, if applicable, in identifying, accessing, and coordinating LMHA or LBHA services and other appropriate services and supports in the community needed by the individual, including:

(A) assisting with admissions and discharges;

(B) facilitating access to appropriate services and supports in the community, including identifying and connecting the individual with community resources, and coordinating the provision of services;

(C) participating in developing and reviewing the individual's recovery or treatment plan;

(D) promoting implementation of the individual's recovery or treatment plan; and

(E) coordinating notification of continuity of care services between the individual and the individual's family and any other person providing support as authorized by the individual and LAR, if applicable.

(17) Continuity of care worker--A LIDDA staff member responsible for providing continuity of care services.

(18) COPSD--Co-occurring psychiatric and substance use disorder.

(19) COPSD model--An application of evidence-based practices for an individual diagnosed with co-occurring conditions of psychiatric and substance use disorder.

(20) CPB--Contracted psychiatric bed. A facility with an HHSC-contracted psychiatric bed that:

(A) includes a community mental health hospital and a private psychiatric bed that:

(i) is authorized by an LMHA or LBHA; and

(ii) is used for inpatient care in the community; and

(B) does not include a crisis respite unit, crisis residential unit, an extended observation unit, or a crisis stabilization unit.

(21) CRCG--Community Resource Coordination Group. A local interagency group comprised of public and private providers who collaborate to develop individualized service plans for individuals whose needs may be met through interagency coordination and cooperation. CRCGs are established and operate in accordance with a Memorandum of Understanding on Services for Persons Needing Multiagency Services, as required by Texas Government Code Chapter 522, Subchapter D.

(22) Crisis--A situation in which:

(A) an individual presents an immediate danger to self or others;

(B) an individual's mental or physical health is at risk of serious deterioration; or

(C) an individual believes the individual presents an immediate danger to self or others, or the individual's mental or physical health is at risk of serious deterioration.

(23) Crisis treatment alternatives--Community-based facilities or units and services providing short-term, residential crisis treatment to ameliorate a behavioral health crisis in the least restrictive and most appropriate environment, including crisis stabilization units, extended observation units, crisis residential units, and crisis respite units. The intensity and scope of services varies by facility type and is available in a local service area based upon the local needs and characteristics of the community.

(24) Day--A calendar day, unless otherwise specified.

(25) DD--Developmental disability. A disability that meets the criteria described in Texas Health and Safety Code §531.002(15).

(26) Designated LMHA or LBHA--The LMHA or LBHA:

(A) that serves the individual's county of residence, which is determined in accordance with §306.162 of this subchapter (relating to Determining County of Residence); or

(B) that does not serve the individual's county of residence but has taken responsibility for ensuring the individual's services.

(27) DFPS--Texas Department of Family and Protective Services or its designee.

(28) Discharge--Means:

(A) the release of an individual from the custody and care of a provider of inpatient services; or

(B) the termination of LMHA or LBHA services delivered to an individual by the individual's LMHA or LBHA.

(29) Discharge planning specialist--A designated state hospital staff member responsible for coordinating continuity of care services with a specific focus on an individual's community transition in accordance with Texas Health and Safety Code §534.0535. This term is synonymous with a "transition support specialist."

(30) Discharged unexpectedly--A discharge from the custody and care of a provider of inpatient services:

(A) due to an individual's unauthorized departure;

(B) at the individual's request;

(C) due to a court releasing the individual;

(D) due to the death of the individual; or

(E) due to the execution of an arrest warrant for the individual.

(31) DSM--Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

(32) Emergency medical condition--This term has the meaning assigned by the Emergency Medical Treatment and Active Labor Act (42 U.S.C. §1395dd), regarding Examination and treatment for emergency medical conditions and women in labor.

(33) Family partner--An experienced, trained primary caregiver, such as the parent of an individual with a mental illness or serious emotional disturbance, who provides peer mentoring, education, and support to the caregivers of a child who is receiving mental health community services in accordance with Chapter 301, Subchapter G of this title (relating to Mental Health Community Services Standards).

(34) Furlough--The authorization for an individual to leave from a state hospital or CPB for longer than a 72-hour period in accordance with Texas Health and Safety Code Chapter 574, Subchapter F.

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

(36) ID--Intellectual disability. A disability that meets the criteria in Texas Health and Safety Code §591.003.

(37) Individual--A person seeking or receiving services under this subchapter.

(38) Inpatient services--Residential psychiatric treatment provided to an individual in:

(A) a state hospital;

(B) a CPB;

(C) a hospital licensed under Texas Health and Safety Code Chapter 241 or Chapter 577;

(D) a crisis stabilization unit licensed under Chapter 510 of this title (relating to Private Psychiatric Hospitals and Crisis Stabilization Units); or

(E) any other type of mental health hospital.

(39) In person or in-person--Within the physical presence of another person. In person or in-person does not include audiovisual or audio-only communication.

(40) Intake assessment--The administrative process conducted by an assessment professional for:

(A) gathering information about an individual, including the psychiatric and medical history, social history, symptomology, and support system; and

(B) giving the individual information about the facility and the facility's treatment and services.

(41) Involuntary admission--An individual receiving inpatient services based on an admission to a state hospital or CPB in accordance with:

(A) §306.176 of this subchapter (relating to Admission Criteria for a State Hospital or a Facility with a Contracted Psychiatric Bed for Emergency Detention);

(B) §306.177 of this subchapter (relating to Admission Criteria Under Order of Protective Custody or Court-ordered Inpatient Mental Health Services);

(C) an order for temporary inpatient mental health services issued in accordance with Texas Health and Safety Code §574.034 or Texas Family Code Chapter 55;

(D) an order for extended inpatient mental health services issued in accordance with Texas Health and Safety Code §574.035 or Texas Family Code Chapter 55;

(E) an order for commitment issued as described in Texas Code of Criminal Procedure Chapter 46B; or

(F) an order for commitment issued as described in Texas Code of Criminal Procedure Chapter 46C.

(42) LAR--Legally authorized representative. A person authorized by state law to act on behalf of an individual.

(43) LBHA--Local behavioral health authority. An entity designated as an LBHA by HHSC in accordance with Texas Health and Safety Code §533.0356(a).

(44) LIDDA--Local intellectual and developmental disability authority. An entity designated by HHSC in accordance with Texas Health and Safety Code §533A.035(a).

(45) LMHA--Local mental health authority. An entity designated as an LMHA by HHSC in accordance with Texas Health and Safety Code §533.035(a).

(46) LMHA or LBHA network provider--An entity that provides mental health and SUD services in the community pursuant to a contract or memorandum of understanding with an LMHA or LBHA, including that part of an LMHA or LBHA directly providing mental health services.

(47) LMHA or LBHA services--Inpatient mental health and outpatient mental health and SUD services provided by an LMHA or LBHA network provider to an individual in the individual's home community.

(48) Local service area--A geographic area composed of one or more Texas counties defining the population that may receive services from an LMHA, LBHA, or LIDDA.

(49) LPHA--Licensed practitioner of the healing arts. This term has the meaning as defined in §301.303 of this title (relating to Definitions).

(50) Mental illness--This term has the meaning as assigned by Texas Health and Safety Code §571.003.

(51) MH priority population--Mental health priority population. As identified in state performance contracts with LMHAs or LBHAs, those groups of children and adolescents with SED, or adults with severe and persistent mental illness, assessed as in need of mental health services.

(52) Minor--An individual younger than 18 years of age who has not been emancipated under Texas Family Code Chapter 31.

(53) Nursing facility--A Medicaid-certified facility licensed in accordance with Texas Health and Safety Code Chapter 242.

(54) Offender with special needs--An individual who has a terminal or serious medical condition, a mental illness, an ID, a DD, or a physical disability, and is served by the Texas Correctional Office on Offenders with Medical or Mental Impairments as provided in Texas Health and Safety Code Chapter 614.

(55) Ombudsman--The Ombudsman for Behavioral Health Access to Care established by HHSC in accordance with Texas Government Code §531.9933.

(56) Outpatient management plan--The prescribed regimen of medical, psychiatric, or psychological care or treatment as defined in Texas Code of Criminal Procedure Article 46C.263(c).

(57) PASRR--Preadmission screening and resident review as defined in §303.102 of this title (relating to Definitions).

(58) Pass--The authorization for an individual to leave from a state hospital or CPB for not more than a 72-hour period in accordance with Texas Health and Safety Code Chapter 574, Subchapter F.

(59) PE--PASRR level II evaluation. This term has the meaning as defined in §303.102 of this title.

(60) Peer specialist--A person who uses lived experience, in addition to skills learned in formal training, to deliver strengths-based, person-centered services to promote an individual's recovery and resiliency in accordance with 1 TAC Chapter 354, Subchapter N (relating to Peer Specialist Services).

(61) Permanent residence--The physical location in the community where an individual lives, or if a minor, where the minor's parents or legal guardian lives. A post office box is not considered a permanent residence.

(62) PL1--PASRR level I screening. This term has the meaning as defined in §303.102 of this title.

(63) Preliminary examination--An assessment for medical stability and a psychiatric examination in accordance with Texas Health and Safety Code §573.022(a)(2).

(64) QMHP-CS--Qualified mental health professional-community services. An LMHA or LBHA staff member who meets the qualifications and performs the functions described in Chapter 301, Subchapter G of this title (relating to Mental Health Community Services Standards).

(65) Recovery--A process of change through which an individual improves the individual's health and wellness, lives a self-directed life, and strives to reach the individual's full potential.

(66) Recovery or treatment plan--A written plan:

(A) developed in collaboration with an individual or LAR and a QMHP-CS or LPHA as defined in §301.303 of this title;

(B) amended at any time based on an individual's needs or requests;

(C) that guides the recovery treatment process and fosters resiliency;

(D) completed in conjunction with the uniform assessment;

(E) that identifies the individual's changing strengths, capacities, goals, preferences, needs, and desired outcomes; and

(F) that includes recommended services and supports or reasons for the exclusion of services and supports.

(67) Screening--Activities to:

(A) collect triage information through interviews with an individual or collateral contact;

(B) determine if the individual's need is emergent, urgent, or routine, and conducted before the assessment to determine the need for emergency services; and

(C) determine the need for an in-depth assessment.

(68) SED--Serious emotional disturbance. A disorder that meets the criteria described in Texas Government Code §547.0051.

(69) SSLC--State supported living center. Consistent with Texas Health and Safety Code §531.002, a residential facility operated by HHSC to provide an individual with an ID a variety of services, including medical treatment, specialized therapy, and training in the acquisition of personal, social, and vocational skills.

(70) State hospital--Consistent with Texas Health and Safety Code §552.002, a mental health facility operated by HHSC, including Waco Center for Youth.

(71) SUD--Substance use disorder. The use of one or more drugs, including alcohol, which significantly and negatively impacts one or more major areas of life functioning and which meets the criteria for SUD as described in the version of the DSM currently recognized by HHSC.

(72) TAC--Texas Administrative Code.

(73) TCOOMMI--Texas Correctional Office on Offenders with Medical or Mental Impairments or its designee.

(74) Treating physician--A physician who coordinates and oversees an individual's treatment.

(75) Treatment team--A group of treatment providers, working with an individual, the LAR, if applicable, and the LMHA, LBHA, or LIDDA in a coordinated manner to provide comprehensive mental health, SUD, and ID services to the individual.

(76) Uniform assessment--An assessment tool adopted by HHSC under §301.353 of this title (relating to Provider Responsibilities for Treatment Planning and Service Authorization) used for recommending an individual's level of care.

(77) Voluntary admission--An individual receiving inpatient services based on an admission made in accordance with:

(A) §306.175 of this subchapter;

(B) §306.178 of this subchapter (relating to Voluntary Treatment Following Involuntary Admission);

(C) Texas Health and Safety Code §572.002; or

(D) Texas Health and Safety Code §572.0025.

§306.154. Notification and Appeals Process for Local Mental Health Authority or Local Behavioral Health Authority Services.

(a) Any individual who is eligible for Medicaid and whose request for eligibility to receive LMHA or LBHA Medicaid services is denied or is not acted upon with reasonable promptness is entitled to a fair hearing in accordance with 1 TAC Chapter 357, Subchapter A (relating to Uniform Fair Hearings Rules).

(b) Any individual who is eligible for Medicaid and whose services have been terminated, suspended, or reduced by HHSC is entitled to a fair hearing in accordance with 1 TAC Chapter 357, Subchapter A.

(c) Any individual who has not applied for or is not eligible for Medicaid, whose request for eligibility to receive LMHA or LBHA services is denied or is not acted upon with reasonable promptness, or whose services have been terminated, suspended, or reduced by a provider, is entitled to notification and right of appeal in accordance with §301.155 of this title (relating to Notification and Appeals Process).

(d) At any time, an individual may obtain additional information and resources on the HHSC website and from the Ombudsman by calling toll-free 1-800-252-8154.

§306.155. Local Mental Health Authority, Local Behavioral Health Authority, and Continuity of Care Liaison Responsibilities.

LMHAs and LBHAs must develop policies and procedures that require:

(1) the LMHA or LBHA to employ at least one dedicated full-time staff member who is a QMHP-CS or LPHA to act as the CoC liaison to support continuity of care activities;

(2) a CoC liaison to delegate continuity of care responsibilities to other continuity of care staff, if necessary;

(3) a CoC liaison not to have assigned duties outside of activities supporting continuity of care and related functions;

(4) an alternate staff member to act as the CoC liaison in the absence of the person identified as the primary CoC liaison;

(5) communication and facilitation of services between the continuity of care team and parties involved in the individual's care, including:

(A) a mental health peer specialist or a recovery support peer specialist as described in 1 TAC §354.3159 (relating to Core and Supplemental Training); or

(B) a family partner;

(6) coordination with other state agencies responsible for the care of a child such as DFPS, the Texas Department of Criminal Justice, or the Texas Juvenile Justice Department;

(7) initiation of contact with the parties involved in the individual's care at a state hospital or CPB within three business days after admission;

(8) coordination of post-discharge activities with local community parties involved in the individual's care, including other LMHAs, LBHAs, and LIDDAs;

(9) a CoC liaison to conduct continuity of care activities, including responding to communications from a facility within three business days after the facility sent the communication;

(10) the LMHA or LBHA to provide notification of the CoC liaison's contact information, including if there is a CoC liaison personnel change, and the CoC liaison's designated alternate staff member's contact information within three business days to each facility that has an individual admitted in the LMHA's or LBHA's care;

(11) a QMHP-CS or LPHA acting as the CoC liaison to maintain the QMHP-CS' certification as a QMHP-CS or the LPHA's licensure as an LPHA;

(12) identification of a process for obtaining services and resources for an individual, as needed;

(13) LMHA or LBHA representation by an assigned CoC liaison in treatment team meetings at a state hospital or CPB as requested by the facility;

(14) the availability of a CoC liaison to communicate with providers from 8:00 a.m. to 5:00 p.m. on business days, coordinate coverage to respond to continuity of care service needs 24 hours a day, and follow up as necessary to ensure continuity of care needs are met;

(15) monitoring of the number of individuals who are currently admitted to state hospitals or CPBs and the number of individuals who are discharged from these facilities;

(16) a CoC liaison to conduct a uniform assessment, either in person or by audiovisual technology, to ensure a level of care determination is made within ten business days before discharge;

(17) a CoC liaison ensures all LMHA, LBHA, or LIDDA appointments are scheduled in advance for needed programs and services to minimize any disruption in services or support at the time of discharge and community integration;

(18) LMHA or LBHA staff to participate in all applicable court proceedings;

(19) LMHA or LBHA staff to participate in the development of an outpatient management plan for an individual who is on a Texas Code of Criminal Procedure Chapter 46C commitment and whom a state hospital identifies as suitable for outpatient placement; and

(20) a CoC liaison to initiate transition planning with the receiving LMHA or LBHA when the individual is changing LMHAs or LBHAs.

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

Filed with the Office of the Secretary of State on February 3, 2025.

TRD-202500355
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: February 23, 2025
Proposal publication date: September 13, 2024
For further information, please call: (737) 704-9063

♦ ♦ ♦

DIVISION 2. SCREENING AND ASSESSMENT FOR CRISIS SERVICES AND ADMISSION INTO LOCAL MENTAL HEALTH AUTHORITY OR LOCAL BEHAVIORAL HEALTH AUTHORITY SERVICES

26 TAC §§306.161 - 306.163

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, §531.008, which requires the Executive Commissioner of HHSC to establish a division for administering state facilities, including state hospitals and state supported living centers, and §531.02161, which requires the Executive Commissioner of HHSC to, by rule, develop and implement a system that ensures behavioral health services may be provided using an audio-only platform to the extent permitted by state and federal law and to the extent it is cost-effective and clinically effective; Health and Safety Code §533.014 which requires the Executive Commissioner of HHSC to adopt rules relating to LMHA treatment responsibilities, §533.0356 which allows the Executive Commissioner to adopt rules governing LBHAs, §533A.0355 which requires the Executive Commissioner of HHSC to adopt rules establishing the roles and responsibilities of local intellectual and developmental disability authorities, §534.052 which requires the Executive Commissioner of HHSC to adopt rules necessary and appropriate to ensure the adequate provision of community-based services through LMHAs, §534.0535 which requires the Executive Commissioner of HHSC to adopt rules that require continuity of services and planning for patient care between HHSC facilities and LMHAs, and §552.001 which provides HHSC with authority to operate the state hospitals.

§306.162. Determining County of Residence.

(a) County of Residence for Adults.

(1) An adult's county of residence is the county of the adult's permanent residence or, if applicable, the county of the LAR's permanent residence, unless there is a preponderance of evidence to the contrary. If the adult is not a Texas resident or indicates no permanent address, the adult's county of residence is the county in which the evidence indicates the adult resides.

(2) If an adult is unable to communicate the location of the adult's permanent residence, there is no evidence indicating the location of an adult's permanent residence, or if an adult is not a Texas resident, the adult's county of residence is the county in which the adult is physically present when the adult requests or requires services.

(3) The county in which the paying LMHA or LBHA is located is the adult's county of residence if the individual receives services:

(A) delivered in the local service area of another LMHA or LBHA for an adult's community mental health services; or

(B) for an adult's living arrangement located outside the paying LMHA's or LBHA's local service area.

(b) County of Residence for Minors.

(1) Except as provided in paragraph (2) of this subsection, a minor's county of residence is the county in which the minor's LAR's permanent residence is located.

(2) A minor's county of residence is the county in which the minor currently resides if:

(A) it cannot be determined in which county the minor's LAR's permanent residence is located;

(B) a state agency is the minor's LAR;

(C) the minor does not have an LAR; or

(D) the minor is at least 16 years of age and self-enrolling into services.

(3) A minor in DFPS conservatorship may continue receiving services from the LMHA or LBHA where the minor was last enrolled in services until another appropriate placement is established. Once placement is established, the transferring LMHA or LBHA will

hold a transfer meeting with the receiving LMHA or LBHA and the minor's LAR.

