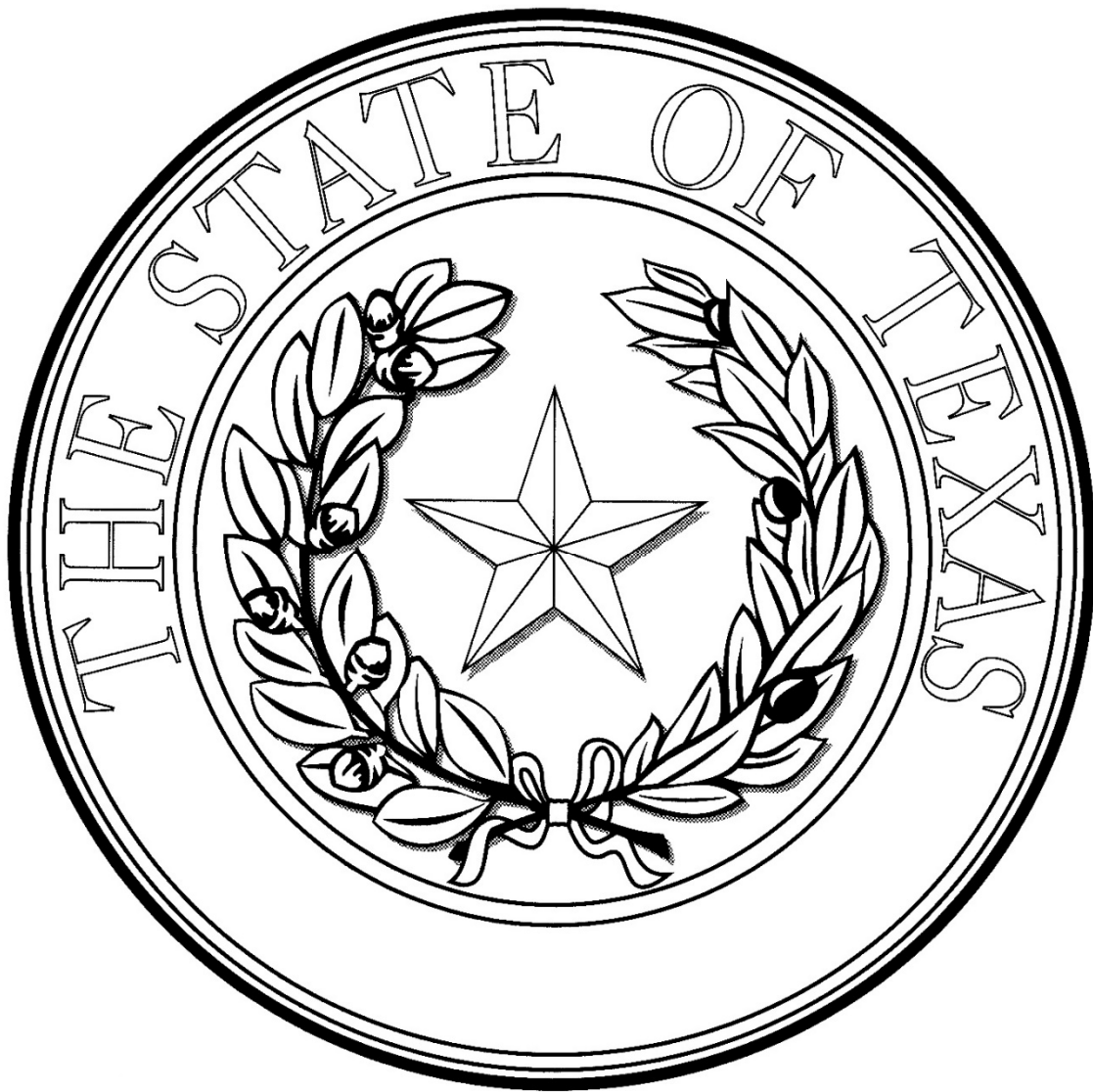

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IN THIS ISSUE

GOVERNOR

Proclamation 41-4168.....899

ATTORNEY GENERAL

Opinions.....901

PROPOSED RULES

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

HOMELESSNESS PROGRAMS

10 TAC §7.34, §7.36.....903

10 TAC §7.34, §7.36.....904

DEPARTMENT OF STATE HEALTH SERVICES

CASE MANAGEMENT FOR CHILDREN AND PREGNANT WOMEN

25 TAC §27.1, §27.3.....907

25 TAC §§27.5, 27.7, 27.9, 27.11, 27.13.....907

25 TAC §§27.15, 27.17, 27.19, 27.21, 27.23, 27.25, 27.27.....908

RADIATION CONTROL

25 TAC §289.230.....909

25 TAC §289.234.....938

HEALTH AND HUMAN SERVICES COMMISSION

CASE MANAGEMENT FOR CHILDREN AND PREGNANT WOMEN

26 TAC §257.1, §257.3.....941

26 TAC §§257.5, 257.7, 257.9, 257.11.....942

26 TAC §§257.15, 257.17, 257.19, 257.21, 257.23.....943

TEXAS DEPARTMENT OF INSURANCE

TRADE PRACTICES

28 TAC §21.1008.....945

TEXAS PARKS AND WILDLIFE DEPARTMENT

FINANCE

31 TAC §§53.1 - 53.6, 53.18.....949

31 TAC §53.60.....952

FISHERIES

31 TAC §57.156.....953

31 TAC §57.252, §57.253.....953

FISHERIES

31 TAC §57.981.....955

31 TAC §57.984, §57.985.....956

31 TAC §57.992.....957

OYSTERS, SHRIMP, AND FINFISH

31 TAC §58.21.....958

31 TAC §58.164.....959

WILDLIFE

31 TAC §§65.7, 65.8, 65.10, 65.29.....960

31 TAC §§65.42, 65.62, 65.64.....961

31 TAC §§65.314 - 65.320.....963

COMPTROLLER OF PUBLIC ACCOUNTS

FUNDS MANAGEMENT (FISCAL AFFAIRS)