(c) Disagreements regarding county of residence initiated by an LMHA or LBHA.

(1) The LMHA or LBHA must initiate or continue providing clinically necessary services, including discharge planning, until a disagreement regarding county of residence is resolved.

(2) If an LMHA or LBHA initiates a disagreement regarding county of residence that the executive directors of the affected LMHAs or LBHAs cannot resolve, the HHSC performance contract manager of the affected LMHAs or LBHAs resolves the disagreement.

(d) Disagreements regarding county of residence initiated by an individual or another person or entity on behalf of the individual. The Ombudsman may consult with the HHSC performance contract manager of the affected LMHAs or LBHAs and help resolve a disagreement initiated by an individual or by another person or entity on behalf of the individual.

(e) Changing county of residence status. If an individual currently receiving LMHA or LBHA services moves the individual's permanent residence to a county within the local service area of another LMHA or LBHA, the LMHAs or LBHAs affected by the change must comply with §306.195 of this subchapter (relating to Changing Local Mental Health Authorities or Local Behavioral Health Authorities).

§306.163. Most Appropriate and Available Treatment Options.

(a) Recommendation for treatment. The designated LMHA or LBHA is responsible for recommending the most appropriate and available treatment alternative for an individual in need of mental health or SUD services.

(b) Inpatient services.

(1) Before an LMHA or LBHA refers an individual for inpatient services, the LMHA or LBHA must screen and assess the individual to determine if the individual requires inpatient services.

(2) If the screening and assessment indicates the individual requires inpatient services and inpatient services are the least restrictive and most appropriate setting available, the LMHA or LBHA must refer the individual:

(A) to a state hospital or CPB, if the LMHA or LBHA determines that the individual meets the criteria for admission; or

(B) to an LMHA or LBHA network provider of inpatient services.

(3) If the individual is identified in the applicable HHSC automation system as having an ID or a DD, the LMHA or LBHA must inform the designated LIDDA that the individual has been referred for inpatient services.

(4) If the LMHA, LBHA, or LMHA or LBHA-network provider refers the individual for inpatient services, the LMHA or LBHA must communicate necessary information to the contracted inpatient provider before or at the time of admission, including the individual's:

(A) identifying information, including address;

(B) legal status, for example regarding guardianship, charges pending, or custody, as applicable;

(C) pertinent medical and medication information, including known disabilities;

(D) behavioral information, including information regarding COPSD;

(E) other pertinent treatment information;

(F) finances, third-party coverage, and other benefits, if known; and

(G) advance directive.

(5) If an LMHA or LBHA, other than the individual's designated LMHA or LBHA, refers the individual for inpatient services, the state hospital or CPB must notify the individual's designated LMHA or LBHA of the referral for inpatient services by the end of the next business day.

(6) The designated LMHA or LBHA must assign a CoC liaison to an individual admitted to a state hospital, a CPB, or an LMHA or LBHA inpatient services network provider.

(7) If the individual has an ID or a DD, the designated LIDDA must assign a continuity of care worker to the individual.

(8) The LMHA or LBHA CoC liaison, and LIDDA continuity of care worker as applicable, are responsible for the facilitation of the individual's continuity of services.

(9) The LMHA or LBHA is responsible for continuity of care and must plan to the greatest extent possible for the successful transition of individuals who are determined by a state hospital or CPB to be clinically appropriate for discharge from these facilities to a community setting in accordance with Texas Health and Safety Code §534.0535.

(c) Community-based crisis treatment options.

(1) An LMHA or LBHA must ensure the provision of crisis services to an individual experiencing a crisis while the individual is in its local service area.

(2) An individual in need of a higher level of care, but not requiring inpatient services, has the option, as available, for admission to other services such as a diversion center, crisis respite unit, crisis residential unit, extended observation unit, or crisis stabilization unit.

(d) LMHA or LBHA Services.

(1) If an LMHA or LBHA admits an individual to LMHA or LBHA services, the LMHA or LBHA must ensure the provision of services in the least restrictive and most appropriate setting available.

(2) The LMHA or LBHA must assign, to an individual receiving services, a staff member who is responsible for coordinating the individual's services.

(e) Court Ordered Treatment. The LMHA or LBHA must provide services to an individual ordered by a court to participate in outpatient mental health services or competency restoration services, if available, when the court identifies the LMHA or LBHA as being responsible for those services.

(f) Referral to alternate provider.

(1) If an individual requests a referral to an alternate provider, and there is not a court order to receive services from the LMHA or LBHA, the LMHA or LBHA must make a referral to an alternate provider in accordance with the individual's request.

(2) If an individual has third-party coverage, but the coverage will not pay for needed services because the designated LMHA or LBHA does not have a provider in its network that is approved by the third-party coverage, the designated LMHA or LBHA must comply with §301.111(c)(2) of this title (relating to Determination of Ability to Pay).

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

Filed with the Office of the Secretary of State on February 3, 2025.

TRD-202500356
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: February 23, 2025
Proposal publication date: September 13, 2024
For further information, please call: (737) 704-9063

♦ ♦ ♦

DIVISION 3. ADMISSION TO A STATE HOSPITAL OR A FACILITY WITH A CONTRACTED PSYCHIATRIC BED--PROVIDER RESPONSIBILITIES

26 TAC §§306.171 - 306.178

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, §531.008, which requires the Executive Commissioner of HHSC to establish a division for administering state facilities, including state hospitals and state supported living centers, and §531.02161, which requires the Executive Commissioner of HHSC to, by rule, develop and implement a system that ensures behavioral health services may be provided using an audio-only platform to the extent permitted by state and federal law and to the extent it is cost-effective and clinically effective; Health and Safety Code §533.014 which requires the Executive Commissioner of HHSC to adopt rules relating to LMHA treatment responsibilities, §533.0356 which allows the Executive Commissioner to adopt rules governing LBHAs, §533A.0355 which requires the Executive Commissioner of HHSC to adopt rules establishing the roles and responsibilities of local intellectual and developmental disability authorities, §534.052 which requires the Executive Commissioner of HHSC to adopt rules necessary and appropriate to ensure the adequate provision of community-based services through LMHAs, §534.0535 which requires the Executive Commissioner of HHSC to adopt rules that require continuity of services and planning for patient care between HHSC facilities and LMHAs, and §552.001 which provides HHSC with authority to operate the state hospitals.

§306.171. General Admission Criteria for a State Hospital or a Facility with a Contracted Psychiatric Bed.

(a) With the exceptions of Waco Center for Youth, a maximum-security unit, and an adolescent forensic unit, a state hospital or CPB may admit an individual who has been assessed by an LMHA or LBHA and recommended for inpatient admission only if the individual has a mental illness and because of the mental illness:

(1) presents a substantial risk of serious harm to self or others; or

(2) evidences a substantial risk of mental or physical deterioration.

(b) An individual's admission to a state hospital or CPB may not occur if the individual:

(1) has a condition that requires medical care that is not available at the state hospital or CPB; or

(2) has a physical medical condition that is unstable and could reasonably require inpatient medical treatment for the condition.

(c) If an individual arrives at a state hospital or CPB for mental health services, and the designated LMHA or LBHA did not screen or refer the individual as described in §306.163 of this subchapter (relating to Most Appropriate and Available Treatment Options):

(1) the state hospital or CPB must notify the designated LMHA or LBHA that the individual has presented for services at the state hospital or CPB within three business days of the individual's presentation for services; and

(2) the state hospital or CPB physician must determine if the individual has an emergency medical condition and decide whether the facility has the capability to treat the emergency medical condition.

(A) If the state hospital or CPB has the capability to treat the emergency medical condition, the facility must admit the individual in accordance with the Emergency Medical Treatment and Active Labor Act (EMTALA) as described in 42 U.S.C. §1395dd.

(B) If the state hospital or CPB does not have the capability to treat the emergency medical condition, the facility must provide evaluation and treatment within its capability to stabilize the individual and arrange for the individual to be transferred to a hospital that has the capability to treat the emergency medical condition in accordance with EMTALA and, as applicable, Medicare and Medicaid regulations.

(d) If an LMHA or LBHA authorized an individual's admission to a state hospital or CPB, and the facility determines that the individual does not meet inpatient criteria for admission, the facility must contact the designated LMHA or LBHA to coordinate alternate outpatient community services at the time of the admission denial.

(e) The designated LMHA or LBHA must contact the individual or LAR within 24 hours after being notified that the individual does not meet inpatient admission criteria and notify the individual or LAR that the LMHA or LBHA will provide referrals and referral follow-up for ongoing services as clinically indicated to address the individual's mental health or other needs.

§306.175. Voluntary Admission Criteria for a State Hospital or a Facility with a Contracted Psychiatric Bed.

(a) Request for voluntary admission.

(1) In accordance with Texas Health and Safety Code §572.001, a request for voluntary admission of an individual with a mental illness may only be made by:

(A) the individual, if the individual is at least 16 years of age or older;

(B) an LAR who meets the criteria described in paragraph (4)(A)(i) or (iii) of this subsection, if the individual is younger than 18 years of age; or

(C) an LAR who meets the criteria described in paragraph (4)(A)(ii) of this subsection, if the admission is sought pursuant to the provisions of Texas Health and Safety Code §572.001(c-1) - (c-4).

(2) In accordance with Texas Health and Safety Code §572.001(b) and (e), a request for admission must:

(A) be in writing and signed by the individual or LAR making the request; and

(B) include a statement that the individual or LAR making the request:

(i) agrees that the individual will remain in the state hospital or CPB until the individual's discharge; and

(ii) consents to diagnosis, observation, care, and treatment of the individual until:

(I) the discharge of the individual; or

(II) the individual is entitled to leave the state hospital or CPB, in accordance with Texas Health and Safety Code §572.004, after a request for discharge is made.

(3) The consent given under paragraph (2)(B)(ii) of this subsection does not waive an individual's rights described in:

(A) Chapter 320, Subchapter A of this title (relating to Rights of Individuals Receiving Mental Health Services);

(B) Chapter 307, Subchapter I of this title (relating to Electroconvulsive Therapy (ECT));

(C) Chapter 320, Subchapter B of this title (relating to Consent to Treatment with Psychoactive Medication--Mental Health Services); and

(D) Chapter 320, Subchapter C of this title (relating to Interventions in Mental Health Services).

(4) An LAR is a person authorized by state law to act on behalf of an individual for the purposes of:

(A) admission, transfer, or discharge that includes:

(i) a parent, non-DFPS managing conservator, or guardian;

(ii) a representative of DFPS for a minor under DFPS conservatorship pursuant to Texas Health and Safety Code §572.001 (c-2) - (c-4); or

(iii) a person authorized by a district court under Texas Family Code Chapter 35A to consent for the temporary admission of a minor; or

(B) consent on behalf of an individual regarding a matter described in this subchapter other than admission, transfer, or discharge that includes:

(i) persons described in subparagraph (A) of this paragraph;

(ii) a person eligible to consent to treatment for a minor under Texas Family Code §32.001(a); and

(iii) an agent acting under a Medical Power of Attorney under Texas Health and Safety Code Chapter 166 or a Declaration for Mental Health Treatment under Texas Civil Practice and Remedies Code Chapter 137.

(b) Failure to meet admission criteria. If a physician of a state hospital or CPB determines that an individual does not meet admission criteria and that community resources may appropriately serve the individual, the facility must contact the LMHA, LBHA, or LIDDA to discuss the availability and appropriateness of community-based services for the individual. The LMHA, LBHA, or LIDDA must:

(1) contact the individual and LAR, if applicable, no later than 24 hours after the LMHA, LBHA, or LIDDA is notified of the failure to meet the admission criteria; and

(2) provide referrals and referral follow-up for ongoing services as clinically indicated to address the individual's mental health needs and SUD needs.

(c) Examination.

(1) A physician must conduct an examination on an individual requesting voluntary admission in accordance with this subsection.

(2) In accordance with Texas Health and Safety Code §572.0025(f)(1)(A), a physician must conduct a physical and psychiatric examination, either in person or through audiovisual or other telecommunications technology within 72 hours before voluntary admission or 24 hours after voluntary admission, that includes:

(A) an assessment for medical stability;

(B) a psychiatric examination; and

(C) if indicated, an assessment for a SUD.

(3) In accordance with Texas Health and Safety Code §572.0025(f)(1); the physician may not delegate the examination to a non-physician.

(d) Meets admission criteria. If, after examination, a physician determines that an individual meets the admission criteria of a state hospital or CPB, the state hospital or CPB must admit the individual.

(e) To meet the needs of an individual who does not meet admission criteria to a state hospital or CPB, an LMHA or LBHA, as applicable, must:

(1) provide community mental health services and supportive services to the individual; or

(2) refer the individual or LAR to community mental health services and supportive services.

(f) Capacity to consent.

(1) If a physician determines that an individual whose consent is necessary for a voluntary admission does not have the capacity to consent to diagnosis, observation, care, and treatment, the state hospital or CPB may not voluntarily admit the individual.

(2) When appropriate, the state hospital or CPB may initiate an emergency detention proceeding in accordance with Texas Health and Safety Code Chapter 573 or file an application for court-ordered inpatient mental health services in accordance with Texas Health and Safety Code Chapter 574.

(g) Intake assessment. Before voluntary admission of an individual, in accordance with Texas Health and Safety Code §572.0025(b), an assessment professional for a state hospital or CPB, must conduct an intake assessment with the individual and LAR, if applicable, to:

(1) obtain relevant information about the individual, including:

(A) psychiatric and medical history;

(B) social history;

(C) symptomology;

(D) support systems;

(E) finances;

(F) third-party coverage or insurance benefits; and

(G) advance directives;

(2) explain, orally and in writing, the individual's rights described in Chapter 320, Subchapter A of this title;

(3) explain, orally and in writing, the state hospital's or CPB's services and treatment as the services and treatment relate to the individual;

(4) explain, orally and in writing, the existence, purpose, telephone number, and address of the protection and advocacy system established in Texas, pursuant to Texas Health and Safety Code §576.008; and

(5) explain, orally and in writing, the individual trust fund account, charges for services, and the financial responsibility form.

(h) Requirements for voluntary admission.

(1) An individual or LAR must make a request for admission in accordance with subsection (a) of this section;

(2) a physician must:

(A) in accordance with Texas Health and Safety Code §572.0025(f)(1):

(i) conduct an examination in accordance with subsection (c) of this section within 72 hours before the admission or 24 hours after the admission; or

(ii) consult with a physician who has conducted an examination in accordance with subsection (c) of this section within 72 hours before the admission or 24 hours after the admission;

(B) determine that the individual meets the admission criteria of the state hospital or CPB and that admission is clinically justified; and

(C) issue an order admitting the individual;

(3) in accordance with Texas Health and Safety Code §572.0025(f)(2), the administrator or designee of the state hospital or CPB must sign a written statement agreeing to admit the individual; and

(4) in accordance with Texas Health and Safety Code §572.0026, the state hospital or CPB must have available space for the individual.

(i) Documentation of admission order. In accordance with Texas Health and Safety Code §572.0025(f)(1), the order described in subsection (h)(2)(C) of this section is issued:

(1) in writing and signed by the issuing physician; or

(2) orally or electronically if, within 24 hours after its issuance, the state hospital or CPB has a written order signed by the issuing physician.

(j) Periodic evaluation. To determine the need for continued inpatient treatment, a physician or physician's designee must evaluate and document justification for continued stay for an individual voluntarily receiving acute inpatient treatment as often as clinically indicated, but no less than once a week.

§306.176. Admission Criteria for a State Hospital or a Facility with a Contracted Psychiatric Bed for Emergency Detention.

(a) Acceptance for preliminary examination. In accordance with Texas Health and Safety Code §573.021 and §573.022, a state hospital or CPB must accept for a preliminary examination:

(1) an individual, of any age, who has been apprehended and transported to the state hospital or CPB by a peace officer or by emergency medical services personnel in accordance with Texas Health and Safety Code §573.001 or §573.012; or

(2) an adult who has been transported to the state hospital or CPB by the adult's guardian in accordance with Texas Health and Safety Code §573.003.

(b) Preliminary examination.

(1) A physician must conduct a preliminary examination of an individual as soon as possible but not more than 12 hours after the individual is transported to the state hospital or CPB for emergency detention.

(2) The preliminary examination must consist of:

(A) an assessment for medical stability; and

(B) a psychiatric examination, including a substance use assessment if indicated, to determine if the individual meets the criteria described in subsection (c)(1) of this section.

(c) Requirements for emergency detention. The state hospital or CPB may admit an individual for emergency detention if:

(1) in accordance with Texas Health and Safety Code §573.022(a)(2), a physician determines from the preliminary examination that:

(A) the individual has a mental illness;

(B) the individual evidences a substantial risk of serious harm to himself or others;

(C) the described risk of harm is imminent unless the individual is immediately detained; and

(D) emergency detention is the least restrictive means by which the necessary detention may be accomplished;

(2) in accordance with Texas Health and Safety Code §573.022(a)(3), a physician must make a written statement documenting the determination described in paragraph (1) of this subsection and describing:

(A) the nature of the individual's mental illness;

(B) the risk of harm the individual evidences, demonstrated either by the individual's behavior or by evidence of severe emotional distress and deterioration in the individual's mental condition to the extent that the individual cannot remain at liberty; and

(C) the detailed information on which the physician based the determination;

(3) the physician issues and signs a written order admitting the individual for emergency detention; and

(4) the individual meets the admission criteria of the state hospital or CPB.

(d) Release.

(1) The state hospital or CPB must release the individual accepted for a preliminary examination if:

(A) a preliminary examination of the individual has not been conducted within 12 hours after the individual is apprehended and transported to the facility by the peace officer or transported for emergency detention; or

(B) in accordance with Texas Health and Safety Code §573.023(a), the individual is not admitted for emergency detention on completion of the preliminary examination.

(2) If the state hospital or CPB does not admit the individual on an emergency detention in accordance with Texas Health and Safety Code Chapter 573, the facility must contact the designated

LMHA or LBHA to provide referrals and referral follow-up for ongoing services as clinically indicated to address the individual's mental health needs.

(A) The LMHA or LBHA in the individual's county of residence must contact the individual within 24 hours of being notified that the individual does not meet emergency detention criteria.

(B) The LMHA or LBHA must provide referrals and referral follow-up for ongoing services as clinically indicated to address the individual's mental health needs, as applicable, when the individual does not meet admission criteria to a state hospital or CPB.

(3) In accordance with Texas Health and Safety Code §576.007(a), if an individual who is an adult is not admitted on emergency detention, the state hospital or CPB must make a reasonable effort to notify the individual's family, or any other person providing support as authorized by the individual and LAR, if applicable, before the individual is released.