34 TAC §5.54.....966

WITHDRAWN RULES

TEXAS HEALTH AND HUMAN SERVICES COMMISSION

COORDINATED PLANNING AND DELIVERY OF HEALTH AND HUMAN SERVICES

1 TAC §§351.821, 351.823, 351.825, 351.827.....969

TEXAS DEPARTMENT OF MOTOR VEHICLES

MOTOR VEHICLE DISTRIBUTION

43 TAC §215.124.....969

ADOPTED RULES

TEXAS HEALTH AND HUMAN SERVICES COMMISSION

COORDINATED PLANNING AND DELIVERY OF HEALTH AND HUMAN SERVICES

1 TAC §§351.4, 351.11, 351.504, 351.507, 351.701, 351.751.....971

1 TAC §§351.801, 351.807, 351.809, 351.811, 351.841.....971

MEDICAID MANAGED CARE

1 TAC §353.1309.....972

MEDICAID HEALTH SERVICES

1 TAC §354.1430, §354.1434.....972

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

SINGLE FAMILY HOME PROGRAM

10 TAC §23.1, §23.2.....974

10 TAC §§23.20 - 23.29.....974

10 TAC §§23.30 - 23.32.....975

10 TAC §§23.40 - 23.42.....975

10 TAC §§23.50 - 23.52.....975

10 TAC §§23.60 - 23.62.....975

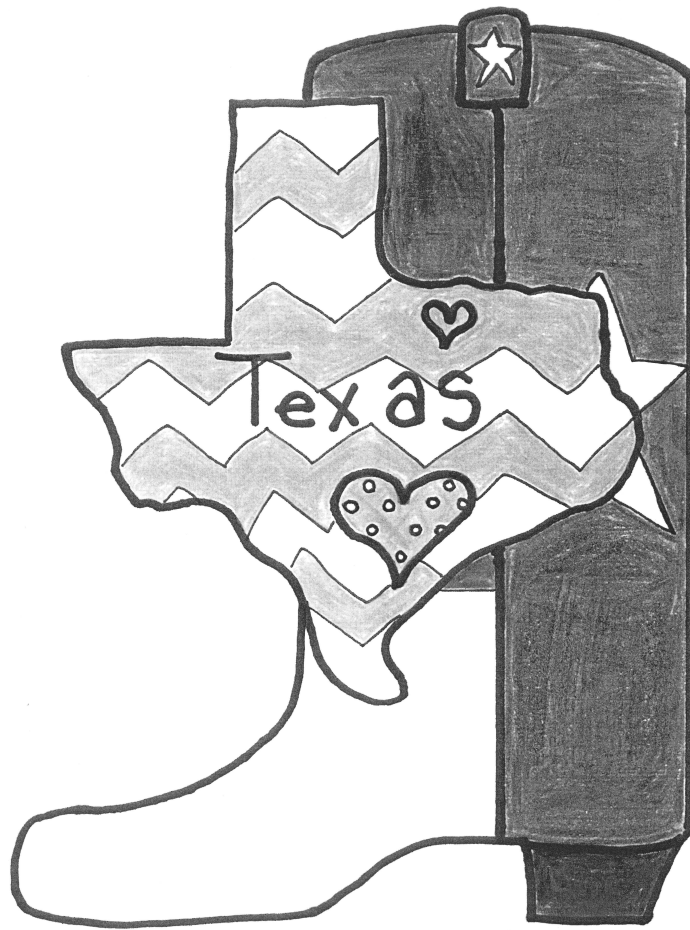
10 TAC §§23.70 - 23.72.....976

SINGLE FAMILY HOME PROGRAM

10 TAC §23.1, §23.2.....977

10 TAC §§23.20 - 23.29	978	26 TAC §§306.151 - 306.155	999
10 TAC §23.30, §23.31	983	26 TAC §§306.161 - 306.163	1004
10 TAC §23.40, §23.41	983	26 TAC §§306.171 - 306.178	1006
10 TAC §23.50, §23.51	983	26 TAC §§306.191 - 306.195	1010
10 TAC §23.60, §23.61	983	26 TAC §§306.201 - 306.205, 306.207	1011
10 TAC §23.70, §23.71	984	26 TAC §306.206	1019
TEXAS LOTTERY COMMISSION		26 TAC §306.221	1020
ADMINISTRATION OF STATE LOTTERY ACT		26 TAC §§306.361, 306.363, 306.365, 306.367, 306.369	1021
16 TAC §§401.101 - 401.104	985	BEHAVIORAL HEALTH PROGRAM	
16 TAC §§401.153, 401.158, 401.160	985	26 TAC §§307.101, 307.103, 307.105, 307.107, 307.109, 307.111,	
16 TAC §§401.301, 401.302, 401.304	985	307.113, 307.115, 307.117, 307.119, 307.121, 307.123, 307.125,	
16 TAC §401.355	986	307.127, 307.129, 307.131	1022
16 TAC §401.501	986	TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION	
CHARITABLE BINGO OPERATIONS DIVISION		GENERAL MEDICAL PROVISIONS	
16 TAC §§402.100 - 402.103	990	28 TAC §133.30	1030
16 TAC §402.105	991	DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES	
16 TAC §§402.200 - 402.203, 402.210, 402.212	992	DIVISION FOR BLIND SERVICES	
16 TAC §402.301, §402.303	992	40 TAC §§106.201, 106.203, 106.205	1033
16 TAC §§402.301 - 402.311	992	40 TAC §§106.307, 106.309, 106.311, 106.313, 106.315,	
16 TAC §§402.300, 402.324 - 402.326, 402.334	992	106.317	1033
16 TAC §§402.400 - 402.402, 402.404, 402.411, 402.443	992	40 TAC §§106.407, 106.409, 106.411, 106.413, 106.415, 106.417,	
16 TAC §402.500, §402.502	993	106.419, 106.421, 106.423, 106.425, 106.427, 106.429, 106.431,	
16 TAC §§402.600 - 402.602	993	106.433	1033
16 TAC §§402.702, 402.703, 402.706, 402.707	993	40 TAC §§106.501, 106.507, 106.509	1034
DEPARTMENT OF STATE HEALTH SERVICES		40 TAC §106.607	1034
EARLY AND PERIODIC SCREENING, DIAGNOSIS, AND TREATMENT		40 TAC §106.707	1034
25 TAC §33.70	993	40 TAC §§106.801, 106.803, 106.805, 106.807, 106.809	1034
MATERNAL AND INFANT HEALTH SERVICES		RULE REVIEW	
25 TAC §37.301	994	Proposed Rule Reviews	
INJURY PREVENTION AND CONTROL		Texas State Library and Archives Commission	
25 TAC §103.1	995	1037	
MEAT SAFETY ASSURANCE		TABLES AND GRAPHICS	
25 TAC §§221.11 - 221.16	995	
HEALTH AND HUMAN SERVICES COMMISSION		
DEAF BLIND WITH MULTIPLE DISABILITIES (DBMD) PROGRAM AND COMMUNITY FIRST CHOICE (CFC) SERVICES		IN ADDITION	
26 TAC §260.61	996	Coastal Bend Workforce Development Board	
26 TAC §260.219	996	Request for Statement of Qualifications for Independent Evaluator Ser-	
BEHAVIORAL HEALTH DELIVERY SYSTEM		vices RFQ 25-03	
		1043	
		Office of Consumer Credit Commissioner	
		Notice of Rate Ceilings	
		1043	
		Texas Commission on Environmental Quality	
		Agreed Orders	
		1043	

Notice of District Petition - TCEQ Docket No. D-01172025-027	1045	Revised Public Notice: Texas State Plan for Medical Assistance	1052
Notice of District Petition TCEQ Docket No. D-12172024-027	1046	Department of State Health Services	
Notice of Opportunity to Comment on an Agreed Order of Administrative Enforcement Actions	1047	Limited Liability Report for Nonprofit Hospitals and Hospital Systems	1055
Notice of Opportunity to Request a Public Meeting for a Development Permit Application for Construction Over a Closed Municipal Solid Waste Landfill Proposed Permit No. 62055	1047	Texas Department of Housing and Community Affairs	
Notice of Second Public Meeting New Permit No. WQ00116391001	1048	2025 HOME American Rescue Plan Nonprofit Capacity Building and Operating Cost Assistance Notice of Funding Availability	1056
Texas Facilities Commission		Notice of Public Comment Period and Public Hearing on Draft 2025 U.S. Department of Energy Weatherization Assistance Program State Plan	1057
Request for Proposals (RFP) # 303-6-20782	1048	Texas Medical Liability Insurance Underwriting Association	
General Land Office		Agenda Texas Medical Liability Insurance Underwriting Association (JUA) Board of Directors Meeting - February 28, 2025	1057
Coastal Boundary Survey - Bird Island Cove, Galveston County	1049	North Central Texas Council of Governments	
Coastal Boundary Survey - City of Galveston, Beach Nourishment	1049	Request for Proposals Car Care Awareness Safety Integration	1058
Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program	1050	Panhandle Regional Planning Commission	
Notice of Funds Availability - Texas Coastal Management Program	1050	Legal Notice - Fuel Cards	1058
Texas Health and Human Services Commission		Legal Notice - General Building Maintenance Services	1058
Public Notice - State Plan on Aging for Federal Fiscal Years 2026 - 2028	1051	Texas Parks and Wildlife Department	
Public Notice - Texas State Plan for Medical Assistance Amendment	1052	Notice of Proposed Real Estate Transactions	1058
		Red River Authority of Texas	
		Request for Qualifications for Audit Services	1058



THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Proclamation 41-4168

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, GREG ABBOTT, Governor of the State of Texas, issued a disaster proclamation on October 14, 2024, as amended and renewed in a subsequent proclamation, certifying that elevated fire weather conditions pose an imminent threat of widespread or severe damage, injury, or loss of life or property in several counties; and

WHEREAS, the Texas Division of Emergency Management has confirmed that those same elevated fire weather conditions persist in certain counties in Texas;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby amend and renew the aforementioned proclamation and declare a disaster in Andrews, Aransas, Archer, Armstrong, Atascosa, Bailey, Bandera, Bastrop, Baylor, Bee, Bell, Bexar, Blanco, Borden, Bosque, Brazos, Brewster, Briscoe, Brooks, Brown, Burleson, Burnet, Caldwell, Calhoun, Callahan, Cameron, Carson, Castro, Childress, Clay, Cochran, Coke, Coleman, Collin, Collingsworth, Comal, Comanche, Concho, Cooke, Coryell, Cottle, Crane, Crockett, Crosby, Culberson, Dallam, Dallas, Dawson, Deaf Smith, Denton, DeWitt, Dickens, Dimmit, Donley, Duval, Eastland, Ector, Edwards, El Paso, Ellis, Erath, Falls, Fannin, Fayette, Fisher, Floyd, Foard, Freestone, Frio, Gaines, Garza, Gillespie, Glasscock, Goliad, Gonzales, Gray, Grayson, Grimes, Guadalupe, Hale, Hall, Hamilton, Hansford, Hardeman, Hartley, Haskell, Hays, Hemphill, Hidalgo, Hill, Hockley, Hood, Howard, Hudspeth, Hunt, Hutchinson, Irion, Jack, Jackson, Jeff Davis, Jim Hogg, Jim Wells, Johnson, Jones, Karnes, Kaufman, Kendall, Kenedy, Kent, Kerr, Kimble, King, Kinney, Kleberg, Knox, Lamb, Lampasas, La Salle, Lavaca, Lee, Leon, Limestone, Lipscomb, Live Oak, Llano, Loving, Lubbock, Lynn, Madison, Martin, Mason, Maverick, McCulloch, McLennan, McMullen, Medina, Menard, Midland, Milam, Mills, Mitchell, Montague, Moore, Motley, Navarro, Nolan, Nueces,

Ochiltree, Oldham, Palo Pinto, Parker, Parmer, Pecos, Potter, Presidio, Randall, Reagan, Real, Reeves, Refugio, Roberts, Robertson, Rockwall, Runnels, San Patricio, San Saba, Schleicher, Scurry, Shackelford, Sherman, Somervell, Starr, Stephens, Sterling, Stonewall, Sutton, Swisher, Tarrant, Taylor, Terrell, Terry, Throckmorton, Tom Green, Travis, Upton, Uvalde, Val Verde, Victoria, Ward, Washington, Webb, Wheeler, Wichita, Wilbarger, Willacy, Williamson, Wilson, Winkler, Wise, Yoakum, Young, Zapata, and Zavala Counties.

Pursuant to Section 418.017 of the Texas Government Code, I authorize the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster.

Pursuant to Section 418.016 of the Texas Government Code, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder, or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. However, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to protect life or property threatened by this declared disaster, I hereby authorize the suspension of such statutes and rules for the duration of this declared disaster.

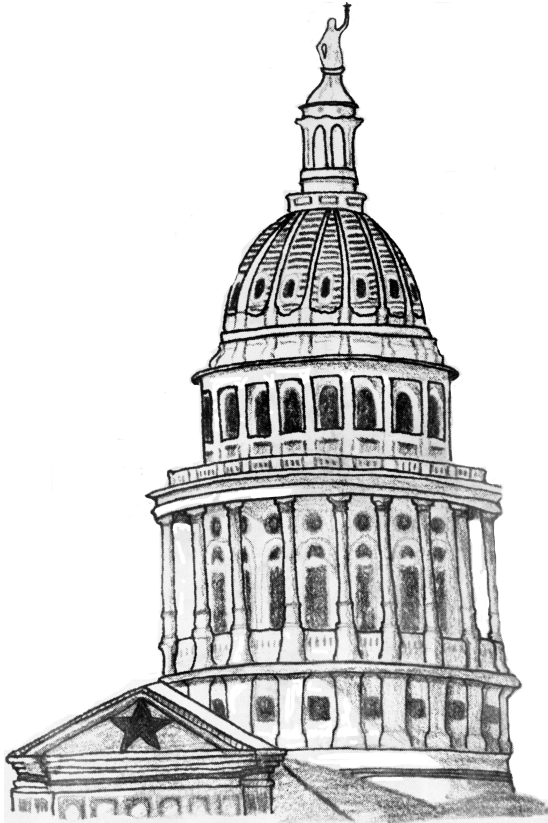
In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 11th day of February, 2025.