(e) Intake assessment. An assessment professional for a state hospital or CPB must conduct an intake assessment as soon as possible, but not later than 24 hours after an individual is admitted for emergency detention. All documents related to the intake assessment must be provided to the individual or LAR and include:

(1) a request for relevant information about the individual, such as:

(A) psychiatric and medical history;

(B) social history;

(C) symptomology;

(D) support systems;

(E) finances;

(F) third-party coverage or insurance benefits; and

(G) advance directives; and

(2) a written and oral explanation of:

(A) the individual's rights described in Chapter 320, Subchapter A of this title(relating to Rights of Individuals Receiving Mental Health Services);

(B) the state hospital's or CPB's services and treatment as the services and treatment relate to the individual;

(C) the existence, purpose, telephone number, and address of the protection and advocacy system established in Texas, pursuant to Texas Health and Safety Code §576.008; and

(D) the individual's trust fund account, charges for services, and the financial responsibility form.

§306.177. Admission Criteria Under Order of Protective Custody or Court-ordered Inpatient Mental Health Services.

(a) A state hospital or CPB may admit an individual after receiving:

(1) an order of protective custody only if a court has issued a protective custody order in accordance with Texas Health and Safety Code §574.022 and the facility has received it; or

(2) for court-ordered inpatient mental health services only if a court has issued:

(A) an order for temporary inpatient mental health services issued in accordance with Texas Health and Safety Code §574.034, or Texas Family Code Chapter 55;

(B) an order for extended inpatient mental health services issued in accordance with Texas Health and Safety Code §574.035, or Texas Family Code Chapter 55;

(C) an order for commitment issued in accordance with the Texas Code of Criminal Procedure Chapter 46B; or

(D) an order for commitment issued in accordance with the Texas Code of Criminal Procedure Chapter 46C.

(b) If a state hospital or CPB admits an individual in accordance with subsection (a) of this section, a physician, PA, or APRN must issue and sign a written order admitting the individual.

(c) A state hospital or CPB must conduct an intake assessment with the individual, and LAR, if applicable, as soon as possible, but not later than 24 hours after the individual is admitted under a protective custody order or court-ordered inpatient mental health services. The intake assessment must include:

(1) a request for relevant information about the individual, including:

(A) psychiatric and medical history;

(B) social history;

(C) symptomology;

(D) support systems;

(E) finances;

(F) third-party coverage or insurance benefits; and

(G) advance directives; and

(2) a written and oral explanation provided to the individual or LAR of:

(A) the individual's rights described in Chapter 320, Subchapter A of this title(relating to Rights of Individuals Receiving Mental Health Services);

(B) the state hospital's or CPB's services and treatment as the services and treatment relate to the individual; and

(C) the existence, purpose, telephone number, and address of the protection and advocacy system established in Texas, pursuant to Texas Health and Safety Code §576.008.

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

Filed with the Office of the Secretary of State on February 3, 2025.

TRD-202500357
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: February 23, 2025
Proposal publication date: September 13, 2024
For further information, please call: (737) 704-9063

♦ ♦ ♦

DIVISION 4. TRANSFERS AND CHANGING LOCAL MENTAL HEALTH AUTHORITIES OR LOCAL BEHAVIORAL HEALTH AUTHORITIES

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, §531.008, which requires the Executive Commissioner of HHSC to establish a division for administering state facilities, including state hospitals and state supported living centers, and §531.02161, which requires the Executive Commissioner of HHSC to, by rule, develop and implement a system that ensures behavioral health services may be provided using an audio-only platform to the extent permitted by state and federal law and to the extent it is cost-effective and clinically effective; Health and Safety Code §533.014 which requires the Executive Commissioner of HHSC to adopt rules relating to LMHA treatment responsibilities, §533.0356 which allows the Executive Commissioner to adopt rules governing LBHAs, §533A.0355 which requires the Executive Commissioner of HHSC to adopt rules establishing the roles and responsibilities of local intellectual and developmental disability authorities, §534.052 which requires the Executive Commissioner of HHSC to adopt rules necessary and appropriate to ensure the adequate provision of community-based services through LMHAs, §534.0535 which requires the Executive Commissioner of HHSC to adopt rules that require continuity of services and planning for patient care between HHSC facilities and LMHAs, and §552.001 which provides HHSC with authority to operate the state hospitals.

§306.191. Transfers Between State Hospitals.

(a) The individual, LAR, if applicable, any other person authorized by the individual, state hospital staff, or the designated LMHA or LBHA, may initiate a request to transfer an individual from one state hospital to another state hospital.

(b) A transfer between state hospitals may occur when deemed advisable by the administrator of the transferring state hospital with the agreement of the administrator of the receiving state hospital based on:

(1) the condition and desires of the individual;

(2) geographic residence of the individual;

(3) program and bed availability; and

(4) geographical proximity to the individual's family and any other person authorized by the individual and LAR, if applicable.

(c) An individual voluntarily receiving treatment may not be transferred without the consent of the individual or LAR who made the request for voluntary admission in accordance with §306.175(a)(1) of this subchapter (relating to Voluntary Admission Criteria for a State Hospital or a Facility with a Contracted Psychiatric Bed).

(d) In accordance with Texas Health and Safety Code §575.011 and §575.017, if a state hospital transfers an individual receiving court-ordered inpatient mental health services from one state hospital to another state hospital, the transferring state hospital must notify the committing court and the designated LMHA, LBHA, or LIDDA of the transfer.

(e) If a prosecuting attorney has notified the state hospital administrator that an individual has criminal charges pending, the administrator must notify the judge of the court before which charges are pending if the individual transfers to another state hospital.

(f) For an individual transferring between a state hospital and a maximum-security unit or adolescent forensic unit, 25 TAC Chapter 415, Subchapter G (relating to Determination of Manifest Dangerousness) governs the transfer.

§306.194. Transfers Between a State Hospital and Another Facility in Texas.

(a) In accordance with Texas Health and Safety Code §575.011, §575.014, and §575.017, an individual may transfer between a state hospital and a psychiatric hospital not operated by HHSC. The state hospital must notify the designated LMHA or LBHA of the transfer. A state hospital must not transfer an individual voluntarily receiving treatment without the consent of the individual or LAR who made the request for voluntary admission in accordance with §306.175(a)(1) of this subchapter (relating to Voluntary Admission Criteria for a State Hospital or a Facility with a Contracted Psychiatric Bed).

(b) In accordance with Texas Health and Safety Code §575.015, an individual may transfer from a state hospital to a federal agency. The transferring state hospital must notify the designated LMHA or LBHA of the transfer.

(c) In accordance with Texas Health and Safety Code §575.016 and §575.017, an individual may transfer from a facility of the institutional division of the Texas Department of Criminal Justice to a state hospital.

§306.195. Changing Local Mental Health Authorities or Local Behavioral Health Authorities.

(a) If an individual currently receiving LMHA or LBHA services intends to move the individual's permanent residence to a county within the local service area of another LMHA or LBHA and seek services from the new LMHA or LBHA the following requirements apply.

(1) The originating LMHA or LBHA must:

(A) ensure the CoC liaison submits requested information to the new LMHA or LBHA, including treatment information pertinent to the individual's continuity of care within seven days after the request, and coordinate an intake appointment at the receiving LMHA or LBHA;

(B) ensure the CoC liaison initiates transition planning with the receiving LMHA or LBHA in accordance with §306.155(20) of this subchapter (relating to Local Mental Health Authority, Local Behavioral Health Authority, and Continuity of Care Liaison Responsibilities);

(C) educate the individual or LAR on the provisions of this subchapter regarding the individual's transfer, consisting of:

(i) information regarding walk-in intake services, if applicable, where no appointment is scheduled for the individual's initial intake to determine eligibility;

(ii) the rights of an individual eligible for services;

(iii) notification for the receiving LMHA or LBHA of the individual's intent to move the individual's permanent residence;

(iv) the point of contact at the receiving LMHA or LBHA;

(v) the 988 Suicide and Crisis Lifeline; and

(vi) the receiving LMHA's or LBHA's crisis hotline;

(D) assist in facilitating and scheduling the intake appointment at the new LMHA or LBHA once the relocation has been confirmed;

(E) ensure the individual has sufficient medication for up to 90 days or to last until the medication management appointment date at the receiving LMHA or LBHA; and

(F) maintain the individual's case in open status in the applicable HHSC automation system for 90 days or until notified that the individual has been admitted to services at the receiving LMHA or LBHA, whichever occurs first.

(2) The receiving LMHA or LBHA must:

(A) initiate transition planning with the originating LMHA or LBHA;

(B) promptly request records pertinent to the individual's treatment, with the individual's consent or the consent of the LAR;

(C) conduct an intake assessment in accordance with §301.353(a) of this title (relating to Provider Responsibilities for Treatment Planning and Service Authorization) and determine whether the individual should receive services immediately or be placed on a waiting list for services;

(D) if the individual is eligible and is not on the waitlist, authorize an initial 180 days of services for an adult and 90 days for a child or an adolescent for transitioning and ongoing care, including the provision of medications;

(E) authorize the individual in the same level of care at the initial assessment in accordance with §301.327 of this title (relating to Access to Mental Health Community Services) and pursuant to Medicaid regulations and policies;

(F) provide the appropriate services based on the clinical needs of the individual;

(G) if there are resource limitations for the receiving LMHA or LBHA, follow the process outlined in §301.327 of this title; and

(H) initiate contact with individual within 14 days.

(3) If the individual or LAR seeks services from the new LMHA or LBHA without prior knowledge of the originating LMHA or LBHA:

(A) the receiving LMHA or LBHA must:

(i) initiate transition planning with the originating LMHA or LBHA;

(ii) promptly request records pertinent to the individual's treatment, with the individual's consent, if applicable;

(iii) conduct an intake assessment in accordance with §301.353(a) of this title and determine whether the individual should receive services immediately or be placed on a waiting list for services; and

(iv) if the individual is eligible and is not on the waitlist, authorize an initial 180 days of services for an adult and 90 days for a child or an adolescent for transitioning and ongoing care, including the provision of medications; and

(B) the originating LMHA or LBHA must:

(i) submit requested information to the new LMHA or LBHA within seven days after the request; and

(ii) maintain the individual's case in open status in the applicable HHSC automation system for 90 days or until notified that the individual has been admitted to services at the new LMHA or LBHA, whichever occurs first.

(4) If the new LMHA or LBHA denies services to the individual during the transition period, or reduces or terminates services at the conclusion of the authorized period, the new LMHA or LBHA must notify the individual or LAR in writing within ten business days of the proposed action and the right to appeal the proposed action in accordance with §306.154 of this subchapter (relating to Notification and Appeals Process for Local Mental Health Authority or Local Behavioral Health Authority Services).

(b) Requirements related to an individual receiving inpatient services at a state hospital or CPB. If an individual at a state hospital or CPB or LAR informs the state hospital or CPB that the individual intends to move the individual's permanent residence to a county within the local service area of another LMHA or LBHA and seek services from the new LMHA or LBHA:

(1) the state hospital or CPB must notify the following of the individual's intent to move the individual's permanent residence upon discharge:

(A) the originating LMHA or LBHA, if the individual was receiving LMHA or LBHA services from the originating LMHA or LBHA before admission to the state hospital or CPB; and

(B) the new LMHA or LBHA;

(2) the following must participate in the individual's discharge planning in accordance with §306.201 of this subchapter (relating to Discharge Planning):

(A) the state hospital or CPB;

(B) the new LMHA or LBHA; and

(C) the originating LMHA or LBHA, if the individual was receiving LMHA or LBHA services from the originating LMHA or LBHA before admission to the state hospital or CPB; and

(3) if the individual was receiving LMHA or LBHA services from the originating LMHA or LBHA before admission to the state hospital or CPB, the originating LMHA or LBHA must maintain the individual's case in open status in the applicable HHSC automation system for 90 days or until notified that the individual is admitted to services at the new LMHA or LBHA, whichever occurs first.

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

Filed with the Office of the Secretary of State on February 3, 2025.

TRD-202500358
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: February 23, 2025
Proposal publication date: September 13, 2024
For further information, please call: (737) 704-9063

♦ ♦ ♦

DIVISION 5. DISCHARGE AND ABSENCES FROM A STATE HOSPITAL OR A FACILITY WITH A CONTRACTED PSYCHIATRIC BED

26 TAC §§306.201 - 306.205, 306.207

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, §531.008, which requires the Executive Commissioner of HHSC to establish a division for administering state facilities, including state hospitals and state supported living centers, and §531.02161, which requires the Executive Commissioner of HHSC to, by rule, develop and implement a system that ensures behavioral health services may be provided using an audio-only platform to the extent permitted by state and federal law and to the extent it is cost-effective and clinically effective; Health and Safety Code §533.014 which requires the Executive Commissioner of HHSC to adopt rules relating to LMHA treatment responsibilities, §533.0356 which allows the Executive Commissioner to adopt rules governing LBHAs, §533A.0355 which requires the Executive Commissioner of HHSC to adopt rules establishing the roles and responsibilities of local intellectual and developmental disability authorities, §534.052 which requires the Executive Commissioner of HHSC to adopt rules necessary and appropriate to ensure the adequate provision of community-based services through LMHAs, §534.0535 which requires the Executive Commissioner of HHSC to adopt rules that require continuity of services and planning for patient care between HHSC facilities and LMHAs, and §552.001 which provides HHSC with authority to operate the state hospitals.

§306.201. Discharge Planning.

(a) At the time of an individual's admission to a state hospital or CPB, the designated LMHA or LBHA, if applicable, and the state hospital or CPB must begin discharge planning for the individual. The state hospital or CPB must send an electronic admission initial notification within three business days to the appropriate LMHA, LBHA, and LIDDA to initiate discharge planning.

(b) The designated LMHA or LBHA CoC liaison or other designated staff; the designated LIDDA continuity of care worker, if applicable; the individual; the LAR, if applicable; and any other person authorized by the individual, such as guardian ad litem or attorney ad litem, must participate in discharge planning with the state hospital or CPB. The state hospital or CPB must initiate coordination of discharge planning.

(1) Except for the state hospital or CPB treatment team and the individual, involvement in discharge planning may be through teleconference or video-conference calls.

(2) The state hospital or CPB must invite the LMHA, LBHA, or LIDDA, as applicable, to routine recovery or treatment plan meetings as well as any additional meetings that arise specific to discharge planning. The state hospital or CPB must notify meeting participants a minimum of 24 hours before each scheduled meeting regarding recovery or treatment planning and any additional meetings specific to discharge planning.

(3) The state hospital or CPB must ensure the development and completion of the discharge plan as listed in subsection (c) of this section and coordinate with the LMHA, LBHA, or LIDDA, if applicable, before the individual's discharge.

(4) The LMHA or LBHA must facilitate the transition of individuals who are determined by the state hospital or CPB to be medically appropriate for discharge in accordance with Texas Health and Safety Code §534.0535 from a facility to a community setting by connecting the individuals to resources available in the individuals' county of residence or choice.

(c) Discharge planning must consist of the following activities:

(1) Considering all pertinent information about the individual's clinical needs, the state hospital or CPB must identify and recommend specific clinical services and supports needed by the individual after discharge or while on pass or furlough.

(2) The state hospital or CPB and the LMHA, LBHA, or LIDDA, if applicable, must jointly identify, recommend, and help coordinate access to services for the individual and LAR, if applicable, regarding specific non-clinical services and supports needed by the individual after discharge, including the individual's need for housing, supported employment, education resources, and food assistance, clothing resources, and other supplemental supports or governmental benefits as applicable.

(3) If an individual needs a living arrangement, the LMHA or LBHA CoC liaison or LIDDA continuity of care worker must:

(A) identify a living arrangement consistent with the individual's clinical needs and preference that is available and has accessible services and supports as agreed upon by the individual or LAR; or

(B) ensure the individual or LAR is referred to housing services and support the individual through the process of obtaining and applying for housing services during the discharge planning process if a living arrangement is unavailable.

(4) The LMHA or LBHA CoC liaison or LIDDA continuity of care worker in collaboration with the individual and LAR, if applicable, must identify potential providers and resources for the recommended services and supports and arrange for provision of services upon discharge in accordance with Texas Health and Safety Code §534.0535.

(5) The state hospital or CPB must attempt to educate the individual and LAR, if applicable, to prepare the individual for care after discharge or while on pass or furlough.

(6) The state hospital or CPB must provide the individual and LAR, if applicable, with written notification of the existence, purpose, telephone number, and address of the protection and advocacy system established in Texas, pursuant to Texas Health and Safety Code §576.008.

(7) The LMHA, LBHA, or LIDDA must comply with the PASRR processes as described in Chapter 303 of this title (relating to Preadmission Screening and Resident Review (PASRR)) for an individual referred to a nursing facility.

(d) Before an individual's discharge or approval for a pass or furlough:

(1) the individual's treatment team must ensure the development of a plan to include the individual's stated goals. The plan must consist of:

(A) a description of the individual's living arrangement after discharge, or while on pass or furlough, that reflects the individual's preferences, choices, and available community resources;

(B) arrangements and referrals for the available and accessible services and supports agreed upon by the individual or LAR recommended in the individual's discharge plan;

(C) a written description of recommended clinical and non-clinical services and supports the individual receives after discharge or while on pass or furlough;

(D) documentation of arrangements and referrals for the services and supports recommended upon discharge or while on pass or furlough.

(E) a description of behavioral health symptoms identified at discharge or before a pass or furlough, including any symptoms that may disrupt the individual's stability in the community;

(F) the individual's goals, strengths, interventions, and objectives as stated in the individual's discharge plan in the state hospital or CPB;

(G) comments or additional information;

(H) a final diagnosis based on the version of the DSM currently recognized by HHSC;

(I) the names, contact information, and addresses of providers to whom the individual will be referred for any services or supports after discharge or while on pass or furlough; and

(J) a description of:

(i) the types and amount of medication the individual needs after discharge or while on pass or furlough until the individual is evaluated by a physician; or

(ii) for 90 days after discharge, the person or entity responsible for providing and paying for the medication.

(2) The state hospital or CPB must request that the individual or LAR sign the discharge plan and document in the discharge plan whether the individual or LAR agree or disagree with the plan.

(3) If the individual or LAR refuses to sign the discharge plan described in paragraph (2) of this subsection, the state hospital or CPB must document in the individual's record whether the individual or LAR agrees to the plan or not, reasons stated, and any other circumstances of the refusal.

(4) If applicable, the individual's treating physician must document in the individual's record reasons why the individual does not require continuing care or a discharge plan.

(5) If the LMHA or LBHA disagrees with the state hospital or CPB treatment team's decision concerning discharge:

(A) the treating physician of the state hospital or CPB must consult with the LMHA or LBHA physician or designee to resolve the disagreement within 24 hours; and

(B) if the disagreement continues unresolved, the medical director or designee of the state hospital or CPB must refer the issue to the Texas State Hospitals Chief Medical Officer to render a final determination.

(e) Discharge notice to family or LAR.

(1) In accordance with Texas Health and Safety Code §576.007, before discharging an adult, the state hospital or CPB must make a reasonable effort to notify the individual's family or any identified person providing support to the individual. Discharge notification requires authorization by the individual or LAR.

(2) Before discharging an individual who is at least 16 years of age, but younger than 18 years of age, who voluntarily consented for the individual's own admission, the state hospital or CPB must make a reasonable effort to notify the individual's LAR, if applicable, of the discharge within 72 hours before the date of discharge.