Greg Abbott, Governor

TRD-202500485





THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following: Requests for Opinions, Opinions, and Open Records Decisions.

An index to the full text of these documents is available on the Attorney General's website at <https://www.texas.attorneygeneral.gov/attorney-general-opinions>. For information about pending requests for opinions, telephone (512) 463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: <https://www.texasattorneygeneral.gov/attorney-general-opinions>.)

Opinions

Opinion No. KP-0480

The Honorable Charles Schwertner
Chair, Senate Committee on Business & Commerce
Texas State Senate
Post Office Box 12068
Austin, Texas 78711-2068

Re: Whether House Bill 1763 and House Bill 1919, enacted by the 87th Legislature and codified in chapter 1369 of the Insurance Code, are enforceable against a health benefit plan issuer and a pharmacy benefit manager administering the pharmacy benefits of the health benefit plan in certain circumstances (RQ-0539-KP).

S U M M A R Y

Enacted by House Bill 1763 and House Bill 1919, subchapter M and subchapter L of chapter 1369 of the Texas Insurance Code regulate certain contracts with pharmacists and pharmacies and certain referral and solicitation practices concerning affiliated providers. Under United States Supreme Court precedent, neither subchapter has an impermissible connection with ERISA plans as they do not dictate plan choices or add requirements to beneficiary status. The two subchapters also do not refer to ERISA plans as they neither exclusively apply to those plans nor are ERISA plans essential to the laws' operation. Therefore, a court would likely conclude that ERISA does not preempt either subchapter.

In addition, nothing in the language of either subchapter limits their applicability to plans domiciled in Texas. Thus, a court would likely conclude that both subchapters are enforceable against an issuer or PBM that satisfy the statutory definitions and administer a plan covering Texas residents or contracting with Texas pharmacy providers regardless of where the plan is domiciled.

Opinion No. KP-0481

Mr. Mike Morath
Commissioner of Education
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701-1494

Re: Interpretation of the University Interscholastic League's legal rights and duties regarding illegal steroid use under the Education Code (RQ-0578-KP)

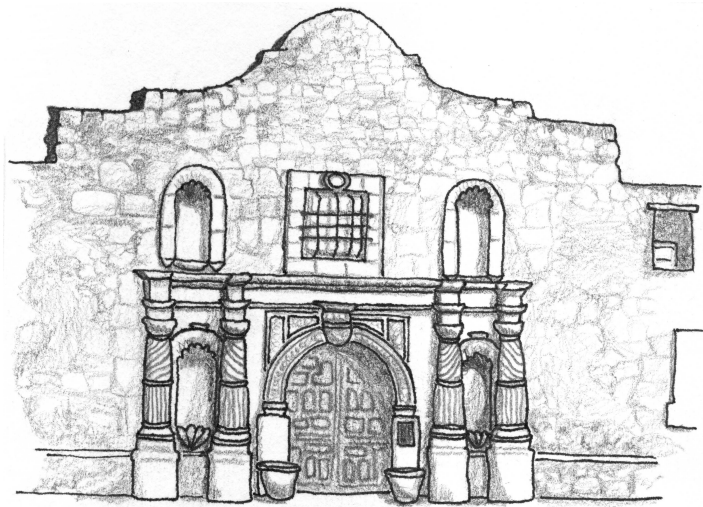
S U M M A R Y

A "valid medical purpose" under Education Code section 33.091 does not contemplate the provision of steroids to a minor for transitioning the minor's biological sex. Suspected use of steroids for this purpose is a basis to question the student-athlete's eligibility to participate in University Interscholastic League (UIL) activities and obligates UIL to investigate as well as require the student-athlete prove by a preponderance of the evidence that they are eligible. A student-athlete may not take part in UIL competitions until their eligibility is proven by a preponderance of the evidence.

For further information, please access the website at www.texasattorneygeneral.gov or call the Opinion Committee at (512) 463-2110.

TRD-202500481
Justin Gordon
General Counsel
Office of the Attorney General
Filed: February 11, 2025





PROPOSED RULES

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

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

TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 7. HOMELESSNESS PROGRAMS SUBCHAPTER C. EMERGENCY SOLUTIONS GRANTS (ESG)

10 TAC §7.34, §7.36

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 7, Subchapter C, Emergency Solutions Grants (ESG), §7.34 Continuing Awards and §7.36 General Threshold Criteria. The purpose of the repeals 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 proposed 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 Department's Emergency Solutions Grants (ESG) Program.

2. The proposed 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 workload to a degree that any existing employee positions are eliminated.

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

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

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

6. The proposed action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, the administration of the Department's Emergency Solutions Grant Program.

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

8. The proposed repeal 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 has evaluated this proposed repeal and determined that the proposed 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 proposed 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 proposed repeal as to its possible effects on local economies and has determined that for the first five years the proposed 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 proposed repeal is in effect, the public benefit anticipated as a result of the repealed sections would be updated and more germane rules. There will not be economic costs to individuals required to comply with the repealed sections.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the proposed 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.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held February 21, 2025, to March 21, 2025, to receive input on the proposed repealed sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Rosy Falcon, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email rosy.falcon@tdhca.texas.gov. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Central Time, March 21, 2025.

STATUTORY AUTHORITY. The proposed 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 sections affect no other code, article, or statute.

§7.34. *Continuing Awards.*

§7.36. *General Threshold Criteria.*

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

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

TRD-202500415

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: March 23, 2025

For further information, please call: (512) 475-3959



10 TAC §7.34, §7.36

The Texas Department of Housing and Community Affairs (the Department) proposes new Chapter 7, Subchapter C, Emergency Solutions Grants (ESG), §7.34 Continuing Awards and §7.36 General Threshold Criteria. The purpose of the proposed new sections is to take steps to better incentivize compliance with HUD's annual reporting 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 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.

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

1. The proposed sections do not create or eliminate a government program, but relate to the readoption of this rule which makes changes to administration of the Department's Emergency Solutions Grants Program.
2. The proposed new sections do 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 proposed new sections do not require additional future legislative appropriations.
4. The proposed new sections will not result in an increase in fees paid to the Department nor a decrease in fees paid to the Department.
5. The proposed new sections are not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.
6. The proposed new sections will not expand or repeal an existing regulation.
7. The proposed new sections will not increase or decrease the number of individuals subject to the rule's applicability.
8. The proposed new sections 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 these proposed new sections, 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 these proposed new sections and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. The Department has determined that because the proposed new sections serve to clarify and update existing requirements and do 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 proposed new sections do 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 proposed new sections as to their possible effects on local economies and has determined that for the first five years the rule will be in effect the proposed new sections have 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 Department's Homeless Programs is at the discretion of the local government or other eligible sub-recipients, there are no "probable" effects of the proposed new sections 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 proposed new sections are in effect, the public benefit anticipated as a result of the rule will be a more germane rule that better aligns administration to federal and state requirements. There will not be any economic cost to any individuals required to comply with the new sections because the processes described by the rule have already been in place through the rule found at this section being repealed.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the proposed new sections are 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 rule updates and clarifies existing requirements and does not impose new requirements.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held February 21, 2025, to March 21, 2025, to receive input on the proposed new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Rosy Falcon, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email rosy.falcon@td-

hca.texas.gov. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Central Time, March 21, 2025.

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

Except as described herein the proposed new sections affect no other code, article, or statute.

§7.34. Continuing Awards.

(a) TDHCA will withhold a portion of funds from the competition for funds to be used for continuing awards to prior Subrecipients of its ESG allocation, not including ESG CARES or Contracts for reallocated funds from prior years only, in accordance with §7.33 of this subchapter (related to Apportionment of ESG Funds).

(b) ESG funds withheld for continuing awards by the Department will be allocated in accordance with the Allocation Formula, and are not subject to the award process and requirements outlined in §7.38 of this subchapter (relating to Competitive Award and Funding Process).

(c) The subsequent years of allocation of ESG funds received by the Department will be offered to eligible Subrecipients of ESG funds (not including ESG CARES) that were awarded funds from at least three of the prior four allocations of ESG. An ESG Subrecipient is eligible for an offer of a continuing award of funds if the Subrecipient meets the following requirements:

(1) Submits an abbreviated Application for funding within 21 days of the request from the Department as promulgated by the Department;

(2) Resolves administrative deficiencies within the timeframe and in the manner outlined in §7.37 of this subchapter (relating to Application Review and Administrative Deficiency Process for Department NOFAs);

(3) Submitted two or fewer delinquent monthly reports for each of their active ESG Contracts or for the most recently closed ESG Contract if there are no active ESG Contracts, (not including ESG CARES) for reports due in the six-month period preceding the application submission deadline;

(4) Satisfies the requirements of the Previous Participation Review as provided for in §1.302 of this title (relating to Previous Participation Reviews for Department Program Awards Not Covered by §1.301 of this title);

(5) Does not have unresolved monitoring findings in any TDHCA funded program after the corrective action period;

(6) Does not have monitoring findings in any TDHCA funded program which resulted in disallowed costs in excess of \$5,000;

(7) Does not apply for funds within the same CoC Region under the competitive Application process for Program Participant service(s) in which they are already funded for a Continuing Award;

(8) Expended a minimum of 95% of their contracted award amount, as amended in their most recently closed ESG Contract (not including ESG CARES);

(9) Did not voluntarily deobligate an amount that exceeds 5% of their contracted award amount, as amended for increases due to reallocated funds, on their most recently closed ESG Contract (not including ESG CARES);

(10) Submitted the most recent yearly report information, as required in 10 TAC §7.5(h)(1), in SAGE by the deadline established

by the Department for the report due in the period preceding the application submission deadline; and

(11) Is approved by the Department's Governing Board.

(d) Any offer of ESG funds made under this section is contingent on retaining similar terms and conditions or agreeing to adjustments reflective of funding amount, including but not limited to performance and match requirements, in the active ESG annual Contract issued under a NOFA.

(e) Offers of funding will be based on the prior year's award, excluding Contracts comprised exclusively of reallocated funds, before amendments, and will be proportionally increased or decreased in proportion to the total amount of ESG funds available subject to the allocation formula.

(f) If additional funds are made available due to reduced continuing awards in the region, awards may be increased proportionate to the increased withheld funds. In any event, an increased award from funds made available from reduced awards may not exceed 115% of the award amount under the allocation or the maximum award amount established in the NOFA.

(g) Funds that remain available after all eligible continuing awards have been accepted will be transferred to the competition for funds for the regional competition in accordance with §7.38 of this subchapter.

(h) Percentages identified in this section will not be rounded up to the nearest whole number.

§7.36. General Threshold Criteria.

(a) Applications submitted to the Department are subject to general threshold criteria. Applications which do not meet the general threshold criteria or which cannot resolve an administrative deficiency related to general threshold criteria are subject to termination. Applicants applying directly to the Department to administer the ESG Program must submit an Application on or before the deadlines specified in the NOFA, notification of a direct Subgrant, or notification of availability of a continuing award, and must include items in paragraphs (1) - (13) of this subsection:

(1) Application materials as published by the Department including, but not limited to, program description, budget, and performance statement.

(2) An ESG budget that does not exceed the total amount available within the CoC region, other geographic limitation, Subgrant, or offer of continuing award, as applicable.

(3) A copy of the Applicant's written standards that comply with the requirements of 24 CFR §576.400 and certification of compliance with these standards. Any occupancy standard set by the Subrecipient must not conflict with local regulations or Texas Property Code §92.010.

(4) A copy of the Applicant's policy for termination of assistance that complies with the requirements of 24 CFR §576.402 and certification of compliance with these standards.

(5) A Service Area which consists of at least the entirety of one county or multiple counties within the CoC region under which Application is made, unless a CoC region does not include an entire county. When the CoC region does not encompass at least the entirety of one county, the Service Area must encompass the entire CoC region. The Service Area selected within an Application must be fully contained within one CoC region.

(6) Commitment in the budget to the provision of 100% Match, or request for a Match waiver, as applicable. Match waivers

will be considered by the Department based on the rank of the Application. Applicants requesting an award of funds in excess of the minimum award amount as described in the NOFA for Program Participant services are not eligible to request or receive a Match waiver. In the event that the Match waivers requested exceed \$100,000, the waivers will be considered only for the highest scoring eligible Applications, subject to availability of excess Match provided by ESG Applicants. Applicants that do not receive the waiver and are unable to provide a source of Match will be ineligible for an ESG award.

(7) Applicant certification of compliance with State and federal laws, rules and guidance governing the ESG Program as provided in the Application.

(8) Evidence of a Unique Entity Identifier (UEI) number for Applicant.

(9) Documentation of existing Section 501(c) tax-exempt status, as applicable.

(10) Completed previous participation review materials, as outlined in Chapter 1, Subchapter C of this title (relating to Previous Participation), for Applicant.

(11) Local government approval per 24 CFR §576.202(a)(2) for an Applicant that will be providing shelter activities with ESG or as ESG Match, as applicable. This documentation must be submitted not later than 30 calendar days after the Application submission deadline as specified in the NOFA, or prior to execution of a Contract for Subrecipients subject to a direct Subgrant, or continuing award. Receipt of the local government approval is a condition prior to the Department obligating ESG funding.

(12) A resolution or other governing body action from the Applicant's direct governing body which includes:

(A) Authorization of the submission of the Application;

(B) Title of the person authorized to represent the entity and who also has signature authority to execute a Contract; and

(C) Date that the resolution was passed by the governing body, which must be not older than 12 months preceding the date the Application is submitted.

(13) Applicants with an ESG Contract(s) must have submitted the most recent yearly report information, as required in 10 TAC §7.5(h)(1), in SAGE by the deadline established by the Department for the report due in the period preceding the application submission deadline.

(b) An Application must be substantially complete when received by the Department. An Application may be terminated if the Application is so unclear or incomplete that a thorough review cannot reasonably be performed, as determined by the Department. Such Application will be terminated without being processed as an administrative deficiency. Specific reasons for a Department termination will be included in the notification sent to the Applicant but, because the termination may occur prior to completion of the full review, will not necessarily include a comprehensive list of all deficiencies in the Application. Termination of an Application may be subject to §1.7 of this title (relating to Appeals Process).

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

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

TRD-202500416

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: March 23, 2025

For further information, please call: (512) 475-3959



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 27. CASE MANAGEMENT FOR CHILDREN AND PREGNANT WOMEN

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes the repeal of §27.1, Purpose and Application; §27.3, Definitions; §27.5, Client Eligibility; §27.7, Client Rights; §27.9, Client Confidentiality; §27.11, Components of Case Management for Children and Pregnant Women Services; §27.13, Prior Authorization; §27.15, Provider Qualifications; §27.17, Provider Approval Process; §27.19, Provider Responsibilities; §27.21, Case Manager Qualifications; §27.23, Case Manager Responsibilities; §27.25, Utilization and Quality Assurance Reviews and Compliance; and §27.27, Termination, Suspension, Probation, and Reprimand of Providers.

BACKGROUND AND PURPOSE

Case Management for Children and Pregnant Women (CPW) services assist eligible Medicaid clients in gaining access to necessary medical, social, educational, and other services related to the client's health conditions and health risks. To be eligible for services, a client must be either a child with a health condition or health risk or a pregnant woman with a high-risk condition. The client must also be Medicaid-eligible in Texas, need case management for CPW services, and choose such services.

HHSC proposes to repeal Chapter 27, Case Management for Children and Pregnant Women, in Title 25, Part 1, Texas Administrative Code (TAC), and proposes a new Chapter 257, Case Management for Children and Pregnant Women, in Title 26, Part 1, TAC. The purpose for moving the CPW chapter from Title 25 to Title 26 is to conform administrative rules to current HHSC practices based on Senate Bill (S.B.) 200, 84th Legislature, Regular Session, 2015. S.B. 200 consolidated functions in the Texas Health and Human Services delivery system and transferred programs, to include CPW, from the Department of State Health Services (DSHS) to HHSC.

The new CPW rules in 26 TAC Chapter 257 are proposed elsewhere in this issue of *Texas Register*.

SECTION-BY-SECTION SUMMARY

The proposed repeal of §§27.1, 27.3, 27.5, 27.7, 27.9, 27.11, 27.13, 27.15, 27.17; 27.19, 27.21, 27.23, 27.25, and 27.27 in 25 TAC Chapter 27 removes rules that need to be replaced by new rules in Title 26 under HHSC.

FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years that the repeals will be in effect, enforcing or administering the repeals does not have fore-

seeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro businesses, or rural communities to comply with the proposed repeals because provider and client participation in CPW is optional.

LOCAL EMPLOYMENT IMPACT

The proposed repeals will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these repeals because the repeals do not impose a cost on regulated persons and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the repeals.

PUBLIC BENEFIT AND COSTS

Emily Zalkovsky, State Medicaid Director, has determined that for each year of the first five years the repeals are in effect, the public will benefit from having all HHSC rules in the same title of the TAC.

Trey Wood has also determined that for the first five years the repeals are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed repeals because the existing benefits will be reintroduced in the new rules.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4601 West Guadalupe Street, Austin, Texas 78751; or emailed to HHSRulesCoordinationOffice@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When faxing or emailing comments, please indicate "Comments on Proposed Rule 24R049" in the subject line.

SUBCHAPTER A. GENERAL PROVISIONS

25 TAC §27.1, §27.3

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules as necessary to carry out the commission's duties; and Human Resources Code §32.021 and Texas Government Code §531.021(a), which authorize HHSC to administer the federal medical assistance (Medicaid) program.

The repeals affect Texas Government Code §531.651, §531.652, §531.653, §531.654, §531.655, and §531.656.

§27.1. Purpose and Application.

§27.3. Definitions.

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

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

TRD-202500394

Karen Ray

Chief Counsel

Department of State Health Services

Earliest possible date of adoption: March 23, 2025

For further information, please call: (512) 438-2910



SUBCHAPTER B. CLIENT SERVICES

25 TAC §§27.5, 27.7, 27.9, 27.11, 27.13

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules as necessary to carry out the commission's duties; and Human Resources Code §32.021 and Texas Government Code §531.021(a), which authorize HHSC to administer the federal medical assistance (Medicaid) program.

The repeals affect Texas Government Code §531.651, §531.652, §531.653, §531.654, §531.655, and §531.656.

- §27.5. *Client Eligibility.*
- §27.7. *Client Rights.*
- §27.9. *Client Confidentiality.*
- §27.11. *Components of Case Management for Children and Pregnant Women Services.*
- §27.13. *Prior Authorization.*

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

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 Karen Ray
 Chief Counsel
 Department of State Health Services
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 For further information, please call: (512) 438-2910



SUBCHAPTER C. PROVIDER QUALIFICATIONS AND RESPONSIBILITIES

25 TAC §§27.15, 27.17, 27.19, 27.21, 27.23, 27.25, 27.27

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules as necessary to carry out the commission's duties; and Human Resources Code §32.021 and Texas Government Code §531.021(a), which authorize HHSC to administer the federal medical assistance (Medicaid) program.

The repeals affect Texas Government Code §531.651, §531.652, §531.653, §531.654, §531.655, and §531.656.

- §27.15. *Provider Qualifications.*
- §27.17. *Provider Approval Process.*
- §27.19. *Provider Responsibilities.*
- §27.21. *Case Manager Qualifications.*
- §27.23. *Case Manager Responsibilities.*
- §27.25. *Utilization and Quality Assurance Reviews and Compliance.*
- §27.27. *Termination, Suspension, Probation, and Reprimand of Providers.*

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

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 Karen Ray
 Chief Counsel
 Department of State Health Services
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 For further information, please call: (512) 438-2910



CHAPTER 289. RADIATION CONTROL SUBCHAPTER E. REGISTRATION REGULATIONS

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), proposes an amendment to §289.230, concerning Certification of Mammography Systems and Mammography Machines Used for Interventional Breast Radiography, and the repeal of §289.234, concerning Mammography Accreditation.

BACKGROUND AND PURPOSE

The purpose of the proposal is to amend §289.230, relating to requirements for the certification and use of radiation machines in mammography and interventional breast radiography. The amendment is necessary to align with the United States Food and Drug Administration (FDA) Mammography Quality Standards Act (MQSA) under 21 Code of Federal Regulations (CFR) Part 900.