(3) Before discharging a minor for whom a parent, managing conservator, or guardian provided consent for admission, the state hospital or CPB must notify the minor's LAR of the discharge.

(f) Release of minors. Upon discharge, the state hospital or CPB may release a minor only to the minor's LAR or the LAR's designee.

(1) If the LAR or the LAR's designee is unwilling to retrieve the minor from the state hospital or CPB and the LAR is not a state agency:

(A) the state hospital or CPB must:

(i) notify DFPS, so DFPS can take custody of the minor from the state hospital or CPB;

(ii) refer the matter to the LMHA or LBHA to schedule a meeting with representatives from the required agencies described in subsection (f)(2)(A) of this section, the LAR, and minor to explore resources and make recommendations;

(iii) document the LMHA or LBHA referral in the discharge plan;

(iv) refer the matter to the local CRCG to schedule a meeting with representation from the required agencies described in subsection (f)(2)(A) of this section, the LAR, and the minor to explore resources and make recommendations; and

(v) document the CRCG referral in the discharge plan; and

(B) the medical directors or the medical directors' designees of the state hospital or CPB; designated LMHA, LBHA, or LIDDA; and DFPS must meet to develop and finalize the discharge recommendations.

(2) If the LAR is a state agency unwilling to assume physical custody of the minor from the state hospital or CPB, the state hospital or CPB must:

(A) refer the matter to the local CRCG office, or state CRCG office if applicable, to schedule a meeting with representatives from the member agencies, in accordance with 40 TAC, Part 19, Chapter 702, Subchapter E (relating to Memorandum of Understanding with Other State Agencies), the LAR, and minor to explore resources and make recommendations; and

(B) document the CRCG referral in the discharge plan.

(g) Notice to the designated LMHA, LBHA, or LIDDA. At least 24 hours before an individual's planned discharge, pass, or furlough, and no later than 24 hours after an unexpected discharge, a state hospital or CPB must notify the designated LMHA, LBHA, or LIDDA of the anticipated or unexpected discharge and convey the following information about the individual:

(1) identifying information, including address and contact information of the individual or LAR;

(2) legal status, for example, regarding guardianship, charges pending, or custody if the individual is a minor;

(3) the day and time the individual will be discharged or participating in a pass or furlough;

(4) the individual's destination address after discharge, or while on pass or furlough;

(5) medical information;

(6) current medications;

(7) clinical documentation, including information regarding a COPSD, an ID, or a DD; and

(8) other pertinent treatment information, including the discharge plan.

(h) Discharge packet.

(1) At a minimum, a discharge packet must include:

(A) the discharge plan;

(B) referral instructions, including:

(i) state hospital or CPB contact person;

(ii) name of the designated LMHA or LBHA CoC liaison or LIDDA continuity of care worker;

(iii) names of community resources and providers to whom the individual is referred, including contacts, appointment dates and times, addresses, and phone numbers;

(iv) a description of to whom or where the individual is released upon discharge, including the individual's intended residence, address, and phone number;

(v) instructions for the individual or LAR;

(vi) medication regimen and prescriptions, as applicable; and

(vii) dated signature of the individual or LAR and a member of the state hospital or CPB treatment team;

(C) copies of all available, pertinent, current summaries, and assessments; and

(D) the treating physician's orders.

(2) At discharge, or while on pass or furlough, the state hospital or CPB provides a copy of the discharge packet or pass or furlough plan to the individual and LAR, if applicable. An individual or LAR may request additional records.

(3) Within 24 hours after discharge, or while on pass or furlough, the state hospital or CPB must send a copy of the discharge packet or pass or furlough plan to:

(A) the designated LMHA, LBHA, or LIDDA; and

(B) the providers to whom the individual is referred, including:

(i) an LMHA or LBHA network provider, if the LMHA or LBHA is responsible for ensuring the individual's services after discharge or while on pass or furlough;

(ii) an alternate provider if the individual requested referral to an alternate provider; and

(iii) a county jail if the individual will be transported to the county jail upon discharge.

(i) Unexpected Discharge.

(1) The state hospital or CPB and the designated LMHA, LBHA, or LIDDA must make reasonable efforts to provide discharge planning for an individual discharged unexpectedly.

(2) If there is an unexpected discharge, the state hospital or CPB social worker or a designee must document the reason for not completing discharge planning activities in the individual's record.

(j) Transportation. A state hospital or CPB must:

(1) initiate and secure transportation in collaboration with an LMHA, an LBHA, or a LIDDA pursuant to an individual's discharge or pass or furlough plan; and

(2) inform a designated LMHA, LBHA, or LIDDA of an individual's transportation needs after discharge or while on pass or furlough.

(k) Discharge summary.

(1) Within ten days after an individual's discharge, the individual's physician of the state hospital or CPB must complete a written discharge summary for the individual.

(2) Within 21 days after an individual's discharge from an LMHA or LBHA, the LMHA or LBHA must complete a written discharge summary for the individual.

(3) The written discharge summary must include:

(A) a description of the individual's treatment and the individual's response to that treatment;

(B) a description of the level of care for services received;

(C) a description of the individual's level of functioning at discharge;

(D) a description of the individual's living arrangement after discharge;

(E) a description of the community services and supports the individual will receive after discharge;

(F) a final diagnosis based on the version of the DSM currently recognized by HHSC; and

(G) a description of the amount of medication available to the individual, if applicable.

(4) The discharge summary must be sent to the individual's:

(A) designated LMHA, LBHA, or LIDDA, as applicable; and

(B) providers to whom the individual was referred.

(5) Documentation of refusal. If the individual or LAR refuses to participate in the discharge planning, the circumstances of the refusal must be documented in the individual's record.

(l) An LMHA or LBHA must provide continuity of care services designed to support joint discharge planning efforts in accordance with Texas Health and Safety Code §534.0535.

§306.202. Special Considerations for Discharge Planning.

(a) Three Admissions Within 180 Days. An individual admitted to a state hospital or CPB three times within 180 days is considered at risk for future admission to inpatient services. To prevent potentially unnecessary admissions to an inpatient facility, the designated LMHA or LBHA must:

(1) during discharge planning, review the individual's previous recovery or treatment plans to determine the effectiveness of the clinical services received;

(2) include in the recovery or treatment plan:

(A) non-clinical supports, such as those provided by a mental health peer specialist or recovery support peer specialist, identified to support the individual's ongoing recovery; and

(B) recommendations for services and interventions from the individual's current or previous care plan that support the

individual's strengths and goals and prevent unnecessary admission to a state hospital or CPB;

(3) determine the availability and level of care, including type, amount, scope, and duration of clinical and non-clinical supports, such as those provided by a mental health peer specialist or recovery support peer specialist, that promote ongoing recovery and prevent unnecessary admission to a state hospital or CPB; and

(4) consider appropriateness of the individual's continued stay in the state hospital or CPB.

(b) Discharge Planning Specialists. Pursuant to Texas Health and Safety Code §534.053, each state hospital must designate at least one employee to deliver continuity of care services for individuals who are determined medically appropriate for discharge from the facility. The state hospital must concentrate the provision of continuity of care services for individuals who have been:

(1) admitted to and discharged from a state hospital three or more times during a 30-day period; or

(2) in the state hospital for longer than 365 consecutive days.

(c) Nursing Facility Referral or Admission.

(1) In accordance with 42 CFR Part 483, Subpart C, and as described in Chapter 554, Subchapter BB of this title (relating to Nursing Facility Responsibilities Related to Preadmission Screening and Resident Review (PASRR)), a nursing facility must coordinate with the referring entity to ensure the referring entity screens the individual for admission to the nursing facility before the nursing facility admits the individual.

(2) As the referring entity, the state hospital or CPB must complete a PL1 Screening and forward the completed form in accordance with §303.301 of this title (relating to Referring Entity Responsibilities Related to the PASRR Process).

(3) The LMHA, LBHA, or LIDDA must conduct a PE in accordance with Chapter 303 of this title (relating to Preadmission Screening and Resident Review (PASRR)).

(4) If a nursing facility admits an individual while on pass or furlough, the designated LMHA or LBHA must conduct and document, including justification for its recommendations, the activities described in paragraphs (5) and (6) of this subsection.

(5) The designated LMHA or LBHA must make at least one in-person contact with the individual at the nursing facility while on pass or furlough. The contact must consist of:

(A) a review of the individual's record at the nursing facility; and

(B) discussions with the individual, the LAR, if applicable, the nursing facility staff, and other staff who provide care to the individual regarding:

(i) the individual's needs and the care the individual is receiving;

(ii) the ability of the nursing facility to provide the appropriate care;

(iii) the provision of mental health services, if needed by the individual; and

(iv) the individual's adjustment to the nursing facility.

(6) Before the end of the initial pass or furlough period described in §306.205(a) of this subchapter (relating to Pass or Furlough from a State Hospital or Facility with a Contracted Psychiatric Bed, the designated LMHA or LBHA must recommend to the state hospital or CPB one of the following:

(A) discharging the individual if the LMHA or LBHA determines that:

(i) the nursing facility is capable and willing to provide appropriate care to the individual after discharge;

(ii) any mental health services needed by the individual are being provided to the individual while residing in the nursing facility; and

(iii) the individual and LAR, if applicable, agrees to the nursing facility admission;

(B) extending the individual's pass or furlough period in accordance with §306.205(a)(2) of this subchapter;

(C) returning the individual to the state hospital or CPB in accordance with §306.205 of this subchapter (relating to Pass or Furlough from a State Hospital or a Facility with a Contracted Psychiatric Bed); or

(D) initiating involuntary admission to the state hospital or CPB in accordance with §306.176 (relating to Admission Criteria for a State Hospital or a Facility with a Contracted Psychiatric Bed for Emergency Detention) and §306.177 (relating to Admission Criteria Under Order of Protective Custody or Court-ordered Inpatient Mental Health Services) of this subchapter.

(d) Assisted Living.

(1) A state hospital, a CPB, an LMHA, or an LBHA may only refer an individual to an assisted living facility that is licensed under Texas Health and Safety Code Chapter 247.

(2) As required by Texas Health and Safety Code §247.063(b), if a state hospital, a CPB, an LMHA, or an LBHA gains knowledge of an assisted living facility not operated or licensed by the state, the state hospital, CPB, LMHA, or LBHA must report the name, address, and telephone number of the facility to HHSC Complaint and Incident Intake at 1-800-458-9858.

(e) Minors.

(1) To the extent permitted by medical privacy laws, the state hospital or CPB and designated LMHA or LBHA must make a reasonable effort to involve a minor's LAR or the LAR's designee in the treatment and discharge planning process.

(2) A minor committed to or placed in a state hospital or CPB under Texas Family Code Chapter 55, Subchapter C or D, shall be discharged in accordance with the Texas Family Code Chapter 55, Subchapter C or D as applicable.

(f) An individual suspected of having an ID. If a state hospital or CPB suspects an individual has an ID, the state hospital or CPB must notify the designated LMHA or LBHA CoC liaison and the designated LIDDA to:

(1) assign a LIDDA continuity of care worker to the individual; and

(2) conduct an assessment in accordance with Chapter 304 of this title (relating to Diagnostic Assessment).

(g) Criminal Code.

(1) Texas Code of Criminal Procedure Chapter 46B.

(A) An individual committed to a state hospital or CPB under Texas Code of Criminal Procedure Article 46B.102 may only be discharged by order of the committing court under Texas Code of Criminal Procedure, Article 46B.107.

(B) An individual committed to a state hospital or CPB under Texas Code of Criminal Procedure Article 46B.073 must be discharged and transferred, in accordance with Texas Code of Criminal Procedure Article 46B.081 through Article 46B.083.

(C) For an individual committed under Texas Code of Criminal Procedure Chapter 46B, who is discharged and returned to the committing court, the state hospital or CPB, within 24 hours after discharge, must notify the following of the discharge:

(i) the individual's designated LMHA or LBHA; and

(ii) the TCOOMMI.

(2) Texas Code of Criminal Procedure Chapter 46C: Insanity defense. An individual committed to a state hospital or CPB under Texas Code of Criminal Procedure Chapter 46C may only be discharged by order of the committing court in accordance with Texas Code of Criminal Procedure Article 46C.253 or Article 46C.268.

(h) Offenders with special needs following discharge from a state hospital or CPB. The LMHA or LBHA must comply with the requirements as defined by the LMHA's and LBHA's TCOOMMI contract for offenders with special needs.

(1) An LMHA or LBHA that receives a referral for an offender with special needs in the MH priority population from a county or city jail at least 24 hours before the individual's release must complete one of the following actions:

(A) if the offender with special needs is currently receiving LMHA or LBHA services, the LMHA or LBHA must:

(i) notify the offender with special needs of the referral from a county or city jail;

(ii) arrange an in-person contact between the offender with special needs and a QMHP-CS to occur within 15 days after the individual's release; and

(iii) ensure that the QMHP-CS, at the in-person contact, reassesses the individual and arranges for appropriate services, including transportation needs at the time of release;

(B) if the individual is not currently receiving LMHA or LBHA services from the LMHA or LBHA that is notified of the referral, the LMHA or LBHA must:

(i) ensure that at the in-person contact required in subparagraph (A) of this paragraph, the QMHP-CS conducts a pre-admission assessment in accordance with §301.353(a) of this title (relating to Provider Responsibilities for Treatment Planning and Service Authorization); and

(ii) comply with §306.161(b) of this subchapter (relating to Screening and Assessment), as applicable; or

(C) if the LMHA or LBHA is unable to conduct an in-person contact with the individual required in paragraph (1)(A) of this subsection, the LMHA or LMHA must document the reasons for not doing so in the individual's record.

(2) If an LMHA or LBHA is notified of the anticipated release from prison or a state jail of an offender with special needs in the MH priority population who is currently taking psychoactive medications for a mental illness and who will be released with a 30-day supply of the psychoactive medications, the LMHA or LBHA must arrange an in-person contact required in paragraph (1)(A) of this subsection between the individual and QMHP-CS within 15 days after the individual's release.

(A) If the offender with special needs is released from state prison or state jail after hours or the LMHA or LBHA is otherwise unable to schedule the in-person contact required in paragraph (2) of this subsection before the individual's release, the LMHA or LBHA must make a good faith effort to locate and contact the individual. If the designated LMHA or LBHA is unable to have an in-person contact with the individual within 15 days after being released, the LMHA or LBHA must document the reasons for not doing so in the individual's record.

(B) At the in-person contact required in paragraph (2) of this subsection:

(i) the QMHP-CS with appropriate supervision and training must perform an assessment in accordance with §301.353(a) of this title and comply with §306.161(b) and (c) of this subchapter, as applicable; and

(ii) if the LMHA or LBHA determines that the offender with special needs should receive services immediately, the LMHA or LBHA must arrange for the individual to meet with a physician or designee authorized by state law to prescribe medication before the individual requires a refill of the prescription.

(C) If the LMHA or LBHA is unable to conduct an in-person contact with the offender with special needs required in paragraph (2) of this subsection, the LMHA or LBHA must document the reasons for being unable to do so in the individual's record.

(3) If the offender with special needs is on parole or probation, the state hospital or CPB must notify a representative of TCOOMMI before the discharge of the individual known to be on parole or probation.

§306.203. Discharge of an Individual Voluntarily Receiving Inpatient Treatment.

(a) A state hospital or CPB must discharge an individual voluntarily receiving treatment if the administrator or designee of the state hospital or CPB concludes that the individual can no longer benefit from inpatient services based on the physician's determination, as delineated in Division 5 of this subchapter (relating to Discharge and Absences from a State Hospital or a Facility with a Contracted Psychiatric Bed).

(b) If an individual voluntarily receiving treatment or LAR makes a written request for discharge:

(1) the state hospital or CPB must discharge the individual in accordance with Texas Health and Safety Code §572.004; and

(2) the individual or LAR must sign, date, and document the time on the discharge request.

(c) In accordance with Texas Health and Safety Code §572.004, if an individual informs a staff member of a state hospital or CPB of the individual's desire to leave the state hospital or CPB, the state hospital or CPB must:

(1) as soon as possible, assist the individual in documenting the written request and obtaining the necessary signature; and

(2) within four hours after a written request is made known to the state hospital or CPB, notify:

(A) the treating physician; or

(B) another physician who is a state hospital or CPB staff member, if the treating physician is not available during that period.

(d) Results of physician notification required by subsection (c)(2) of this section.

(1) In accordance with Texas Health and Safety Code §572.004(c) and (d):

(A) a state hospital or CPB, based on a physician's determination, must discharge an individual within the four-hour period described in subsection (c)(2) of this section; or

(B) if the physician who is notified in accordance with subsection (c)(2) of this section has reasonable cause to believe that the individual may meet the criteria for court-ordered inpatient mental health services or emergency detention, the physician must examine the individual as soon as possible, but no later than 24 hours, after the request for discharge is made known to the state hospital or CPB.

(2) Reasonable cause to believe that the individual may meet the criteria for court-ordered inpatient mental health services or emergency detention.

(A) If a physician does not examine an individual who may meet the criteria for court-ordered inpatient mental health services or emergency detention within 24 hours after the request for discharge is made known to the state hospital or CPB, the facility must discharge the individual.

(B) If a physician, in accordance with Texas Health and Safety Code §572.004(d), examines the individual as described in paragraph (1)(B) of this subsection and determines that the individual does not meet the criteria for court-ordered inpatient mental health services or emergency detention, the state hospital or CPB must discharge the individual upon completion of the examination.

(C) If a physician, in accordance with Texas Health and Safety Code §572.004(d), examines the individual as described in paragraph (1)(B) of this subsection and determines that the individual meets the criteria for court-ordered inpatient mental health services or emergency detention, the state hospital or CPB, by 4:00 p.m. on the next business day, must:

(i) if the state hospital or CPB intends to detain the individual, require the physician or designee, in accordance with Texas Health and Safety Code §572.004(d), to:

(I) file an application for court-ordered inpatient mental health services or emergency detention and obtains a court order for further detention of the individual;

(II) notify the individual and LAR, if applicable, of such intention; and

(III) document in the individual's record the reasons for the decision to detain the individual; or

(ii) discharge the individual.

(e) In accordance with Texas Health and Safety Code §572.004(i), after a written request from a minor individual admitted under §306.175(a)(1)(B) of this subchapter (relating to Voluntary Admission Criteria for a State Hospital or a Facility with a Contracted Psychiatric Bed, the state hospital or CPB must:

(1) notify the minor's parent, managing conservator, or guardian of the request and:

(A) if the minor's parent, managing conservator, or guardian objects to the discharge, the minor continues receiving voluntary treatment; or

(B) if the minor's parent, managing conservator, or guardian does not object to the discharge, the minor individual is discharged and released to the minor's LAR; and

(2) document the request in the minor's record.

(f) In accordance with Texas Health and Safety Code §572.004(f)(1), a state hospital or CPB is not required to complete the requirements described in this section if the individual documents and signs a written statement withdrawing the request for discharge.