Additionally, the proposal repeals §289.234, relating to mammography accreditation, because DSHS no longer accredits mammography facilities due to an expired contract which ended on August 31, 2024. With the contract's expiration, this rule is no longer valid.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §289.230 updates the requirements concerning breast tissue density in mammography reports and plain language notification statements to patients. Three new outcome data reporting requirements for the interpreting physician and the facility have been added. The outcome data report must include calculations for positive predictive value, cancer detection rate, and recall rate.

Additional changes to §289.230 include reorganizing the rule to mirror the layout of other sections of this chapter, adding survey report requirements, and adding and clarifying definitions for various terms related to mammography machines. The proposal adopts 21 CFR Part 900 by reference for system design, screen-film, processor performance testing, equipment variances, and investigational device requirements. The proposed changes enhance clarity, safety, and regulatory compliance in the field of mammography. Other edits are made to improve grammar, formatting, and rule clarity.

The proposed repeal of §289.234 is necessary to delete an invalid rule.

FISCAL NOTE

Christy Havel Burton, DSHS Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

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

- (1) the proposed rules will eliminate a government program;
- (2) implementation of the proposed rules will not affect the number of DSHS employee positions;

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

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

Christy Havel Burton has also determined that there will be an adverse economic effect on small businesses or micro-businesses, or rural communities because there may be a cost to comply with new data reporting requirements.

DSHS estimates that the number of mammography facilities subject to the proposal for §289.230 is 668. The projected economic impact cannot be determined because the impact is based on the size of the facility and the age of its current software.

DSHS determined that alternative methods to achieve the purpose of the proposed rules for small businesses, micro-businesses, or rural communities would not be consistent with ensuring the health and safety of the public, employees, and patients.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to comply with federal law: 21 CFR Part 900, and to protect the health, safety, and welfare of the residents of Texas.

PUBLIC BENEFIT AND COSTS

Dr. Timothy Stevenson, Deputy Commissioner, Consumer Protection Division, has determined that for each year of the first five years the rules are in effect, the anticipated public benefit will be improved protection from unnecessary exposure to radiation for the public, patients, workers, and the environment.

Christy Havel Burton has also determined that for the first five years the rules are in effect, persons required to comply with the proposed rules may incur economic costs because new outcome data reporting requirements may require additional software or increase staff workload. The proposed rules do not increase registration fees or increase the frequency of fee payment.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4601 West Guadalupe Street, Austin, Texas 78751; or emailed to HHSRulesCoordinationOffice@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) faxed or emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When faxing or emailing comments, please indicate "Comments on Proposed Rule 24R087" in the subject line.

25 TAC §289.230

STATUTORY AUTHORITY

The amendment is authorized by Texas Health and Safety Code Chapter 401 (the Texas Radiation Control Act), which provides for DSHS radiation control rules and regulatory program to be compatible with federal standards and regulations; §401.051, which provides the required authority to adopt rules and guidelines relating to the control of sources of radiation; §401.064, which provides for the authority to adopt rules relating to inspection of x-ray equipment; Chapter 401, Subchapter J, which authorizes enforcement of the Act; Chapter 401, Subchapter L, which provides for the Certification of Mammography Systems; and Texas Government Code §531.0055 and Texas Health and Safety Code §1001.075, which authorize the Executive Commissioner of HHSC to adopt rules and policies for the operation and provision of health and human services by DSHS and the administration of Texas Health and Safety Code Chapter 1001.

§289.230. Certification of Mammography Systems and X-Ray [Mammography] Machines Used for Interventional Breast Radiography.

(a) Purpose. This section establishes the requirements for using mammography systems and x-ray machines for interventional breast radiography.

(1) Requirements for the registration of a person using radiation machines for mammography.

(A) A person must not use radiation machines except as authorized in a certificate of registration issued by the Department of State Health Services (department) as specified in the requirements of this section.

(B) A person who receives, possesses, uses, owns, or acquires radiation machines before receiving a certificate of registration is subject to the requirements of this chapter.

~~[(1) This section provides for the certification of mammography systems and mammography machines used for interventional breast radiography. No person shall use radiation machines for mammography of humans or for interventional breast radiography except as authorized in a certification issued by the agency in accordance with the requirements of this section. Certification by this agency includes certification of mammography systems and facilities that have received accreditation by the agency accreditation body or by another United States Food and Drug Administration (FDA)-approved accreditation body and certification of mammography machines used for interventional breast radiography.]~~

(2) Mammography [The use of all mammography] machines certified under [in accordance with] this section must [shall] be used [by or] under the supervision of a physician licensed by the Texas Medical Board.

(3) Requirements for specific record keeping and general provisions for records and reports.

(b) Scope.

(1) This section applies to a person who receives, possesses, uses, or transfers radiation machines in mammography facilities. The facility is responsible for the administrative control and oversight of the mammography systems or x-ray machines used for interventional breast radiography.

(2) [(+) In addition to the requirements of this section, all facilities [registrants] are subject to the requirements of:

(A) §289.203 of this chapter [title] (relating to Notices, Instructions, and Reports to Workers; Inspections);[;]

(B) §289.204 of this chapter [title] (relating to Fees for Certificates of Registration, Radioactive Material Licenses, Emergency Planning and Implementation, and Other Regulatory Services);[;]

(C) §289.205 of this chapter [title] (relating to Hearing and Enforcement Procedures);[;]

(D) §289.226 of this subchapter [title] (relating to Registration of Radiation Machine Use and Services);[; and]

(E) §289.231 of this subchapter [title] (relating to General Provisions and Standards for Protection Against Machine-Produced Radiation); and

(F) 21 Code of Federal Regulations (CFR) Part 900, except for facilities subject to subsection (w) of this section. [Mammography facilities choosing to be accredited by the agency accreditation body will be subject to §289.234 of this title (relating to Mammography Accreditation).]

(3) [(2)] The procedures as specified [found] in §289.205 of this chapter relating to [title for] modifications, suspensions, revocations, denials, and hearings regarding certificates of registration are applicable to certifications issued by the department [agency].

(4) [(3)] This section does not apply to an entity under the jurisdiction of the federal government.

(5) [(4)] An entity, [that is a "covered entity" as that term is] defined in [HIPAA (]the Health Insurance Portability and Accountability Act of 1996 (HIPAA) as a "covered entity" under[;] 45 [Code of Federal Regulations (]CFR[;] Parts 160 and 164[)], may be subject to privacy standards governing how information identifying [that identifies] a patient can be used and disclosed. Failure to follow HIPAA requirements may result in the department referring [making a referral of] a potential violation to the United States Department of Health and Human Services.

(c) Prohibitions.

(1) The department prohibits the use of radiographic equipment designed for general purpose or special non-mammography procedures for mammographic imaging. This includes systems that have been modified or equipped with special attachments for mammography.

(2) The department prohibits the use of mammography machines posing a significant threat or danger to occupational and public health and safety, as specified in §289.205 and §289.231 of this chapter.

(3) The department prohibits exposing an individual to the useful beam, except for healing arts imaging ordered by a practitioner. This provision specifically prohibits intentional exposure of an individual for:

(A) training, demonstration, or other non-healing arts purposes;

(B) healing arts screening, or self-referral mammography except as authorized by subsection (r) of this section; and

(C) research, except as authorized by subsection (s) of this section.

(4) The department prohibits remote operation of radiation machines.

(d) Exemptions.

(1) Mammography machines or cabinet x-ray machines used exclusively for examination of breast biopsy specimens are exempt from the requirements of this section. These machines are required to meet applicable provisions of §289.226 and §289.228 of this subchapter (relating to Radiation Safety Requirements for Industrial Radiation Machines).

(2) Machines used exclusively for interventional breast radiography are exempt from the requirements of this section except for those listed in subsection (w) of this section. These machines are not required to be accredited by a United States Food and Drug Administration (FDA)-approved accreditation body (AB).

(3) Loaner machines as described in subsection (g)(6) of this section are exempt from the inspection requirements in subsection (v)(1) of this section. These machines are not required to be accredited by an AB.

(4) Mammography machines with investigational device exemptions as described in subsection (s) of this section and used in clinical studies are exempt from the requirements of this chapter. These machines are not required to be accredited by an AB.

(5) All mammography and interventional breast radiography facilities are exempt from the posting of radiation area requirements of §289.231 of this subchapter if the operator has continuous surveillance and controls access to the radiation area.

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

(1) Accreditation--The approved use of a mammography machine by an AB [An approval of a mammography machine within a mammography facility by an accreditation body. A facility may be accredited by the agency accreditation body or another FDA-approved accreditation body].

(2) Act--Texas Radiation Control Act, Health and Safety Code[;] Chapter 401.

(3) Action limit--The minimum or maximum value of a quality assurance (QA) measurement representing acceptable performance. Values less than the minimum or greater than the maximum action limit indicate [that] corrective action must be taken by the facility.

(4) Additional mammography review (AMR)--A [(includes targeted clinical image reviews)--At the request of the agency certification body or an FDA-approved accreditation body, a] review [by the FDA-approved accreditation body] of clinical images and other relevant facility information necessary to assess compliance [conformation] with [the] accreditation standards. [The reviews include the following:]

[(A) clinical image review with interpretation; or]

[(B) clinical image review without interpretation.]

(5) Adverse event--An undesirable experience associated with mammography activities [within the scope of this section]. Adverse events include [but are not limited to]:

(A) poor image quality;

(B) failure to send mammography reports within 30 days to the referring physician or in a timely manner to the self-referred patient; and

(C) use of personnel who do not meet the applicable requirements of subsection (h) [(#)] of this section.

(6) Air kerma--The kinetic energy released in air by ionizing radiation. Kerma is the quotient of dE by dM, where dE is the sum of the initial kinetic energies of all the charged ionizing particles liberated by uncharged ionizing particles in air of mass dM. The System International (SI) unit of air kerma is joule per kilogram, and the special name for the unit of kerma is gray (Gy) [Agency accreditation body--For the purpose of this section, the agency as approved by the FDA under Title 21, CFR, §900.3(d) to accredit mammography facilities in the State of Texas].

(7) American Registry of Radiologic Technologists - Radiography (ARRT(R))--the credential issued by the American Registry of Radiologic Technologists in radiography [Agency certifying body--For the purpose of this section, the agency, as approved by FDA, under Title 21, CFR, §900.21, to certify facilities within the State of Texas to perform mammography services].

[(8) Air kerma--The kerma in a given mass of air. The unit used to measure the quantity of air kerma is the Gray (Gy). For x-rays with energies less than 300 kiloelectronvolts (keV), 1 Gy = 100 rad. In air, 1 Gy of absorbed dose is delivered by 114 roentgens (R) of exposure.]

(8) [(9)] Automatic exposure control (AEC)--A device [that] automatically controlling [controls] one or more technique factors [in order] to obtain the [at preselected locations a] required quantity of radiation at preselected locations.

(9) [(10)] Average glandular dose--The average absorbed dose [acquiring] to the glandular tissue of the breast.

(10) [(11)] Beam-limiting device--A device providing [that provides] a means to restrict the dimensions of the x-ray field.

(11) [(12)] Breast implant--A prosthetic device implanted in the breast.

(12) [(13)] Calendar quarter--Any one of the following time periods during a given year: January 1 - March 31, April 1 - June 30, July 1 - September 30, or October 1 - December 31.

(13) [(14)] Calibration of instruments--The comparative response or reading of an instrument relative to a series of known radiation values over the range of the instrument.

(14) [(15)] Category I continuing medical education units (CMEU)--Educational activities designated as Category I and approved by the Accreditation Council for Continuing Medical Education, the American Osteopathic Association, a state medical society, or an equivalent organization.

(15) [(16)] Certification--An authorization for the use of a mammography system for mammography or x-ray [mammography] machines used for interventional breast radiography.

(16) [(17)] Clinical image--See the definition for mammogram.

(17) [(18)] Contact hour--An hour of training received through direct instruction.

(18) [(19)] Continuing education unit (CEU)--One contact hour of training.

(19) [(20)] Control panel--The [That] part of the radiation machine control upon which are mounted the [switches, knobs, push buttons, and other] hardware necessary for setting the technique factors.

(20) [(21)] Direct instruction--Instruction, including [that includes]:

(A) interaction between an instructor and student [face-to-face interaction between instructor(s) and student(s)], such as when the instructor provides a lecture, conducts demonstrations, or reviews student performance; or

(B) [the] administration and correction of student examinations by an instructor [instructor(s)] with subsequent feedback to the student [student(s)].

(21) [(22)] Direct supervision--Oversight of operations, including [that include] the following.

(A) During joint interpretation of mammograms, the supervising interpreting physician reviews, discusses, and confirms the interpretation [diagnosis] of the physician being supervised and signs the [resulting] report before it is entered into the patient's record.

(B) During performance of a mammography examination, the supervising medical radiologic technologist (MRT) is present to observe and correct, as needed, the individual [who is] performing the examination.

(C) During performance of a survey of the facility's [registrant's] equipment and QA [quality assurance] program, the supervising medical physicist is present to observe, and correct, as needed, the individual [who is] conducting the survey.

[(23) Established operating level--The value of a particular quality assurance parameter that has been established as an acceptable normal level by the registrant's quality assurance program.]

(22) [(24)] Facility--A hospital, outpatient department, clinic, radiology practice, mobile unit, an office of a physician, or other person conducting [that conducts] breast cancer screening or diagnosis through mammography activities, including [the following]:

(A) operating [the operation of] equipment to produce a mammogram;

(B) processing [of] film or digital images;

(C) interpreting [initial interpretation of] the mammogram; or

(D) maintaining the viewing conditions for [that] interpretation.

(23) [(25)] FDA-approved accreditation body (AB)--An entity approved by the FDA under [Title] 21[;] CFR[;] §900.3(d)[;] to accredit mammography facilities.

(24) [(26)] Final assessment categories--The overall final assessment of findings in a report of a mammography examination[;] classified in (j)(3)(E) of this section. [one of the following categories:]

[(A) "negative" indicates nothing to comment upon (if the interpreting physician is aware of clinical findings or symptoms, despite the negative assessment, these shall be explained);]

[(B) "benign" is also a negative assessment;]

{(C) "probably benign" indicates a finding(s) that has a high probability of being benign;}

{(D) "suspicious abnormality" indicates a finding(s) without all the characteristic morphology of breast cancer but indicating a definite probability of being malignant;}

{(E) "highly suggestive of malignancy" indicates a finding(s) that has a high probability of being malignant;}

{(F) "known biopsy proven malignancy" indicates appropriate action should be taken;}

{(G) "post procedure mammogram" indicates a mammogram to confirm the deployment and position of a breast tissue marker; or}

{(H) "incomplete" indicates there is a need for additional imaging evaluation and/or prior mammograms for comparison. Reasons why no assessment can be made shall be stated by the interpreting physician.}

(25) [(27)] First allowable time--The earliest time a resident physician is eligible to take the diagnostic radiology boards from an FDA-designated certifying body.

(26) [(28)] Formal training--Attendance and participation in direct instruction. This does not include self-study programs.

(27) [(29)] Half-value layer (HVL)--The thickness of a specified material attenuating [that attenuates] the beam of radiation to the [an] extent [such that] the exposure rate is reduced to one-half of its original value. [In this definition, the contribution of all scattered radiation, other than any that might be present initially in the beam concerned, is deemed to be excluded.]

(28) [(30)] Healing arts--Any system, treatment, operation, diagnosis, prescription, or practice for the ascertainment, cure, relief, palliation, adjustment, or correction of any human disease, ailment, deformity, injury, or unhealthy or abnormal physical or mental condition.

(29) Healthcare provider--A doctor of medicine or osteopathy, podiatrist, dentist, chiropractor, clinical psychologist, optometrist, physician assistant, or nurse practitioner authorized to practice by the state of Texas and performing within the scope of their practice as defined by state law.

(30) [(31)] Image receptor--Any device that transforms incident x-ray photons either into a visible image or into another form that can be made into a visible image by further transformations.

(31) [(32)] Institutional review board (IRB)--Any board, committee, or other group created under 45 CFR Part 46 and 21 CFR Part 56, and formally designated by an institution to review, approve the initiation of, and conduct periodic review of biomedical research involving human subjects.

(32) [(33)] Interpreting physician (IP)--A licensed physician who interprets mammographic images and who meets the requirements of subsection (h)(1) [(+)(1)] of this section.

(33) [(34)] Interventional breast radiography--Imaging of a breast during invasive interventions for localization or biopsy procedures.

(34) [(35)] Investigational device exemption--An exemption allowing an [that allows the] investigational device to be used in a clinical study [in order] to collect safety and effectiveness data required to support a Premarket Approval application or a 510(k) Premarket Notification submission to FDA.

(35) [(36)] Kerma--The sum of the initial energies of all the charged particles liberated by uncharged ionizing particles in a material of given mass.

(36) [(37)] Laterality--The designation of either the right or left breast.

(37) [(38)] Lead interpreting physician (LIP)--The interpreting physician assigned the general responsibility for ensuring [that] a facility's QA [quality assurance] program meets all [of the] requirements of subsections (k), (l), and (m) [(+), (+), and (+)] of this section.

(38) [(39)] Mammogram--A radiographic image produced through mammography.

(39) [(40)] Mammographic modality--A technology, within the scope of 42 United States Code (U.S.C.) §263b, for radiography of the breast. Examples are screen-film mammography, [and] full-field digital mammography, and digital breast tomosynthesis (DBT).

(40) [(41)] Mammography--The use of x-rays [x-radiation] to produce an image of the breast that may be used to detect the presence of pathological conditions of the breast. Mammography [For the purposes of this section, mammography] does not include radiography of the breast performed [as follows]:

(A) during invasive interventions for localization or biopsy procedures, except as specified in subsection (w) [(+)] of this section; or

(B) using [with] an investigational mammography device as part of a scientific study conducted under the [in accordance with] FDA's investigational device exemption regulations.

(41) [(42)] Mammography machine--An assemblage of components for mammography. This includes an x-ray high-voltage generator, x-ray control, tube housing assembly, beam-limiting device, and the necessary supporting structures. Additional components functioning with the machine are considered integral parts of the system. [machine(s)--A unit consisting of components assembled for the production of x-rays for use during mammography. These include, at a minimum, the following:]

{(A) an x-ray generator;}

{(B) an x-ray control;}

{(C) a tube housing assembly;}

{(D) a beam limiting device; and}

{(E) [supporting structures.]}

(42) [(43)] Mammography medical outcomes audit--A systematic collection of mammography results and the comparison of those results [compared] with outcomes data.

(43) [(44)] Mammography system--A system, including [that includes the following]:

(A) an x-ray machine used as a source of radiation in producing images of breast tissue;

(B) an imaging system used for the formation of a latent image of breast tissue;

(C) an imaging-processing device for changing a latent image of breast tissue to a visual image that can be used for diagnostic purposes;

(D) a [viewing] device used for viewing and evaluating [the visual evaluation of] an image of breast tissue [if the image is produced in interpreting visual data captured on an image receptor];

(E) an MRT who meets the qualifications specified in subsection (h)(2) of this section and [a medical radiologic technologist who] performs mammography; and

(F) a physician who interprets [engages in] mammography and [who] meets the requirements specified in subsection (h)(1) of this section [relating to the reading, evaluation, and interpretation of mammograms].

(44) [(45)] Mandatory training--Additional training required by the department [agency certifying body] or AB [FDA-approved accreditation body] for IPs [interpreting physicians], MRTs [medical radiologic technologists], or medical physicists as the result of a required corrective action.

[(46)] Mean optical density--The average of the optical densities measured using uniform, defect-free absorber thicknesses of 2, 4, and 6 centimeters (cm) with values of kilovolt peak (kVp) clinically appropriate for those thicknesses.]

(45) [(47)] Medical physicist--An individual who performs surveys and evaluations of mammographic equipment and facility QA [quality assurance] programs as specified in [accordance with] this section and who meets the qualifications in subsection (h)(3) [(+)(3)] of this section.

(46) [(48)] Medical radiologic technologist (MRT [operator of equipment])--An individual specifically trained in the use of radiographic equipment and the positioning of patients for radiographic examinations, who performs mammography examinations as specified in [accordance with] this section and who meets the qualifications in subsection (h)(2) [(+)(2)] of this section.