§306.204. Discharge of an Individual Involuntarily Receiving Treatment.

(a) Discharge from emergency detention.

(1) Except as provided by §306.178 of this subchapter (relating to Voluntary Treatment Following Involuntary Admission) and in accordance with Texas Health and Safety Code §573.021(b) and §573.023(b), a state hospital or CPB must immediately discharge an individual under emergency detention if:

(A) the state hospital administrator, administrator of the CPB, or designee concludes, based on a physician's determination, the individual no longer meets the criteria in §306.176(c)(1) of this subchapter (relating to Admission Criteria for a State Hospital or a Facility with a Contracted Psychiatric Bed for Emergency Detention); or

(B) except as provided in paragraph (2) of this subsection:

(i) 48 hours has elapsed from the time the individual was presented to the state hospital or CPB; and

(ii) the state hospital or CPB has not obtained a court order for further detention of the individual.

(2) In accordance with Texas Health and Safety Code §573.021(b), if the 48-hour period described in paragraph (1)(B)(i) of this subsection ends on a Saturday, Sunday, or legal holiday, or before 4:00 p.m. on the next business day after the individual was presented to the state hospital or CPB, the state hospital or CPB may detain the individual until 4:00 p.m. on such business day.

(b) Discharge under order of protective custody. Except as provided by §306.178 of this subchapter and in accordance with Texas Health and Safety Code §574.028, a state hospital or CPB must immediately discharge an individual under an order of protective custody if:

(1) the state hospital administrator, administrator of the CPB, or designee determines that, based on a physician's determination, the individual no longer meets the criteria described in Texas Health and Safety Code §574.022(a);

(2) the state hospital administrator, administrator of the CPB, or designee does not receive notice that the individual's continued detention is authorized after a probable cause hearing held within the period prescribed by Texas Health and Safety Code §574.025(b);

(3) a final order for court-ordered inpatient mental health services has not been entered within the period prescribed by Texas Health and Safety Code §574.005; or

(4) an order to release the individual is issued in accordance with Texas Health and Safety Code §574.028(a).

(c) Discharge under court-ordered inpatient mental health services.

(1) Except as provided by §306.178 of this subchapter and in accordance with Texas Health and Safety Code §574.085 and §574.086(a), a state hospital or CPB must immediately discharge an individual under a temporary or extended order for inpatient mental health services if:

(A) the order for inpatient mental health services expires; or

(B) the state hospital administrator, administrator of the CPB, or designee concludes that, based on a physician's determination, the individual no longer meets the criteria for court-ordered inpatient mental health services.

(2) In accordance with Texas Health and Safety Code §574.086(b), before discharging an individual in accordance with paragraph (1) of this subsection, the state hospital administrator, administrator of the CPB, or designee must consider whether the individual should receive court-ordered outpatient mental health services in accordance with a modified order described in Texas Health and Safety Code §574.061.

(3) In accordance with Texas Health and Safety Code §574.081, at the time an individual receiving court-ordered inpatient mental health services is furloughed or discharged from a state hospital or CPB, the state hospital or CPB must provide and pay for psychoactive medication and any other medication prescribed to counteract adverse side effects of psychoactive medication. This requirement also applies for a patient on a pass.

(A) A state hospital or CPB is only required to provide or pay for these medications if funding to cover the cost of the medications is available to be paid to the facility for this purpose from HHSC.

(B) The state hospital or CPB must provide or pay for the medications in an amount sufficient to last until the individual can see a physician, or provider with prescriptive authority, but the state hospital or CPB is not required to provide or pay for more than a seven-day supply.

(C) The state hospital or CPB must inform an individual if funding is not available to provide or pay for the medications upon pass, furlough, or discharge, and if funding is not available, the individual's designated LMHA or LBHA is responsible for providing psychoactive medications as provided in §306.207(2)(A) of this division (relating to Post Discharge or Furlough: Contact and Implementation of the Recovery or Treatment Plan), if applicable.

(4) An individual committed under Texas Code of Criminal Procedure Chapter 46B or 46C may only be discharged as provided by §306.202(f) of this division (relating to Special Considerations for Discharge Planning).

(d) Discharge packet. A state hospital administrator, administrator of a CPB, or designee must forward a discharge packet, as provided in §306.201(h) of this division (relating to Discharge Planning), of any individual committed under the Texas Code of Criminal Procedure to the jail and the LMHA or LBHA in accordance with state and federal privacy laws.

§306.205. Pass or Furlough from a State Hospital or a Facility with a Contracted Psychiatric Bed.

(a) An individual who is under consideration for discharge as described in §306.203 of this division (relating to Discharge of an Individual Voluntarily Receiving Treatment) or §306.204(c) of this division (relating to Discharge of an Individual Involuntarily Receiving Treatment) may leave the state hospital or CPB while on pass or furlough if the state hospital or CPB and the designated LMHA or LBHA agree that a pass or furlough will be beneficial in implementing the individual's recovery or treatment plan. The designated LMHA or LBHA is responsible for monitoring the individual while the individual is on pass or furlough.

(1) If an individual on an involuntary commitment under Texas Health and Safety Code Chapter 574 is authorized for a pass or furlough, the state hospital or CPB must notify the committing court of the individual's absence.

(2) The state hospital or CPB may extend an initial pass or furlough if:

(A) requested by the designated LMHA or LBHA; and

(B) the extension is clinically justified.

(3) A furlough that exceeds 60 days must be approved by:

(A) the state hospital administrator or designee, or the administrator of the CPB or designee; and

(B) the designated LMHA or LBHA executive director or designee.

(4) The state hospital or CPB must not authorize a pass or furlough that exceeds the expiration date of the individual's order for inpatient mental health services.

(b) The administrator of a state hospital or CPB may contact a peace officer as described under Texas Health and Safety Code §574.083 if:

(1) an individual is absent without authority from a state hospital or CPB;

(2) the individual has violated the conditions of a pass or furlough; or

(3) the individual's condition has deteriorated to the extent that the individual's continued absence under pass or furlough is not appropriate.

(c) If the individual is detained in a nonmedical facility by a peace officer, the LMHA or LBHA must ensure the individual receives proper care and medical attention in accordance with Texas Health and Safety Code §574.083.

(d) In accordance with Texas Health and Safety Code §574.084, an individual's furlough may be revoked only after an administrative hearing held in accordance with this subsection.

(1) The state hospital or CPB must conduct a hearing by a hearing officer who is a mental health professional not directly involved in treating the individual.

(2) The state hospital or CPB must:

(A) hold an informal hearing within 72 hours after the individual returns to the facility;

(B) provide the individual or LAR and facility staff members an opportunity to present information supporting the state hospital's or CPB's position; and

(C) provide the individual or LAR the option to select another person or staff member to serve as the individual's advocate.

(3) Within 24 hours after the conclusion of the hearing, the hearing officer must determine if:

(A) revocation of the furlough is justified because:

(i) the individual was absent without authority from the facility;

(ii) the individual violated the conditions of the furlough; or

(iii) the individual's condition deteriorated to the extent the individual's continued furlough was inappropriate; or

(B) the furlough was justified.

(4) The hearing office must render the final decision in writing, including the basis for the hearing officer's decision, and place the decision in the individual's file.

(5) If the hearing officer's decision does not revoke the furlough, the individual may leave the state hospital or CPB pursuant to the conditions of the furlough.

(6) The state hospital or CPB must ensure the individual's record includes a copy of the hearing officer's report.

(e) Only the committing criminal court may grant a pass or furlough from a state hospital or CPB for individuals committed under Texas Code of Criminal Procedure Chapter 46B or 46C.

§306.207. Post Discharge or Furlough: Contact and Implementation of the Recovery or Treatment Plan.

(a) The designated LMHA or LBHA must:

(1) contact an individual following discharge or furlough from a state hospital or CPB;

(2) implement the individual's recovery or treatment plan within seven days after discharge in accordance with this section; and

(3) ensure the successful transition of the individual determined by the state hospital or CPB to be medically appropriate for discharge in accordance with Texas Health and Safety Code §534.0535.

(b) LMHA or LBHA contact after discharge or furlough.

(1) The designated LMHA or LBHA must contact an individual in person or using audiovisual technology within seven days after discharge or furlough of an individual who is:

(A) discharged or on furlough from a state hospital or CPB and referred to the LMHA or LBHA for services or supports as indicated in the recovery or treatment plan;

(B) discharged from an LMHA or LBHA-network provider of inpatient services and referred to the LMHA or LBHA for services or supports as indicated in the recovery or treatment plan;

(C) discharged from an alternate provider of inpatient services and receiving LMHA or LBHA services from the designated LMHA or LBHA at the time of admission and who, upon discharge, is referred to the LMHA or LBHA for services or supports as indicated in the recovery or treatment plan;

(D) discharged from the LMHA's or LBHA's crisis stabilization unit or any overnight crisis facility and referred to the LMHA or LBHA for services or supports as indicated in the discharge plan; or

(E) an offender with special needs discharged from a state hospital or CPB returning to jail.

(2) During the contact required by paragraph (1)(A) of this paragraph, the designated LMHA or LBHA must:

(A) reassess the individual;

(B) ensure the provision of the services and supports specified in the individual's recovery or treatment plan by making the services and supports available and accessible as determined by the individual's level of care; and

(C) assist the individual in accessing the services and supports specified in the individual's recovery or treatment plan.

(3) The designated LMHA or LBHA must develop or review an individual's recovery or treatment plan in accordance with §301.353(e) of this title (relating to Provider Responsibilities for Treatment Planning and Service Authorization) and consider treatment recommendations in the state hospital's or CPB's discharge plan within ten business days after the contact required by paragraph (1)(A) of this paragraph.

(4) The designated LMHA or LBHA must make a good faith effort to contact an individual as required by paragraph (1)(A) of this paragraph. If the designated LMHA or LBHA does not have the required contact with the individual, the LMHA or LBHA must document the attempts made and reasons the contact did not occur in the individual's record.

(c) For an individual whose recovery or treatment plan identifies the designated LMHA or LBHA as responsible for providing or paying for the individual's psychoactive medications, the designated LMHA or LBHA must ensure:

(1) the provision of psychoactive medications for the individual; and

(2) the individual has an appointment with a physician or designee authorized by state law to prescribe medication before the earlier of the following events:

(A) the individual's supply of psychoactive medication from the state hospital or CPB has been depleted; or

(B) the 15th day after the individual is on furlough or discharged from the state hospital or CPB.

(d) The designated LMHA or LBHA must document in an individual's record the LMHA's or LBHA's activities described in this section, and the individual's responses to those activities.

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

Filed with the Office of the Secretary of State on February 3, 2025.

TRD-202500359
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: February 23, 2025
Proposal publication date: September 13, 2024
For further information, please call: (737) 704-9063

♦ ♦ ♦

26 TAC §306.206

STATUTORY AUTHORITY

The repeal is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, §531.008, which requires the Executive Commissioner of HHSC to establish a division for administering state facilities, including state hospitals and state supported living centers, and §531.02161, which requires the Executive Commissioner of HHSC to, by rule, develop and implement a system that ensures behavioral

health services may be provided using an audio-only platform to the extent permitted by state and federal law and to the extent it is cost-effective and clinically effective; Health and Safety Code §533.014 which requires the Executive Commissioner of HHSC to adopt rules relating to LMHA treatment responsibilities, §533.0356 which allows the Executive Commissioner to adopt rules governing LBHAs, §533A.0355 which requires the Executive Commissioner of HHSC to adopt rules establishing the roles and responsibilities of local intellectual and developmental disability authorities, §534.052 which requires the Executive Commissioner of HHSC to adopt rules necessary and appropriate to ensure the adequate provision of community-based services through LMHAs, §534.0535 which requires the Executive Commissioner of HHSC to adopt rules that require continuity of services and planning for patient care between HHSC facilities and LMHAs, and §552.001 which provides HHSC with authority to operate the state hospitals.

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

Filed with the Office of the Secretary of State on February 3, 2025.

TRD-202500360
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: February 23, 2025
Proposal publication date: September 13, 2024
For further information, please call: (737) 704-9063

♦ ♦ ♦

DIVISION 6. TRAINING

26 TAC §306.221

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, §531.008, which requires the Executive Commissioner of HHSC to establish a division for administering state facilities, including state hospitals and state supported living centers, and §531.02161, which requires the Executive Commissioner of HHSC to, by rule, develop and implement a system that ensures behavioral health services may be provided using an audio-only platform to the extent permitted by state and federal law and to the extent it is cost-effective and clinically effective; Health and Safety Code §533.014 which requires the Executive Commissioner of HHSC to adopt rules relating to LMHA treatment responsibilities, §533.0356 which allows the Executive Commissioner to adopt rules governing LBHAs, §533A.0355 which requires the Executive Commissioner of HHSC to adopt rules establishing the roles and responsibilities of local intellectual and developmental disability authorities, §534.052 which requires the Executive Commissioner of HHSC to adopt rules necessary and appropriate to ensure the adequate provision of community-based services through LMHAs, §534.0535 which requires the Executive Commissioner of HHSC to adopt rules that require continuity of services and planning for patient care between HHSC facilities and LMHAs, and §552.001 which provides HHSC with authority to operate the state hospitals.

§306.221. Screening and Intake Assessment Training Requirements at a State Hospital and a Facility with a Contracted Psychiatric Bed.

(a) Screening training. As required by Texas Health and Safety Code §572.0025(e), a state hospital or CPB staff member whose responsibilities include conducting a screening described in Division 3 of this subchapter (relating to Admission to a State Hospital or a Facility with a Contracted Psychiatric Bed--Provider Responsibilities) must receive at least eight hours of training in the state hospital's or CPB's screening.

(1) The screening training must provide instruction regarding:

(A) obtaining relevant information about the individual, including information about finances, third-party coverage or insurance benefits, and advance directives;

(B) explaining, orally and in writing, the individual's rights described in Chapter 320, Subchapter A of this title(relating to Rights of Individuals Receiving Mental Health Services);

(C) explaining, orally and in writing, the state hospital's or CPB's services and treatment as the services and treatment relate to the individual;

(D) explaining, orally and in writing, the existence, purpose, telephone number, and address of the protection and advocacy system established in Texas, pursuant to Texas Health and Safety Code §576.008; and

(E) determining whether an individual comprehends the information provided in accordance with subparagraphs (B) - (D) of this paragraph.

(2) Up to six hours of the following training may count toward the screening training required by this subsection:

(A) 25 TAC §417.515 (relating to Staff Training in Identifying, Reporting, and Preventing Abuse, Neglect, and Exploitation); and

(B) §320.29 of this title (relating to Staff Training in Rights of Individuals Receiving Mental Health Services).

(b) Intake assessment training. As required by Texas Health and Safety Code §572.0025(e), if a state hospital's or CPB's internal policy permits an assessment professional to determine whether a physician should conduct an examination on an individual requesting voluntary admission, the assessment professional must receive at least eight hours of training in conducting an intake assessment pursuant to this subchapter.

(1) The intake assessment training must provide instruction regarding assessing and diagnosing in accordance with §301.353 of this title (relating to Provider Responsibilities for Treatment Planning and Service Authorization).

(2) An assessment professional must receive intake training:

(A) before conducting an intake assessment; and

(B) annually throughout the professional's employment or association with state hospital or CPB.

(c) Documentation of training. A state hospital or CPB must document that each staff member and each assessment professional

whose responsibilities include conducting the screening or intake assessment have successfully completed the training described in subsections (a) and (b) of this section, including:

(1) the date of the training;

(2) the length of the training session; and

(3) the name of the instructor.

(d) Performance in accordance with training. Each staff member and each assessment professional whose responsibilities include conducting the screening or intake assessment must perform the assessments in accordance with the training required by this section.

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

Filed with the Office of the Secretary of State on February 3, 2025.

TRD-202500361
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: February 23, 2025
Proposal publication date: September 13, 2024
For further information, please call: (737) 704-9063

♦ ♦ ♦

SUBCHAPTER H. BEHAVIORAL HEALTH SERVICES--TELECOMMUNICATIONS

26 TAC §§306.361, 306.363, 306.365, 306.367, 306.369

STATUTORY AUTHORITY

The new sections are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, §531.008, which requires the Executive Commissioner of HHSC to establish a division for administering state facilities, including state hospitals and state supported living centers, and §531.02161, which requires the Executive Commissioner of HHSC to, by rule, develop and implement a system that ensures behavioral health services may be provided using an audio-only platform to the extent permitted by state and federal law and to the extent it is cost-effective and clinically effective; Health and Safety Code §533.014 which requires the Executive Commissioner of HHSC to adopt rules relating to LMHA treatment responsibilities, §533.0356 which allows the Executive Commissioner to adopt rules governing LBHAs, §533A.0355 which requires the Executive Commissioner of HHSC to adopt rules establishing the roles and responsibilities of local intellectual and developmental disability authorities, §534.052 which requires the Executive Commissioner of HHSC to adopt rules necessary and appropriate to ensure the adequate provision of community-based services through LMHAs, §534.0535 which requires the Executive Commissioner of HHSC to adopt rules that require continuity of services and planning for patient care between HHSC facilities and LMHAs, and §552.001 which provides HHSC with authority to operate the state hospitals.

§306.361. Purpose.

The purpose of this subchapter is to establish methods and parameters of service delivery for individuals receiving general revenue-funded behavioral health services that the Texas Health and Human Services Commission (HHSC) determines are clinically effective and cost-effective in accordance with Texas Government Code §548.0002.

§306.363. Application.

This subchapter applies to:

(1) a local mental health authority (LMHA);

(2) a local behavioral health authority (LBHA);

(3) an HHSC-funded substance use intervention provider;

(4) an HHSC-funded substance use treatment provider; and

(5) a subcontracted provider of an LMHA, LBHA, HHSC-funded substance use intervention provider, and HHSC-funded substance use treatment provider.

§306.365. Definitions.

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

(1) Audio-only technology--A synchronous interactive, two-way audio communication that uses only sound and that conforms to privacy requirements of the Health Insurance Portability and Accountability Act. Audio-only includes the use of telephonic communication. Audio-only does not include audiovisual or in-person communication.

(2) Audiovisual technology--A synchronous interactive, two-way audio and video communication that conforms to privacy requirements under the Health Insurance Portability and Accountability Act. Audiovisual does not include audio-only or in-person communication.

(3) CFR--Code of Federal Regulations.

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

(5) HIPAA--The Health Insurance Portability and Accountability Act, 42 U.S.C. §1320d et seq.

(6) Individual--A person seeking or receiving services under this subchapter.

(7) In person or in-person--Within the physical presence of another person. In person or in-person does not include interacting with an individual through audiovisual or audio-only communication.

(8) LAR--Legally authorized representative. A person authorized by state law to act on behalf of an individual.

(9) LBHA--Local behavioral health authority. An entity designated as the local behavioral health authority by HHSC in accordance with Texas Health and Safety Code §533.0356.