(47) [(49)] Mobile service operation--The provision of mammography machines and personnel at temporary sites to perform mammography for limited time periods.

(48) [(50)] Multi-reading--Two or more physicians interpreting the same mammogram. At least one physician must [shall] be qualified as an IP [interpreting physician].

(49) Operator--An individual who performs interventional breast mammography examinations.

(50) [(51)] Optical density (OD)--A measure of the fraction of incident light transmitted through a developed film and defined by the equation:

Figure: 25 TAC §289.230(e)(50)

[Figure: 25 TAC §289.230(e)(51)]

(51) [(52)] Patient--Any individual who undergoes a mammography examination in a facility, regardless of whether the individual [person] is referred by a physician or is self-referred.

(52) [(53)] Phantom--A test object used to simulate radiographic characteristics of compressed breast tissue and containing components modeling [that radiographically model] aspects of breast disease and cancer in a radiograph.

(53) [(54)] Phantom image--A radiographic image of a phantom.

(54) [(55)] Physical science--This includes physics, chemistry, radiation science (including medical physics and health physics), and engineering.

(55) Physician--An individual licensed by the Texas Medical Board to practice medicine under Texas Occupations Code Chapter 155.

(56) Positive mammogram--A mammogram with [that has] an overall assessment of findings that are either "suspicious" or "highly suggestive of malignancy."

[(57)] Practitioner of the healing arts (practitioner)--For the purposes of this section, a person licensed to practice healing arts by the Texas Medical Board as a physician.]

(57) [(58)] Provisional certification--A certification category enabling a facility to perform mammography and obtain the clinical images needed to complete the accreditation process [provisional authorization described in subsection (g) of this section].

(58) [(59)] Qualified instructor--An individual whose training and experience prepares the qualified instructor [him or her] to carry out specified training assignments. IPs [Interpreting physicians], MRTs [medical radiologic technologists], or medical physicists who meet the requirements of subsection (h)[(+)] of this section are [would be] considered qualified instructors in their respective areas of mammography. Other examples of an individual [individuals] who may be a qualified instructor [instructors] for the purpose of providing training to meet the requirements of this section include; but are not limited to, instructors in a post-high school training institution and manufacturers' representatives.

(59) [(60)] Quality control (QC) technologist--An individual meeting the requirements of subsection (h)(2)[(+)(2)] of this section who is responsible for those QA [quality assurance] responsibilities not assigned to the LIP [lead interpreting physician] or to the medical physicist.

(60) [(61)] Radiation machine--see definition for [For the purposes of this part, radiation machine also means] mammography machine.

(61) [(62)] Self-referral mammography--The use of x-ray [x-radiation] to test asymptomatic women for the detection of diseases of the breasts when such tests are not specifically and individually ordered by a licensed physician.

(62) [(63)] Serious adverse event--An adverse event that may significantly compromise clinical outcomes, or an adverse event for which a facility fails to take appropriate corrective action in a timely manner.

(63) [(64)] Serious complaint--A report of a serious adverse event.

(64) [(65)] Source-to-image receptor distance (SID)--The distance from the source to the center of the input surface of the image receptor.

(65) [(66)] Standard breast--A 4.2 cm thick compressed breast consisting of 50 percent [%] glandular tissue and 50 percent [%] adipose tissue.

(66) [(67)] Survey--An on-site physics consultation and evaluation of a facility QA [quality assurance] program performed as specified in subsection (l)(5) of this section by a medical physicist meeting the requirements of subsection (h)(3) of this section.

(67) [(68)] Technique chart--A chart providing [that provides] all necessary generator control settings and geometry needed to make clinical radiographs.

(68) [(69)] Traceable to a national standard--Calibrated at either the National Institute of Standards and Technology (NIST) or at a calibration laboratory participating [that participates] in a proficiency program with NIST at least once every two years. The results of the proficiency test conducted within 24 months of calibration must [shall]

show agreement within plus or minus 3.0 percent [%] of the national standard in the mammography energy range.

~~[(d) Prohibitions.]~~

~~[(1) Radiographic equipment designed for general purpose or special nonmammography procedures shall not be used for mammography. This includes systems that have been modified or equipped with special attachments for mammography.]~~

~~[(2) The agency may prohibit use of mammography machines that pose a significant threat or endanger public health and safety, in accordance with §289.231 of this title and §289.205 of this title.]~~

~~[(3) Individuals shall not be exposed to the useful beam except for healing arts purposes and unless such exposure has been authorized by a licensed physician. This provision specifically prohibits intentional exposure for the following purposes:]~~

~~[(A) exposure of an individual for training, demonstration, or other non-healing arts purposes;]~~

~~[(B) exposure of an individual for the purpose of healing arts screening (self referral mammography) except as authorized by subsection (bb) of this section; and]~~

~~[(C) exposure of an individual for the purpose of research except as authorized by subsection (cc) of this section.]~~

~~[(e) Exemptions.]~~

~~[(1) Mammography machines or cabinet x-ray machines used exclusively for examination of breast biopsy specimens are exempt from the requirements of this section. These machines are required to meet applicable provisions of §289.226 of this title and §289.228 of this title (relating to Radiation Safety Requirements for Analytical and Other Industrial Radiation Machines).]~~

~~[(2) Mammography machines used exclusively for interventional breast radiography are exempt from the requirements of this section except for those listed in subsection (gg) of this section. These machines are not required to be accredited by an FDA-approved accreditation body.]~~

~~[(3) Loaner machines as described in subsection (n)(5) of this section are exempt from the inspection requirements in subsection (ff) of this section. These machines are not required to be accredited by an FDA-approved accreditation body.]~~

~~[(4) Mammography machines with investigational device exemptions as described in subsection (ee) of this section and used in clinical studies are exempt from the requirements of this chapter. These machines are not required to be accredited by an FDA-approved accreditation body.]~~

~~[(5) All mammography registrants are exempt from the posting of radiation area requirements of §289.231(x) of this title provided that the operator has continuous surveillance and access control of the radiation area.]~~

~~(f) Mammography systems certification.~~

~~(1) [(f)] Requirements for [mammography systems] certification.~~

~~(A) [(4)] A facility must [To obtain a certification, facilities shall] meet the quality standards in subsections (h) - (q) [(f) - (aa)] of this section and be accredited by an AB. To [FDA-approved accreditation body. In order to] qualify for certification, a new facility [facilities] must apply to the department [agency certifying body in accordance with the following requirements and to an FDA-approved ac-~~

~~creditation body] and receive acceptance of an [the] accreditation application by an AB. [If the facility chooses to be accredited by the agency accreditation body, the facility shall submit the information required in this subsection and §289.234(d) of this title.]~~

~~(B) [(2)] A person who receives, possesses, uses, owns, or acquires [Each person having] a mammography machine must apply for certification as specified [shall submit an application] in [accordance with] §289.226(e) of this subchapter, relating to general requirements for application for registration, [(1) - (3) and (5) - (7) and (f)(4) - (5) of this title,] and receive certification from the department [agency certifying body] before using a [beginning use of the] mammography machine on humans.~~

~~(C) [(3)] An application for certification must [shall] be signed by the:~~

~~(i) LIP;~~

~~(ii) applicant; and~~

~~(iii) [(4)]radiation safety officer (RSO) [An application for certification may contain information on multiple mammography machines. Each mammography machine must be identified by referring to the machine's manufacturer, model name, and serial number on the control panel. If this is not a new certification, the registrant shall maintain and provide proof of current accreditation. If accreditation expires before the expiration of the certification, the registrant shall submit proof of renewed status to the agency.]~~

~~(D) [(5)] Each applicant must [shall] submit documentation of [the following]:~~

~~(i) [(A)] personnel qualifications, including dates of licensure or certification, as specified in [accordance with] subsection (h)[(f)] of this section;~~

~~(ii) [(B)] manufacturer, model name, and serial number of each mammography machine control panel;~~

~~(iii) [(C)] evidence that a medical physicist has:~~

~~(I) [(1)] [has] determined [that] each machine meets the equipment standards in subsection (i)[(s)] of this section;~~

~~(II) [(2)] [has] performed a survey and a mammography equipment evaluation as specified in [accordance with] subsection (1)(5) and (6)[(v)(10) and (4)] of this section; and~~

~~(III) [(3)] [has] determined [that] the average glandular dose for one craniocaudal [eraniocaudal-caudal] view for each machine is less than [does not exceed] the value in subsection (i)(11)(D)[(v)(5)(F)] of this section;~~

~~(iv) [(D)] self-referral program information as specified in [accordance with] subsection (r)[(bb)] of this section, if the facility offers self-referral mammography;[and]~~

~~(v) [(E)] items required for authorization of a mobile service operation as specified in [accordance with] §289.226(g) of this subchapter, relating to application for registration of mobile service operations [title], if the facility provides a mobile service; and[.]~~

~~(vi) proof of current accreditation.~~

~~(2) [(g)] Issuance of certification [and provisional certification].~~

~~[(4)] [Certification.] A certification will be issued if the department [agency certifying body] determines the [that an] application meets the requirements of the Act and [the requirements of] this chapter. The certification authorizes the proposed operations and includes [activity in such form and contains such] conditions and limita-~~

tions deemed necessary by [as] the department [agency certifying body deems appropriate or necessary].

(A) The certification may include [one of the following]:

(i) [(A)] mammography systems and facilities certification, following approval of accreditation by an AB [FDA-approved accreditation body]; or

(ii) [(B)] certification of interventional breast radiography machines.

(B) [(2)] Conditions [Requirements and conditions]. The department [agency certifying body] may incorporate in the certification at the time of issuance, or [thereafter] by amendment, [such] additional requirements and conditions [with respect to the registrant's possession, use, and transfer of radiation machines subject to this chapter as it deems appropriate or necessary in order] to:

(i) [(A)] minimize danger to occupational and public health and safety;

(ii) [(B)] require additional reporting and record keeping [reports and the keeping of additional records as may be appropriate or necessary]; and

(iii) [(C)] prevent loss or theft of radiation machines subject to this section.