(10) LMHA--Local mental health authority. An entity designated as the local mental health authority by HHSC in accordance with Texas Health and Safety Code §533.035(a).

(11) Provider--A person or entity that contracts to deliver services under this subchapter with:

(A) HHSC;

(B) an LMHA;

(C) an LBHA;

(D) an HHSC-funded substance use intervention provider; or

(E) an HHSC-funded substance use treatment provider.

§306.367. General Provisions.

(a) A provider may deliver services as permitted under this subchapter, if such delivery is permitted under the provider's state license, permit, or other legal authorization.

(b) If a behavioral health service has a procedure code that is billable in Medicaid, but the service is funded through general revenue, a provider must adhere to:

(1) the Texas Medicaid Provider Procedures Manual and the Behavioral Health and Case Management Services Handbook posted on the Texas Medicaid and Healthcare Partnership website;

(2) the Texas Medicaid Provider Procedures Manual and Telecommunications Services Handbook posted on the Texas Medicaid and Healthcare Partnership website; and

(3) other Medicaid guidance concerning delivery of behavioral health services by audiovisual technology and audio-only technology.

(c) A provider may deliver behavioral health services that do not have a procedure code billable in Medicaid either in person, by audiovisual technology, or by audio-only technology.

(d) A provider delivering behavioral health services by audiovisual technology or audio-only technology as permitted under this subchapter must:

(1) deliver behavioral health services in person or use audiovisual technology rather than audio-only technology, whenever possible;

(2) offer the option of in-person service delivery and not require an individual to receive services through audiovisual technology or audio-only technology;

(3) defer to the needs of the individual receiving services, allowing the method of service delivery to be accessible, person-centered and family-centered, and driven primarily by the individual's choice rather than provider convenience;

(4) only deliver the service by audiovisual technology and audio-only technology if agreed to by the individual or LAR;

(5) determine that providing the service by audiovisual technology or audio-only technology is clinically appropriate and safe;

(6) deliver services in compliance with state standards set forth in Texas Health and Safety Code §533.035(d) and §533.0356(h), Texas Health and Safety Code Chapter 464, and in accordance with applicable HHSC rules; and

(7) maintain the confidentiality of protected health information as required by 42 CFR Part 2, 45 CFR Parts 160 and 164, Texas Occupations Code Chapter 159, Texas Health and Safety Code Chapter 611, and other applicable federal and state law.

(e) A provider must ensure any software or technology used complies with all applicable state and federal requirements, including HIPAA confidentiality and data encryption requirements, and with the United States Department of Health and Human Services rules implementing HIPAA confidentiality and data encryption requirements.

§306.369. Documentation Requirements.

(a) A provider must accurately document the services rendered and identify the method of service delivery. Documentation requirements for behavioral health services delivered by audiovisual technology or audio-only technology are the same as for service delivery in person.

(b) Before delivering a behavioral health service by audio-only technology, a provider must:

(1) obtain informed consent from the individual or LAR except when doing so is not feasible or could result in death or injury to the individual;

(2) if applicable, document in the individual's medical record that informed consent was obtained verbally; and

(3) document the reason why the provider delivered services by audio-only technology.

(c) A provider must adhere to documentation requirements in accordance with publications and conditions described in §306.367(b) of this subchapter (relating to General Provisions) if the general revenue-funded behavioral health service has a procedure code that is billable in Medicaid.

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

Filed with the Office of the Secretary of State on February 3, 2025.

TRD-202500362
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: February 23, 2025
Proposal publication date: September 13, 2024
For further information, please call: (737) 704-9063

♦ ♦ ♦

CHAPTER 307. BEHAVIORAL HEALTH PROGRAM

SUBCHAPTER C. JAIL-BASED COMPETENCY RESTORATION PROGRAM

26 TAC §§307.101, 307.103, 307.105, 307.107, 307.109, 307.111, 307.113, 307.115, 307.117, 307.119, 307.121, 307.123, 307.125, 307.127, 307.129, 307.131

The Texas Health and Human Services Commission (HHSC) adopts amendments to §307.101, concerning Purpose; §307.103, concerning Application; §307.105, concerning Definitions; §307.107, concerning JBCR Program Eligibility Requirements; §307.109, concerning Service Standards; §307.111, concerning JBCR Provider Staff Member Training; §307.113, concerning Policies and Procedures; §307.115, concerning Individual Eligibility; §307.117, concerning Admission; §307.119, concerning Rights of Individuals Receiving JBCR; §307.121, concerning Treatment Planning; §307.123, concerning Competency Restoration Education; §307.125, concerning Procedures for Determining Competency Status in a JBCR Program; §307.127, concerning Preparation for Discharge from a JBCR Program; §307.129, concerning Outcome Measures; and §307.131, concerning Compliance with Statutes, Rules, and Other Documents.

The amendments to §§307.101, 307.103, 307.105, 307.107, 307.111, 307.113, 307.117, 307.119, 307.121, 307.123, 307.125, 307.127, 307.129, and 307.131 are adopted with changes to the proposed text as published in the September 13,

2024, issue of the *Texas Register* (49 TexReg 7227) and will be republished.

The amendments to §307.109 and §307.115 are adopted without changes to the proposed text and will not be republished.

BACKGROUND AND JUSTIFICATION

The amendments are necessary to comply with Senate Bill 49, 87th Legislature, Regular Session, 2021, which amended Texas Code of Criminal Procedure (CCP) Chapter 46B concerning procedures regarding defendants who are or may be individuals with a mental illness or intellectual disability. The amended rules align the existing rules with CCP Chapter 46B by removing references to the pilot program, defining when the initial competency restoration period and an extension begin, updating requirements for a psychiatrist or psychologist in §307.125, and allowing jail-based competency restoration (JBCR) programs to continue competency restoration services after 60 days if the individual is not restored to competency unless notified that space at a facility or an Outpatient Competency Restoration program appropriate for the individual is available and if the required number of days are remaining in the restoration period. The amended rules expand upon JBCR policies and procedures for consistency in staff training and program operations. The amended rules also update cross-references and terminology for clarity and make minor grammatical and editorial changes for accuracy, understanding, and uniformity.

COMMENTS

The 31-day comment period ended on October 14, 2024.

During this period, HHSC received comments regarding the proposed rules from three commenters, including Family to Family Network, Texas Council of Community Centers, and Texas Parent to Parent. A summary of comments relating to the rules and HHSC's responses follows.

Comment: One commenter suggested adding autism to the list of services that JBCR includes in §307.101.

Response: HHSC declines to revise the rule because the commenter's request does not align with the scope of this rule project. JBCR providers are required to collaborate with the local intellectual and developmental disability authority (LIDDA) during continuity of care and discharge planning. LIDDAs provide and oversee services for persons with intellectual and developmental disabilities, including autism.

Comment: One commenter suggested changing "discharge planning services" to "continuity of care" in §307.101.

Response: HHSC agrees that "continuity of care" should be added to the list of what JBCR includes; however, HHSC opts to keep "discharge planning services." Therefore, HHSC revised §307.101 to add "continuity of care" in a new paragraph (6) and kept "discharge planning services" as proposed in §307.101(5).

Comment: A commenter suggested updating §307.103 to apply to a board certified behavioral analyst (BCBA).

Response: HHSC declines to revise the rule because CCP Article 46B.091(c) requires that JBCR providers are local mental health authorities (LMHA) or local behavioral health authorities (LBHA) or subcontractors of LMHAs or LBHAs. The inclusion of a BCBA does not align with the scope of this rule project.

Comment: One commenter recommended updating §307.103 for this subchapter to apply to counties.

Response: HHSC declines to revise the rule. HHSC removed this language because Article 46B.090, which authorized HHSC to implement a JBCR pilot program by contracting with a non-LMHA or non-LBHA JBCR provider, expired. Article 46B.091(e) requires that HHSC establish contract monitoring and oversight requirements for an LMHA or LBHA that contracts with a county to provide JBCR services.

Comment: A commenter suggested adding the terms "autism" and "BCBA" to the list of definitions in §307.105.

Response: HHSC declines to revise the rule. HHSC has determined that autism does not need to be specifically named in the context of this subchapter, and the inclusion of a BCBA does not align with the scope of this rule project.

Comment: One commenter suggested for the definition of "competency restoration" in §307.105(3) to include both "treatment" and "education processes."

Response: HHSC declines to revise the definition of "competency restoration" as suggested because HHSC uses the statutory definition of "competency restoration" in CCP Article 46B.001(3). In addition, these rules require that treatment must be provided as clinically appropriate.

Comment: A commenter recommended leaving in the definition for "local unit of general purpose government" in §307.105(13), as there is still a role for counties in JCBR implementation.

Response: HHSC declines to revise the rule. While HHSC agrees that there is a role for counties in JBCR implementation, Article 46B.091(e) requires that HHSC establish contract monitoring and oversight requirements for an LMHA or LBHA that contracts with a county to provide JBCR services.

Comment: A commenter suggested to revise §307.105(14) to "specify that individuals receiving JBCR should be housed separately from the general population unless such housing results in seclusion or solitary-like settings."

Response: HHSC declines to revise the rule as suggested. The definition that is now in §307.105(15) aligns with CCP Article 46B.091(d)(5), which requires that JBCR programs operate in the jail in a designated space that is separate from the space used for the general population of the jail.

Comment: One commenter observed that §307.107(b) does not appear to include JBCR providers who contract with HHSC and requested to ensure that language in §307.107(b) does not jeopardize JBCR efforts that do not contract with a county or counties.

Response: Based on the suggestion, HHSC believes the commenter is commenting about §307.107(c), not §307.107(b). HHSC declines to revise the rule because §307.103 authorizes a JBCR provider to deliver JBCR regardless of the funding source. Section 307.107(c) does not preclude JBCR providers who are an LMHA, LBHA, or a subcontractor of an LMHA or LBHA, from receiving funding from HHSC or from another source to operate a JBCR program. In addition, CCP Article 46B.091(c) requires that counties contract with an LMHA or LBHA to implement a JBCR program.

Comment: One commenter requested to add "ID/autism" services to the list of JBCR program service standards in §307.109.

Response: HHSC declines to revise the rule because the commenter's request does not align with the scope of this rule project. JBCR providers are required to collaborate with the LIDDA dur-

ing continuity of care and discharge planning. LIDDAs provide and oversee services for persons with intellectual and developmental disabilities, including autism.

Comment: One commenter suggested ensuring in §307.109(5) that JBCR participants are housed separately from the general population and receive separate, evidence-based programming.

Response: HHSC declines to revise §307.109(5) as suggested. The rule aligns with CCP Article 46B.091(d)(5), which requires that JBCR programs operate in the jail in a designated space that is separate from the space used for the general population of the jail. In addition, HHSC is not aware of any JBCR programming studies that would be considered "evidence-based" at this time.

Comment: A commenter suggested adding a BCBA as a contractor to §307.113.

Response: HHSC declines to revise the rule as suggested because CCP Article 46B.091(c) requires that JBCR providers are LMHAs or LBHAs) or subcontractors of LMHAs or LBHAs, and the inclusion of a BCBA does not align with the scope of this rule project.

Comment: A commenter wrote, "Collaborate on suicide and homicide prevention plans," in relation to §307.113(4).

Response: Development of an individualized suicide and homicide prevention plan is addressed in §307.113(5). HHSC therefore declines to revise §307.113 in response to this comment.

Comment: A commenter requested clarification on the term "capacity" in §307.113(9).

Response: HHSC cannot respond to this comment as the term "capacity" does not appear in any of the rule text published as proposed.

Comment: One commenter requested adding a BCBA as a contractor to §307.115.

Response: HHSC declines to revise the rule because CCP Article 46B.091(c) requires that JBCR providers are LMHAs or LBHAs or subcontractors of LMHAs or LBHAs and the inclusion of a BCBA does not align with the scope of this rule project.

Comment: One commenter recommended including rejection criteria in §307.115(a) for when an individual is deemed ineligible for competency restoration.

Response: HHSC declines to revise the rule because JBCR and OCR providers are permitted to set program-specific eligibility criteria depending on the program structure and services available. The addition of ineligibility requirements would be too limiting and may disrupt current service provision.

Comment: A commenter recommended to revise §307.117(a) to allow for JBCR providers to operate their programs based on capacity and staffing.

Response: HHSC agrees with the comment and revised §307.117(a) to replace "must admit" with "may only admit" as JBCR providers should consult with their legal counsel related to compliance with court orders when issues of capacity or staffing arise. In §307.113(9) of this rule, JBCR providers are required to have a policy and procedure for coordinating with the court concerning the JBCR program's ability to provide services to a new participant.

Comment: One commenter requested to change "OCR services" to "JBCR services" in §307.117(b)(1)(A).

Response: HHSC declines to revise the rule because the rule text aligns with CCP Article 46B.0735.

Comment: A commenter suggested inserting a concrete timeframe for providing services in §307.117(b)(2).

Response: HHSC declines to revise §307.117(b)(2) because the rule text aligns with CCP Article 46B.0735. In addition, §307.117(c) requires that competency restoration services begin no later than 72 hours after admission to the JBCR program.

Comment: A commenter suggested changing the timeframe in §307.117(c) to "72 hours after the court orders JBCR."

Response: HHSC disagrees and declines to revise the rule. HHSC has determined that admission to the JBCR program as required in §307.117(c) aligns with CCP Article 46B.073(d).

Comment: One commenter recommended clarifying the factors to be considered in determining JBCR eligibility in §307.117(c).

Response: HHSC declines to revise the rule. JBCR providers are permitted to set program-specific eligibility criteria depending on the program structure and services available.

Comment: A commenter noted previous language in §307.117(c)(2) that provided a process for informing the court about program capacity limits and potential waitlists. The commenter requested keeping this language to confirm that "JBCR providers can manage their programs and ensure individuals are appropriately enrolled as capacity allows."

Response: HHSC declines to revise the rule in response to the comment. JBCR providers vary in how they manage program capacity, so the proposed rule is intended to allow for flexibility. The deleted language also did not align with HHSC policy of adding individuals to the waitlist when HHSC receives an inpatient order of commitment.

Comment: A commenter suggested ensuring documentation mentioned in §307.119(2) includes an explanation of the individual's rights and complies with the Americans with Disabilities Act of 1990.

Response: HHSC declines to revise §307.119(2) in response to the comment because §307.119(1) requires a JBCR program to inform individuals of the individuals' rights in accordance with 26 TAC Chapter 320, Subchapter A (relating to Rights of Individuals Receiving Mental Health Services). Though it does not specifically require compliance with the Americans with Disabilities Act of 1990, 26 TAC §320.25(a) requires that the method used to communicate the information should be designed for effective communication, tailored to meet each person's ability to comprehend, and responsive to any visual or hearing impairment.

Comment: One commenter suggested adding the term "autism" to §307.121(7).

Response: HHSC declines to revise the rule because JBCR providers are required to collaborate with the LIDDA during treatment planning. LIDDAs provide and oversee services for persons with intellectual and developmental disabilities, including autism. The commenter's request does not align with the scope of this rule project and CCP Chapter 46B.

Comment: One commenter requested to revise §307.123(a) to require the resubmission of the competency restoration training module for any subsequent variation of content.

Response: HHSC agrees with the comment and revised §307.123(a) to require a JBCR program to submit the compe-

tency restoration training module for HHSC review annually after the initial submission. HHSC also revised §307.123(a) to clarify that the training module is submitted for HHSC approval before providing services and updated the definition for "competency restoration training module" in §307.105(4) to "HHSC-approved training module" for consistency throughout the amended rules.

Comment: A commenter recommended replacing "promptly" with a definite timeline in §307.125(b).

Response: HHSC declines to revise the rule in response to the comment because the rule text aligns with CCP Article 46B.091.

Comment: A commenter suggested retaining current language in §307.125(c) that includes the additional allowance for a 45-day extension.

Response: HHSC declines to revise the rule because the current rule text aligns with CCP Article 46B.091(j)(1)- (2). The current rule text has no 45-day extension.

Comment: A commenter requested replacing "without unnecessary delay" in §307.125(d) with a specific timeframe.

Response: HHSC declines to revise §307.125(d) as suggested because the rule text aligns with CCP Article 46B.091.

Comment: One commenter suggested removing the language in §307.125(d) that requires JBCR provider coordination because JBCR providers lack authority over courts or county jails.

Response: HHSC agrees that JBCR providers do not have authority over county jails or courts. Therefore, HHSC revised §307.125(d) to require that the JBCR program "must collaborate with the court and the county jail to support the transfer of the individual, not "must coordinate with the court and county jail to ensure the transfer of the individual." In addition, HHSC revised §307.113(7) to require a JBCR program's policies and procedures to address how a program staff member "collaborates," not "coordinates" with the jail medical provider as described in that rule.

Comment: A commenter noted that JBCR providers have limited ability to coordinate an individual's movement after discharge and recommended revising §307.127(a) to have the treatment team "collaborate with appropriate entities to ensure the individual's continuity of care and supports in accordance with Chapter 306, Subchapter D of this title (relating to Mental Health--Admission, Continuity, and Discharge)."

Response: HHSC agrees that JBCR providers do not have authority over county jails or courts. HHSC revised §307.127(a) - (c) to require that the treatment team must "collaborate with appropriate entities to facilitate" the individual's continuity of care and discharge, not "coordinate" the individual's continuity of care and discharge.

HHSC revised §307.101, §307.103, §307.107(a), §307.113(6), §307.117(d), and §307.125(c)(2) to make minor editorial changes for accuracy, understanding, and uniformity.

HHSC revised §307.105 to add "COPSD--Co-occurring psychiatric and substance use disorder" in a new paragraph (5) and then reformatted the remainder of the rule and revised §307.101(3) and §307.121(8) to use the acronym (COPSD).

HHSC revised §307.107(d), §307.111(b)(1) and (2), §307.119(1), §307.121, §307.129(b)(2)(B)(vi), and §307.131(a) to update rule references. In addition, the rule reference updates in §307.131 required removing paragraph (3)(A) - (D) and changing paragraph (4) to paragraph (3)(A) - (F).

STATUTORY AUTHORITY

The amendments are authorized by the Texas Code of Criminal Procedure Chapter 46B, relating to Incompetency to Stand Trial, Article 46B.091, requiring the Executive Commissioner of HHSC to adopt rules as necessary for a county to develop and implement a JBCR program, and Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system.

§307.101. Purpose.

The purpose of this subchapter is to provide standards for jail-based competency restoration as required by Texas Code of Criminal Procedure Chapter 46B, relating to Incompetency to Stand Trial. Jail-based competency restoration includes:

(1) mental health services;

(2) intellectual disability services;

(3) co-occurring psychiatric and substance use disorder treatment services;

(4) competency restoration education in the county jail for an individual found incompetent to stand trial;

(5) discharge planning services; and

(6) continuity of care services.

§307.103. Application.

This subchapter applies to a local mental health authority, local behavioral health authority, or a subcontractor of a local mental health authority or local behavioral health authority delivering jail-based competency restoration authorized by Texas Code of Criminal Procedure Chapter 46B, regardless of the funding source for the jail-based competency restoration program.

§307.105. Definitions.

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

(1) Business day--Any day except a Saturday, Sunday, or legal holiday listed in Texas Government Code §662.021.

(2) CFR--Code of Federal Regulations.

(3) Competency restoration--The treatment or education process for restoring an individual's ability to consult with the individual's attorney with a reasonable degree of rational understanding, including a rational and factual understanding of the court proceedings and charges against the individual as defined in Texas Code of Criminal Procedure Article 46B.001.

(4) Competency restoration training module--An HHSC-approved training module used by program staff members to provide legal education to an individual receiving competency restoration services.

(5) COPSD--Co-occurring psychiatric and substance use disorder.

(6) Court--A court of law presided over by a judge, judges, or a magistrate in civil and criminal cases.

(7) Day--A calendar day, unless otherwise specified.

(8) Extension--As described in Texas Code of Criminal Procedure Article 46B.080(d), an extension begins on the later of:

(A) the date the court enters the order under Article 46B.080(a); or

(B) the date competency restoration services begin pursuant to the order entered under Article 46B.080(a).

(9) Good standing--Entities eligible to contract with HHSC pursuant to HHSC procurement and contract rules and guidelines.

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

(11) ID--Intellectual disability. Consistent with Texas Health and Safety Code §591.003, significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior as defined in §304.102 of this title (relating to Definitions) and originating before age 18.

(12) Individual--A person receiving services under this subchapter.

(13) Inpatient mental health facility--The term has the meaning assigned in Texas Health and Safety Code §571.003.

(14) IST--Incompetent to stand trial. The term has the meaning described in Texas Code of Criminal Procedure Article 46B.003.

(15) JBCR--Jail-based competency restoration. Competency restoration services in a county jail setting provided in a designated space separate from the space used for the general population of the county jail.

(16) JBCR program--A jail-based competency restoration program developed and implemented by a county or counties in accordance with the Texas Code of Criminal Procedure Article 46B.091.

(17) LBHA--Local behavioral health authority. An entity designated as the local behavioral health authority by HHSC in accordance with Texas Health and Safety Code §533.0356.

(18) Legally authorized representative--A person authorized by state law to act on behalf of an individual with regard to a matter described in this subchapter.

(19) LIDDA--Local intellectual and developmental disability authority. An entity designated as the local intellectual and developmental disability authority by HHSC in accordance with Texas Health and Safety Code §533A.035(a).

(20) LMHA--Local mental health authority. An entity designated as the local mental health authority by HHSC in accordance with Texas Health and Safety Code §533.035(a).

(21) LPHA--Licensed practitioner of the healing arts. A person who is:

(A) a physician;

(B) a physician assistant;

(C) an advanced practice registered nurse;

(D) a licensed psychologist;

(E) a licensed professional counselor;

(F) a licensed clinical social worker; or

(G) a licensed marriage and family therapist.

(22) Mental illness--An illness, disease, or condition as defined by Texas Health and Safety Code §571.003.

(23) Non-clinical services--Services that support an individual's care but do not provide direct diagnosis, treatment, or care for the individual.

(24) OCR--Outpatient competency restoration. As defined in Chapter 307, Subchapter D of this title (relating to Outpatient Competency Restoration), a community-based program with the specific objective of attaining restoration to competency pursuant to Texas Code of Criminal Procedure Chapter 46B.

(25) Program staff member--An employee or person with whom the program contracts or subcontracts for the provision of JBCR. A program staff member includes specially trained security officers, all licensed and credentialed staff, and other people directly contracted or subcontracted to provide JBCR to an individual.

(26) QIDP--Qualified intellectual disability professional as defined in 42 CFR §483.430(a).

(27) QMHP-CS--Qualified mental health professional-community services as defined in Chapter 301, Subchapter G of this title (relating to Mental Health Community Services Standards).

(28) Residential care facility--A state supported living center or the Intermediate Care Facilities for Individuals with an Intellectual Disability (ICF-IID) component of the Rio Grande State Center.

(29) Safety plan--An individualized written plan to prevent or manage crises.

(30) Serious injury--An injury determined by a physician to require medical treatment by a licensed medical professional (e.g., physician, dentist, physician's assistant, or advance practice nurse) or requires medical treatment in an emergency department or licensed hospital.

(31) Significantly sub-average general intellectual functioning--Consistent with Texas Health and Safety Code §591.003, measured intelligence on standardized general intelligence tests of two or more standard deviations (not including standard error of measurement adjustments) below the age-group mean for the test used.

(32) SUD--Substance use disorder. The use of one or more substances, including alcohol, which significantly and negatively impacts one or more major areas of life functioning, and which meets the criteria for substance use disorder as described in the HHSC-recognized edition of the *Diagnostic and Statistical Manual of Mental Disorders* published by the American Psychiatric Association.

(33) TAC--Texas Administrative Code.

(34) Treatment team--A group of treatment providers, including a psychiatrist and LPHA; the individual; and the individual's legally authorized representative, if any, who work together in a coordinated manner to provide competency restoration services to the individual.

§307.107. JBCR Program Eligibility Requirements.

(a) A JBCR program must meet the standards set forth in Texas Code of Criminal Procedure Article 46B.091.

(b) A JBCR program must:

(1) be an LMHA or LBHA in good standing with HHSC; or

(2) a subcontractor of an LMHA or LBHA in good standing with HHSC.

(c) An LMHA or LBHA must contract with the county to provide JBCR.

(d) An LMHA or LBHA that provides JBCR must comply with Chapter 301, Subchapter A of this title (relating to Contracts Management for Local Authorities) and the contract management and oversight requirements of the Texas Comptroller of Public Accounts.

§307.111. JBCR Program Staff Member Training.

(a) A JBCR program must recruit, train, and maintain qualified program staff members with documented competency in accordance with Chapter 301, Subchapter G, Division 2 of this title (relating to Organizational Standards), specifically:

(1) §301.327(e) of this title (relating to Access to Mental Health Community Services);

(2) §301.329 of this title (relating to Medical Records System); and

(3) §301.331 of this title (relating to Competency and Credentialing).

(b) Before providing services, a JBCR program must train each program staff member and ensure demonstrated competence in:

(1) the rights of an individual receiving mental health services as described in Chapter 320, Subchapter A of this title (relating to Rights of Individuals Receiving Mental Health Services);

(2) the rights of an individual with an intellectual disability and a legally authorized representative as described in Chapter 334 of this title (relating to Rights of Individuals with an Intellectual Disability);

(3) identifying, preventing, and reporting abuse, neglect, and exploitation in accordance with the Texas Commission on Jail Standards or HHSC as set forth in applicable state laws and rules; and

(4) using a protocol for preventing and managing aggressive behavior, including preventative de-escalation intervention strategies.

§307.113. Policies and Procedures.

A JBCR program must develop and implement written policies and procedures for:

(1) maintaining a list of each program staff member providing JBCR, including:

(A) position and credentials;

(B) reporting structure; and

(C) responsibilities;

(2) maintaining program staff member training records;

(3) describing JBCR eligibility as determined by the JBCR program, intake and assessment, and treatment planning as described in §307.121 of this subchapter (relating to Treatment Planning), and transition and discharge processes to include coordination and continuity of care planning with an LMHA, LBHA, or LIDDA, or an LMHA, LBHA, or LIDDA subcontractor;

(4) describing how an individual is assessed for:

(A) suicidality and homicidality;

(B) the degree of suicidality and homicidality;

(C) the development of a safety plan;

(5) developing a safety plan that must document:

(A) warning signs, including thoughts, images, changes in mood and behavior, or situations that may prompt a crisis;

(B) internal coping strategies that distract from crisis thoughts and urges;

(C) a process for communicating safety concerns and recommended precautions to the jail relating to an individual participating in JBCR;

(D) the process for identifying and addressing suicidal and homicidal means;

(6) outlining a JBCR program's process to assess, evaluate, and report to the court an individual's restoration to competency status and readiness for return to court as specified in Texas Code of Criminal Procedure Articles 46B.077(b) and 46B.079;

(7) addressing how a program staff member collaborates with the jail medical provider to address continuity of care, treatment, and overall therapeutic environment during evenings and weekends, including responding to behavioral health crisis or physical health crisis consistent with §301.351(a) and (e) of this title (relating to Crisis Services);

(8) educating an individual about the individual's rights while participating in JBCR;

(9) coordinating with the court concerning the JBCR program's ability to provide services to a new participant within 72 hours after admission in accordance with §307.117 of this title and Texas Code of Criminal Procedure Article 46B.073(d); and

(10) accommodating individual needs through adaptive materials and approaches as needed, including accommodations for language barriers and disabilities.

§307.117. Admission.

(a) A JBCR program may only admit an individual to JBCR upon receipt of a court order requiring the individual to participate in JBCR under Texas Code of Criminal Procedure Chapter 46B, Subchapter D.

(b) In accordance with Texas Code of Criminal Procedure Article 46B.0735, the initial competency restoration period begins on the later of:

(1) the date the individual is:

(A) ordered to participate in OCR services; or

(B) committed to a mental health facility, residential care facility, or JBCR; or

(2) the date competency services begin.

(c) When a JBCR program determines an individual is eligible for JBCR, the program must ensure the individual will receive competency restoration services no later than 72 hours after admission to the JBCR program.

(d) A JBCR program must, when necessary, seek a court order for psychoactive medications in accordance with Texas Health and Safety Code §574.106 or Texas Code of Criminal Procedure Article 46B.086.

§307.119. Rights of Individuals Receiving JBCR.

A JBCR program must:

(1) inform the individual receiving JBCR of the individual's rights in accordance with Chapter 320, Subchapter A of this title (relating to Rights of Individuals Receiving Mental Health Services) or Chapter 334 of this title (relating to Rights of Individuals with an Intellectual Disability), as applicable;

(2) provide the individual with a copy of the rights handbook published for an individual receiving mental health services or an individual with an ID; and

(3) explain to the individual receiving JBCR how to initiate a complaint and how to contact:

(A) the HHS Office of the Ombudsman for complaints against the JBCR program;

(B) the Texas Commission on Jail Standards for complaints against the county jail; and

(C) the Texas protection and advocacy system.

§307.121. Treatment Planning.

Within five days after admission to JBCR, based on an individual's competency evaluation and JBCR program assessment, the JBCR program must develop the individual's treatment plan in accordance with Chapter 320, Subchapter A of this title (relating to Rights of Individuals Receiving Mental Health Services) and Chapter 301, Subchapter G of this title (relating to Mental Health Community Services Standards) to include the individual's:

(1) strengths, to assist the individual in:

(A) overcoming barriers to achieving a factual and rational understanding of legal proceedings; and

(B) consulting with the individual's lawyer with a reasonable degree of rational understanding;

(2) trauma history;

(3) physical health concerns or issues;

(4) medication and medication management;

(5) level of family and community support;

(6) mental health concerns or issues;

(7) ID concerns or issues;

(8) SUD or COPSD concerns or issues; and

(9) specific non-clinical services and supports needed by the individual after discharge, including:

(A) housing assistance;

(B) food assistance;

(C) governmental benefits;

(D) clothing resources; and

(E) other supplemental supports.

§307.123. Competency Restoration Education.

(a) A JBCR program must submit the competency restoration training module for HHSC review and approval before providing services and annually thereafter.

(b) A JBCR program must educate individuals using multiple learning formats, which may include:

(1) discussion;

(2) written text;

(3) video; and

(4) experiential methods, such as role-playing or mock trial.

(c) A JBCR program must ensure an individual with accommodation needs receives adapted materials and approaches as needed, including accommodations for language barriers and disabilities.

§307.125. Procedures for Determining Competency Status in a JBCR Program.

(a) A JBCR program psychiatrist or psychologist who has the qualifications described by Texas Code of Criminal Procedure Article 46B.022 must evaluate the individual's competency and report to the court as required by Article 46B.079.

(b) A JBCR program psychiatrist or psychologist must promptly send a report to the court, if at any time during an individual's commitment for JBCR, the JBCR psychiatrist or psychologist determines the individual is:

(1) restored to competency; or

(2) unlikely to be restored to competency in the foreseeable future.

(c) If the JBCR program psychiatrist or psychologist determines that the individual has not restored to competency by the end of the 60th calendar day after the date the individual began receiving JBCR, the JBCR program must continue to provide competency restoration services to the individual for the period authorized under Texas Code of Criminal Procedure Chapter 46B, Subchapter D, including any extension ordered under Article 46B.080, unless the JBCR program is notified that space at a mental health facility or residential care facility or an OCR program appropriate for the individual is available and:

(1) for an individual charged with a felony, not less than 45 calendar days are remaining in the initial restoration period; or

(2) for an individual charged with a felony or misdemeanor, an extension has been ordered under Article 46B.080 and not less than 45 calendar days are remaining under the extension order.

(d) After receipt of a notice under subsection (c) of this section, the JBCR program must collaborate with the court and the county jail to support the transfer of the individual without unnecessary delay to the appropriate mental health facility, residential care facility, or OCR program for the remainder of the period permitted by Texas Code of Criminal Procedure Article 46B.073(b), including any extension that may be ordered under Article 46B.080 if an extension has not previously been ordered under that article.

(e) If the individual is not transferred, as referenced in subsection (d) of this section, and if the JBCR program psychiatrist or psychologist determines that the individual has not been restored to competency by the end of the period authorized under Texas Code of Criminal Procedure Chapter 46B, Subchapter D, the individual must be returned to the court for further proceedings.

§307.127. Preparation for Discharge from a JBCR Program.

(a) At any time an individual is restored to competency, the treatment team must collaborate with appropriate entities to facilitate:

(1) continuity of care, including specific non-clinical services and supports needed by the individual after discharge, such as:

(A) housing assistance;

(B) food assistance;

(C) governmental benefits;

(D) clothing resources; and

(E) other supplemental supports; and

(2) the individual's discharge from the JBCR program to the individual's discharge setting, including:

(A) the county jail;

(B) the LMHA;

(C) the LBHA;

(D) the LIDDA;

(E) other community mental health provider; or

(F) the care of a responsible person.

(b) If the individual is determined to be unlikely to restore to competency in the foreseeable future or is not restored after completing the JBCR program, the treatment team must collaborate with appropriate entities to facilitate:

(1) continuity of care, including specific non-clinical services and supports needed by the individual after discharge, such as:

(A) housing assistance;

(B) food assistance;

(C) governmental benefits;

(D) clothing resources; and

(E) other supplemental supports; and

(2) the individual's discharge from the JBCR program to the individual's discharge setting, including:

(A) a mental health facility;

(B) a residential care facility;

(C) the LMHA;

(D) the LBHA;

(E) the LIDDA;

(F) other community mental health provider; or

(G) the care of a responsible person.

(c) If an individual is not restored to competency by the 60th day and is being transferred to a facility or OCR program, the JBCR treatment team must collaborate with appropriate entities to facilitate:

(1) continuity of care, including specific non-clinical services and supports needed by the individual after discharge, such as:

(A) housing assistance;

(B) food assistance;

(C) governmental benefits;

(D) clothing resources; and

(E) other supplemental supports; and

(2) the individual's discharge from the JBCR program to:

(A) a mental health facility;

(B) a residential care facility; or

(C) an OCR program.

§307.129. Outcome Measures.

(a) For the purposes of this section, "competency as determined by the JBCR psychiatrist or psychologist" refers to the clinical opinion of the psychiatrist or psychologist provided under Texas Code of Criminal Procedure Articles 46B.079(b) and 46B.091, as applicable.

(b) A JBCR program must collect and report the following data for an individual admitted to a JBCR program, using HHSC's designated automation system:

(1) individual outcomes:

(A) the number of individuals on felony charges;

(B) the number of individuals on misdemeanor charges;

(C) date individual was ordered to JBCR;

(D) date of first JBCR service provided;

(E) whether the court granted an extension;

(F) the average number of calendar days for an individual charged with a felony to be restored to competency, as determined by the JBCR psychiatrist or psychologist;

(G) the average number of calendar days for an individual charged with a misdemeanor to be restored to competency, as determined by the JBCR psychiatrist or psychologist;

(H) the number of individuals charged with a misdemeanor and not restored to competency, as determined by the JBCR psychiatrist or psychologist;

(I) the number of individuals charged with a felony and not restored to competency, as determined by the JBCR psychiatrist or psychologist;

(J) the number of individuals charged with a misdemeanor and restored to competency, as determined by the JBCR psychiatrist or psychologist;

(K) the number of individuals charged with a felony and restored to competency, as determined by the JBCR psychiatrist or psychologist;

(L) the average length of time between determination of non-restorability by the JBCR psychiatrist or psychologist and transfer to an inpatient mental health facility, residential care facility, or OCR program pursuant to Texas Code of Criminal Procedures Article 46B.091(j-1);

(M) the number of individuals restored to competency as determined by the JBCR psychiatrist or psychologist in 60 calendar days or less;

(N) the number of individuals found IST who were found ineligible for JBCR based on the JBCR program screening and the reason why;

(O) the number of individuals not restored to competency and who were transferred to an inpatient mental health facility or residential care facility; and

(P) the number of individuals whose charges were dismissed before completion of JBCR; and

(2) administrative outcomes, in a format specified by HHSC, for the JBCR program, including:

(A) the costs associated with operating the JBCR program; and

(B) the number of:

(i) reported and confirmed cases of abuse, neglect, and exploitation;

(ii) reported and confirmed cases of rights violations;

(iii) restraints and seclusions used;

(iv) emergency medications used;

(v) serious injuries; and

(vi) deaths, in accordance with §320.143 of this title (relating to Documenting, Reporting, and Analyzing Restraint or Seclusion) or Chapter 301, Subchapter H of this title (relating to Deaths of Individuals Served by Community Mental Health Centers), as applicable.

§307.131. Compliance with Statutes, Rules, and Other Documents.

(a) In addition to any applicable federal or state law or rule, a JBCR program must comply with:

(1) Texas Health and Safety Code Chapter 574 (relating to Court-Ordered Mental Health Services);

(2) Texas Human Resources Code Chapter 48 (relating to Investigations and Protective Services for Elderly Persons and Persons with Disabilities);

(3) 26 TAC:

(A) Chapter 301, Subchapter G of this title (relating to Mental Health Community Services Standards);

(B) Chapter 301, Subchapter H of this title (relating to Deaths of Individuals Served by Community Mental Health Centers);

(C) Chapter 306, Subchapter A of this title (relating to Standards for Services to Individuals with Co-occurring Psychiatric and Substance Use Disorders (COPSD));

(D) Chapter 320, Subchapter A of this title (relating to Rights of Individuals Receiving Mental Health Services);

(E) Chapter 320, Subchapter C of this title (relating to Interventions in Mental Health Services);

(F) Chapter 320, Subchapter D of this title (relating to Prescribing of Psychoactive Medication); and

(G) Chapter 334 of this title (relating to Rights of Individuals with an Intellectual Disability).

(b) Concerning confidentiality, a JBCR program must comply with the Health Insurance Portability and Accountability Act, 42 U.S.C. §1320d et seq and other applicable federal and state laws, including:

(1) 42 CFR Part 2 and Part 51, Subpart D;

(2) 45 CFR Parts 160 and 164, and Part 1326, Subpart C;

(3) Texas Health and Safety Code Chapter 81, Subchapter F;

(4) Texas Health and Safety Code Chapters 181, 595, and 611;

(5) Texas Health and Safety Code §§533.009, 576.005, 576.007, and 614.017;

(6) Texas Government Code Chapters 552 and 559;

(7) Texas Occupations Code Chapter 159; and

(8) Texas Business and Commerce Code §521.053.

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

Filed with the Office of the Secretary of State on February 3, 2025.

TRD-202500363
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: February 23, 2025
Proposal publication date: September 13, 2024
For further information, please call: (512) 593-0168

♦ ♦ ♦

TITLE 28. INSURANCE

PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 133. GENERAL MEDICAL PROVISIONS

SUBCHAPTER B. HEALTH CARE PROVIDER BILLING PROCEDURES

28 TAC §133.30

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (DWC) adopts amendments to 28 TAC §133.30, concerning telemedicine, telehealth, and teledentistry services. Section 133.30 implements Texas Labor Code §413.011. The DWC medical advisor recommended the amendments to the commissioner of workers' compensation under Labor Code §413.0511(b).

The amendments to §133.30 are adopted with two changes to the proposed text published in the December 6, 2024, issue of the *Texas Register* (49 TexReg 9942). DWC updated the effective dates to June 1, 2025. Section 133.30 will be republished.

REASONED JUSTIFICATION. The amendments to §133.30 allow a treating doctor to use telemedicine or telehealth to certify maximum medical improvement (MMI) under §§130.1 and 130.2 of this title, concerning certification of MMI and evaluation of permanent impairment, under the following conditions. The injured employee must have been examined by the treating doctor for the condition in question at least once before the examination to certify MMI. The injured employee must consent to the examination to certify MMI by telemedicine or telehealth. The condition in question must qualify as a minor injury, such as §130.2(a)(2) of this title contemplates, that requires no additional treatment, and has resulted in no impairment. A minor injury does not require application of the American Medical Association (AMA) Guides, so under §130.1 of this title, the treating doctor is allowed to certify MMI with no impairment.

The amendments specify that such an evaluation must be billed in compliance with the MMI billing requirements in §134.250 of this title, concerning MMI evaluations and impairment rating examinations by treating doctors. The treating doctor's billing and reimbursement are the same for an in-person MMI evaluation and a telemedicine MMI evaluation. They do not expand the scope of practice or authorize new treatments. Health care providers should refer to their licensing boards' rules for practicing telemedicine and telehealth. The amendments do not allow a doctor to assign an impairment rating by a telemedicine or telehealth examination. The amendments are effective for examinations conducted by treating doctors to certify MMI by telemedicine or telehealth conducted on or after June 1, 2025.

Amending §133.30 is necessary to ensure better and more convenient access to evaluations necessary to certify MMI, to ensure that more required MMI evaluations are conducted on time, and to clarify how doctors must bill and be reimbursed for MMI evaluations conducted by telemedicine or telehealth. For example, when a treating doctor treats and releases an injured employee for a minor injury, such as a scrape or a bruise, and

does not anticipate that the injured employee will need additional treatment, the amendments allow the treating doctor to use telemedicine or telehealth to determine that the injured employee has reached MMI but has no permanent impairment. Treating doctors can certify MMI under current rules, and the amendments just allow them to do so by telemedicine or telehealth under specific conditions. In addition, the number of disputes from treating doctor certifications of MMI under current rules is very low. Based on medical billing data reported to DWC, treating doctors submitted over 36,000 bills in calendar year 2023 for these MMI examinations. Over 34,000 claims were associated with those bills containing CPT code 99455 (work-related or medical disability evaluation services), and of those claims, only 259 were associated with an MMI or impairment rating dispute.

Labor Code §413.011 requires the commissioner to adopt health care reimbursement policies and guidelines that reflect the standardized reimbursement structures found in other health care delivery systems with minimal modifications to those reimbursement methodologies as necessary to meet occupational injury requirements. It also requires that the commissioner's adopted medical policies or guidelines be designed to ensure the quality of medical care and achieve medical cost control, and to enhance a timely and appropriate return to work. Amending §133.30 to allow a treating doctor to use telemedicine or telehealth to certify MMI and to ensure that billing and reimbursement for that evaluation are consistent with the billing requirements in §134.250 meets the requirements in Labor Code §413.011.

DWC invited public comments on an informal draft posted on DWC's website in July 2024 and revised the text to be more specific about the conditions under which a treating doctor may perform a telemedicine or telehealth examination to certify MMI. In addition, DWC held a hearing on the proposed amendments on January 8, 2025.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: DWC received three written comments by the January 13, 2025, deadline, and one oral comment at the January 8, 2025, hearing, which was also provided in writing. Commenters in support of the proposal were: Concentra, Enlyte (Coventry), HCA Healthcare, and the Office of Injured Employee Counsel (OIEC). No commenters were against the proposal.

Comment on §133.30. At the hearing, Enlyte (Coventry) stated that the amendment to allow for a treating doctor to use telemedicine or telehealth to certify MMI of minor injuries with no impairment addresses a significant concern among treating providers who also certify MMI. Currently to provide in-person MMI evaluations, providers are flying out to rural clinics monthly to perform examinations, which comes with increased costs in travel and administration for providers who must balance already packed schedules to move practitioners around the state. This current situation also increases personal costs and confusion for injured workers who are waiting inordinately and unnecessarily long amounts of time to receive a MMI evaluation. By trusting clinicians and their training to make these video determinations, the rule change will create significant opportunities for treating partners in Texas, will reduce unnecessary delays and costs within the system, and will create significant cost and time saving efficiencies for injured workers in Texas, especially those who live far from a potential in-person examination location, resulting in more efficient and complete care for injured workers.

Agency Response to Comment on §133.30. DWC appreciates the comment.

Comment on §133.30. Concentra stated that the change allows for telehealth or telemedicine to be used in workers' compensation exams to certify MMI when no impairment is present; that in Concentra's experience, when often treating very minor injuries with no impairment, timely closure of these cases is important to assure that the injured worker can timely return to work; and that Concentra fully supports the proposed changes.

Agency Response to Comment on §133.30. DWC appreciates the comment.

Comment on §133.30. HCA Healthcare stated that they were in favor of the proposed changes that would permit a treating doctor via a telemedicine encounter to certify MMI in the case of a minor injury where no impairment exists. They noted that advanced practice providers (APPs) often treat injured workers with minor injuries, that injured workers seldom return to see the treating doctor to certify MMI in those cases, and that the proposed rule would reduce the barrier to certify MMI without impairment when the injured worker is unlikely to return to the clinic. HCA Healthcare expressed concern about the requirement that the treating doctor must have examined the injured worker at least once before the certifying examination, so if only an APP has provided care and the injured worker will not return to the clinic, the treating doctor still will not be able to certify MMI.

Agency Response to Comment on §133.30. DWC appreciates the comment. Because the workers' compensation system is set up with the treating doctor responsible for the injured employee's care, the requirement for the treating doctor to have an established relationship with the injured employee before certifying MMI is an important safeguard to ensure that the treating doctor has the information needed to make an accurate certification.

Comment on §133.30. OIEC supported the proposed rule allowing for certification of MMI under these circumstances. OIEC appreciated DWC adding requirements before a treating doctor conducts an MMI certifying examination via telemedicine.

Agency Response to Comment on §133.30. DWC appreciates the comment.

STATUTORY AUTHORITY. The commissioner of workers' compensation adopts the amendments to 28 TAC §133.30 under Labor Code §§413.011, 413.0511, 402.00111, 402.00116, and 402.061.

Labor Code §413.011 requires the commissioner to adopt health care reimbursement policies and guidelines that reflect the standardized reimbursement structures found in other health care delivery systems with minimal modifications to those reimbursement methodologies as necessary to meet occupational injury requirements. It also requires that the commissioner's adopted medical policies or guidelines be designed to ensure the quality of medical care and achieve medical cost control, and to enhance a timely and appropriate return to work.

Labor Code §413.0511 requires DWC to employ or contract with a medical advisor. The medical advisor must be a doctor, as defined in §401.011. The medical advisor's duties include making recommendations about the adoption of rules and policies to: develop, maintain, and review guidelines as provided by §413.011, including rules about impairment ratings; review compliance with those guidelines; regulate or perform other acts related to medical benefits as required by the commissioner; and

determine minimal modifications to the reimbursement methodology and model used by the Medicare system as needed to meet occupational injury requirements.

Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation shall administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to DWC or the commissioner.

Labor Code §402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

§133.30. Telemedicine, Telehealth, and Teledentistry Services.

(a) This section applies to medical billing and reimbursement for telemedicine, telehealth, and teledentistry services provided on or after September 1, 2021, to injured employees in the Texas workers' compensation system, including injured employees subject to a workers' compensation health care network established under Insurance Code Chapter 1305.

(b) For the purposes of this section:

(1) "Telemedicine services" means telemedicine medical services as defined in Occupations Code §111.001.

(A) The term includes an examination by a treating doctor to certify maximum medical improvement (MMI), conducted on or after June 1, 2025, under §§130.1 and 130.2 of this title (relating to Certification of Maximum Medical Improvement and Evaluation of Permanent Impairment) to determine whether an injured employee has reached MMI, that meets the following conditions:

(i) the injured employee has been examined by the treating doctor for the condition in question at least once before the examination to certify MMI;

(ii) the injured employee consents to the examination to certify MMI by telemedicine; and

(iii) the condition in question qualifies as a minor injury, such as §130.2(a)(2) of this title contemplates, requires no additional treatment, and has resulted in no impairment.

(B) The term does not include an examination to assign an impairment rating conducted under §130.1 of this title.

(2) "Telehealth services" means telehealth services as defined in Occupations Code §111.001.

(A) The term includes an examination by a treating doctor to certify MMI, conducted on or after June 1, 2025, under §§130.1 and 130.2 of this title (relating to Certification of Maximum Medical Improvement and Evaluation of Permanent Impairment) to determine whether an injured employee has reached MMI, that meets the following conditions:

(i) the injured employee has been examined by the treating doctor for the condition in question at least once before the examination to certify MMI;

(ii) the injured employee consents to the examination to certify MMI by telehealth; and

(iii) the condition in question qualifies as a minor injury, such as §130.2(a)(2) of this title contemplates, requires no additional treatment, and has resulted in no impairment.

(B) The term does not include an examination to assign an impairment rating conducted under §130.1 of this title.

(3) "Teledentistry services" means teledentistry dental services as defined in Occupations Code §111.001.

(c) Except as provided in subsection (d) of this section, a health care provider must bill for telemedicine, telehealth, and teledentistry services according to applicable:

(1) Medicare payment policies, as defined in §134.203 of this title (relating to Medical Fee Guideline for Professional Services);

(2) Medicaid payment policies, in accordance with the dental fee guideline in §134.303 of this title (relating to 2005 Dental Fee Guideline);

(3) MMI billing requirements in §134.250 of this title (relating to Maximum Medical Improvement Evaluations and Impairment Rating Examinations by Treating Doctors); and

(4) provisions of Chapter 133 of this title.

(d) A health care provider may bill and be reimbursed for telemedicine, telehealth, or teledentistry services regardless of where the injured employee is located at the time the telemedicine, telehealth, or teledentistry services are provided.

(e) The provisions of this section take precedence over any conflicting provisions adopted or used by:

(1) the Centers for Medicare and Medicaid Services in administering the Medicare program; and

(2) the Texas Health and Human Services Commission in administering the Texas Medicaid Program.

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

Filed with the Office of the Secretary of State on February 4, 2025.

TRD-202500384
Kara Mace
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Effective date: June 1, 2025
Proposal publication date: December 6, 2024
For further information, please call: (512) 804-4703

♦ ♦ ♦

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 2. DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES

CHAPTER 106. DIVISION FOR BLIND SERVICES

The Texas Health and Human Services Commission (HHSC) adopts the repeal of Chapter 106 in Texas Administrative Code Title 40, Part 2, concerning Division for Blind Services. The chapter consists of §§106.201, concerning, Purpose; 106.203, concerning Legal Authority; 106.205, concerning Definitions; 106.307, concerning Application; 106.309, concerning Eligibility;

106.311, concerning Prohibited Factors; 106.313, concerning Eligibility Determination Time Frame; 106.315, concerning Determination of Ineligibility; 106.317, concerning Case Closure; 106.407, concerning Provision of Services; 106.409, concerning Assessment for Determining Eligibility, Vocational Rehabilitation Needs, and Rehabilitation Technology Needs; 106.411, concerning Physical and Mental Restoration Services; 106.413, concerning Vocational and Other Training Services; 106.415, concerning Maintenance; 106.417, concerning Transportation; 106.419, concerning Services to Family Members; 106.421, concerning Interpreter Services and Note-Taking Services for Consumers Who Are Deaf and Tactile Interpreting for Consumers Who Are Deafblind; 106.423, concerning Reader Services and Rehabilitation Teaching Services; 106.425, concerning Employment Assistance; 106.427, concerning Post-Employment Services; 106.429, concerning Occupational Licenses, Tools, Equipment, and Initial Stocks and Supplies; 106.431, concerning Assistive Technology Devices; 106.433, concerning Individualized Plan for Employment (IPE); §106.501, concerning Purpose of Consumer Participation; 106.507, concerning Scope of Consumer Participation; 106.509, concerning Refusal to Disclose Economic Resources; 106.607, concerning Comparable Services and Benefits; 106.707, concerning Application of an Order of Selection; 106.801, concerning Purpose; 106.803, concerning Legal Authority; 106.805, concerning Definitions; 106.807, concerning Eligibility; and 106.809, concerning Certificate of Blindness for Tuition Waiver.

The repeals are adopted without changes to the proposed text as published in the October 25, 2024, issue of the *Texas Register* (49 TexReg 8566). The repeals will not be republished.

BACKGROUND AND JUSTIFICATION

Senate Bill (S.B.) 200, 84th Regular Session, 2015, transferred the functions of the Department of Assistive and Rehabilitative Services (DARS) to HHSC and S.B. 208, 84th Regular Session, 2015, transferred the Vocational Rehabilitation (VR) Program from DARS to the Texas Workforce Commission (TWC). HHSC has identified VR Program rules in 40 TAC Chapter 106, Division for Blind Services, for repeal because HHSC no longer oversees that program. TWC has adopted rules for the VR Program in Title 40, Part 20, Chapter 856, so there will be no disruption to the VR Program or to Texans receiving services.

COMMENTS

The 31-day comment period ended November 25, 2024.

During this period, HHSC did not receive any comments regarding the proposed repeals.

SUBCHAPTER B. VOCATIONAL REHABILITATION PROGRAM

DIVISION 1. PROGRAM AND SUBCHAPTER PURPOSE

40 TAC §§106.201, 106.203, 106.205

STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §117.073, which authorizes HHSC to adopt rules necessary to administer services under that chapter (concerning former DARS programs).

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

Filed with the Office of the Secretary of State on February 3, 2025.

TRD-202500364
Karen Ray
Chief Counsel
Department of Assistive and Rehabilitative Services
Effective date: February 23, 2025
Proposal publication date: October 25, 2024
For further information, please call: (512) 840-8536

♦ ♦ ♦

DIVISION 2. ELIGIBILITY

40 TAC §§106.307, 106.309, 106.311, 106.313, 106.315, 106.317

STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §117.073, which authorizes HHSC to adopt rules necessary to administer services under that chapter (concerning former DARS programs).

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

Filed with the Office of the Secretary of State on February 3, 2025.

TRD-202500365
Karen Ray
Chief Counsel
Department of Assistive and Rehabilitative Services
Effective date: February 23, 2025
Proposal publication date: October 25, 2024
For further information, please call: (512) 840-8536

♦ ♦ ♦

DIVISION 3. PROVISION OF VOCATIONAL REHABILITATION SERVICES

40 TAC §§106.407, 106.409, 106.411, 106.413, 106.415, 106.417, 106.419, 106.421, 106.423, 106.425, 106.427, 106.429, 106.431, 106.433

STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §117.073, which authorizes HHSC to adopt rules necessary to administer services under that chapter (concerning former DARS programs).

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

Filed with the Office of the Secretary of State on February 3, 2025.

TRD-202500366
Karen Ray
Chief Counsel
Department of Assistive and Rehabilitative Services
Effective date: February 23, 2025
Proposal publication date: October 25, 2024
For further information, please call: (512) 840-8536

♦ ♦ ♦

DIVISION 4. CONSUMER PARTICIPATION

40 TAC §§106.501, 106.507, 106.509

STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §117.073, which authorizes HHSC to adopt rules necessary to administer services under that chapter (concerning former DARS programs).

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

Filed with the Office of the Secretary of State on February 3, 2025.

TRD-202500367
Karen Ray
Chief Counsel
Department of Assistive and Rehabilitative Services
Effective date: February 23, 2025
Proposal publication date: October 25, 2024
For further information, please call: (512) 840-8536

♦ ♦ ♦

DIVISION 5. COMPARABLE BENEFITS

40 TAC §106.607

STATUTORY AUTHORITY

The repeal is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §117.073, which authorizes HHSC to adopt rules necessary to administer services under that chapter (concerning former DARS programs).

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

Filed with the Office of the Secretary of State on February 3, 2025.

TRD-202500368
Karen Ray
Chief Counsel
Department of Assistive and Rehabilitative Services
Effective date: February 23, 2025
Proposal publication date: October 25, 2024
For further information, please call: (512) 840-8536

♦ ♦ ♦

DIVISION 6. METHODS OF ADMINISTRATION OF VOCATIONAL REHABILITATION

40 TAC §106.707

STATUTORY AUTHORITY

The repeal is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §117.073, which authorizes HHSC to adopt rules necessary to administer services under that chapter (concerning former DARS programs).

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

Filed with the Office of the Secretary of State on February 3, 2025.

TRD-202500369
Karen Ray
Chief Counsel
Department of Assistive and Rehabilitative Services
Effective date: February 23, 2025
Proposal publication date: October 25, 2024
For further information, please call: (512) 840-8536

♦ ♦ ♦

DIVISION 7. CERTIFICATE OF BLINDNESS FOR TUITION WAIVER

40 TAC §§106.801, 106.803, 106.805, 106.807, 106.809

STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §117.073, which authorizes HHSC to adopt rules necessary to administer services under that chapter (concerning former DARS programs).

§106.809. Certificate of Blindness for Tuition Waiver.

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

Filed with the Office of the Secretary of State on February 3, 2025.

TRD-202500370
Karen Ray
Chief Counsel
Department of Assistive and Rehabilitative Services
Effective date: February 23, 2025
Proposal publication date: October 25, 2024
For further information, please call: (512) 840-8536

♦ ♦ ♦