(C) [(3)] Additional information. The department [agency certifying body] may request[, and the registrant shall provide,] additional information after the certification has been issued to enable the department [agency certifying body] to determine whether the certification should be modified as specified in [accordance with] §289.226(r) of this subchapter, relating to renewal of certificates of registration [title].

(3) [(4)] Provisional certification [application. A new facility is eligible to apply for a provisional certification. The provisional certification will enable the facility to perform mammography and to obtain the clinical images needed to complete the accreditation process].

(A) To apply for and receive a provisional certification, a new facility must meet the requirements of this chapter and submit the necessary information to an AB [FDA-approved accreditation body]. If the facility chooses to be accredited by the agency accreditation body, the facility shall submit the information required in subsection (F) of this section and §289.234(d) of this title to the agency accreditation body].

(B) [(5)] [Issuing provisional certifications.] Following the department's [agency certifying body's] receipt of the accreditation body's decision that a facility has submitted the required information, the department [agency certifying body] may issue a provisional certification to a facility if [upon determination that] the facility has satisfied the requirements of the Act and this chapter.

(i) A provisional certification is [shall be] effective for up to six months as noted on the certificate [from the date of issuance].

(ii) A provisional certification cannot be renewed, but a facility may apply for a 90-day extension of the provisional certification. [(6) Extension of provisional certification. Extension of provisional certifications shall be in accordance with the following.]

(C) [(A)] To apply for a 90-day extension to a provisional certification, a facility must [shall] submit to the AB [FDA-approved accreditation body] who issued the original certificate, a state-

ment of actions taken [what the facility is doing] to obtain certification and evidence that there would be a significant adverse impact on access to mammography in the geographic area served if the [such] facility did not obtain an extension.

(i) [(B)] The department [agency certifying body] may issue a 90-day extension for a provisional certification if [upon determination that] the extension meets the criteria in paragraph (3)[(4)] of this subsection.

(ii) [(C)] Renewal [There can be no renewal] of a provisional certification beyond the 90-day extension is prohibited.

(4) [(7)] Reinstatement [policy].

(A) A previously certified facility that has allowed its certification to expire, [that has] been refused a renewal of its certification by the department [agency certifying body], or [that has] had its certification suspended or revoked by the department [agency certifying body], may reapply to have the certification reinstated so [that] the facility may be considered [to be] a new facility and thereby be eligible for a provisional certification.

(B) [(A)] Unless prohibited from reinstatement as specified in [under] subsection (f)(5)[(h)(5)] of this section, a facility applying for reinstatement must [shall]:

(i) contact an AB [FDA-approved accreditation body] for reapplication of [for] accreditation;

(ii) provide documentation of [fully document] its history as a previously provisionally certified or certified mammography facility, and include [including] the [following information]:

(I) name and address of the facility under which it was previously provisionally certified or certified;

(II) name of previous owner or lessor [owner/lessor];

(III) facility identification number assigned to the facility under its previous certification by the FDA or the department [agency certifying body]; and

(IV) expiration date of the most recent FDA or department [agency] provisional certification; and

(iii) justify application for reinstatement of accreditation by submitting to an AB [FDA-approved accreditation body] a corrective action plan detailing [that details] how the facility has corrected deficiencies contributing [that contributed] to the lapse [of], denial of renewal, or revocation of its certification.

(C) [(B)] The department [agency certifying body] may issue a provisional certification to the facility if the department [agency] determines [that] the facility has:

(i) [has] adequately corrected, or is in the process of correcting, pertinent deficiencies; and

(ii) [has] taken sufficient corrective action since the lapse [of], denial of renewal, or revocation of its previous certification.

(D) [(C)] After receiving the provisional certification, the facility may lawfully perform mammography while completing the requirements for accreditation and certification.

(5) [(h)] Suspension or revocation of certification.

(A) [(4)] Except as provided in subparagraph (B) of this paragraph [(2) of this subsection], the department [agency certifying body] may suspend or revoke a certification issued by the department [agency certifying body] if it finds, after providing the owner or

[operator of the] facility representative with notice and an opportunity for a hearing as specified in [accordance with] §289.205 of this chapter [title], that the owner, facility representative [operator], or any employee of the facility has:

(i) [(A)] misrepresented documentation to obtain [has been guilty of misrepresentation in obtaining] the certification;

(ii) [(B)] [has] failed to comply with the requirements of this chapter;

(iii) [(C)] [has] failed to comply with requests of the department [agency certifying body] or an AB [FDA-approved accreditation body] for records, information, reports, or materials [that are] necessary to determine the continued eligibility of the facility for a certification or continued compliance with the requirements of this chapter;

(iv) [(D)] [has] refused a request of a duly designated FDA inspector, state inspector, or an AB [FDA-approved accreditation body] representative for permission to inspect the facility or the operations and pertinent records of the facility;

(v) [(E)] [has] violated or aided and abetted in the violation of any provision of or regulation promulgated pursuant to the requirements of the Act and the requirements of this chapter; or

(vi) [(F)] [has] failed to comply with prior sanctions imposed by the department as specified in [agency certifying body under] §289.205 of this chapter [title].

(B) [(2)] The department [agency certifying body] may suspend a certification of a facility before holding a hearing if it makes a finding described in subparagraph (A) [paragraph (1)] of this paragraph [subsection] and [also] determines that:

(i) [(A)] the failure to comply with requirements presents a serious risk to human health;

(ii) [(B)] the refusal to permit inspection makes immediate suspension necessary; or

(iii) [(C)] there is reason to believe [that] the violation or aiding and abetting of the violation was intentional or associated with fraud.

(C) [(3)] If the department [agency certifying body] suspends a certification as specified in subparagraph (B) of this [accordance with] paragraph [(2) of this subsection]:

(i) [(A)] the department will [agency certifying body shall] provide the facility with an opportunity to request [for] a hearing as specified in [under] §289.205 of this chapter [not later than 60 days from the effective date of this suspension]; and

(ii) [(B)] the suspension will [shall] remain in effect until it is determined by the department [agency certifying body determines] that the:

(I) [(1)] allegations of violations or misconduct were not substantiated;

(II) [(2)] violations of requirements have been corrected to the department's [agency certifying body's] satisfaction; or

(III) [(3)] [the] certification is revoked as specified in subparagraph (D) [accordance with paragraph (4)] of this paragraph [section].

(D) [(4)] After providing a hearing as specified in §289.205 of this chapter [accordance with paragraph (3)(A) of this subsection], the department [agency certifying body] may revoke the

certification if it is determined by the department [agency determines] that the facility:

(i) [(A)] is unwilling or unable to correct violations that were the basis for suspension; or

(ii) [(B)] has engaged in fraudulent activity to obtain or continue certification.

(E) [(5)] If a facility's certification was revoked based on [on the basis of] an act described in §289.205 of this chapter, a [title, no] person who owned or operated that facility at the time the act occurred is prohibited from owning [may own or operate] a mammography facility for [within] two years following [of] the [date of] revocation date.

(6) [(6)] Appeal of adverse accreditation or reaccreditation decisions preventing [that preclude] certification or recertification.

(A) [(4)] The appeal process described in this paragraph [subsection] is only available [only] for adverse accreditation or reaccreditation decisions preventing [that preclude] certification by the department. If the department suspends or revokes a certificate [agency certifying body. Agency certifying body decisions to suspend or revoke certificates that are] already in effect, it will be handled as specified in [accordance with] subsection (f)(5) [(h)] of this section.

(B) [(2)] If [Upon learning that] a facility has failed to become accredited or reaccredited, the department [agency certifying body] will notify the facility that the department [agency certifying body] is unable to certify the [that] facility without proof of accreditation.

(C) [(3)] A facility that has been denied accreditation or reaccreditation and cannot achieve satisfactory resolution of an adverse accreditation decision through the AB's [FDA-approved accreditation body's] appeal process is entitled to further appeal to the FDA.

(D) [(4)] A facility cannot perform mammography services while an adverse accreditation decision is being appealed.

(7) [(7)] Denial of certification.

(A) [(4)] The department [agency certifying body] may deny the application if the department [agency certifying body] has reason to believe that:

(i) [(A)] the facility will not be operated as specified in [accordance with] the provisions of subsections (h) - (q) [(1) - (6)] of this section;

(ii) [(B)] the facility will not permit inspections or provide access to records or information [in a] timely [fashion];

(iii) [(C)] made a materially [any material] false statement in the application or any statement of fact required under provision of the Act [was made];

(iv) [(D)] conditions revealed by such application or statement of fact or any report, record, inspection, or other means that would warrant the department [agency certification body] to refuse to grant a certification of mammography facility on an original application; or

(v) [(E)] the facility failed to observe any of the terms and conditions of the Act, this chapter, or order of the department [agency].

(B) [(2)] Before the department [agency certification body] denies an application for certification, the department must [agency shall] give notice of the denial, the facts warranting the denial, and [shall] afford the applicant an opportunity for a hearing in

accordance with §289.205(h) of this chapter [title]. If no request for a hearing is received by the director of the Radiation Control Program within 30 days of date of receipt of the notice, the department [agency] may proceed to deny. The applicant must bear [shall have] the burden of proof showing cause why the application should not be denied.

(C) [(3)] If the department [agency certifying body] denies an application for certification from [by] a facility that has received accreditation from an AB [FDA-approved accreditation body], the department will [agency certifying body shall] provide the facility with a written statement of the grounds on which the denial is based.

(8) [(k)] Appeals of a certification denial [Appeals of denial of certification].

(A) [(1)] The appeals procedures described in this paragraph [subsection] are available only to facilities that are denied certification by the department [agency certifying body] after they have been accredited by an AB [FDA-approved accreditation body]. Appeals for facilities that have failed to become accredited with the agency accreditation body shall be in accordance with §289.234(h) of this title].

(B) [(2)] A facility that has been denied certification may request reconsideration and appeal the department's [of the agency certifying body's] determination as specified in [accordance with] the applicable provisions of §289.205(h) of this chapter [title].

(9) [(4)] Modification of certification. Modification of a certification will follow the requirements in §289.226(s) of this subchapter, relating to modification, suspension, and revocation of certificates of registration [shall be in accordance with §289.226(r) of this title].

(10) [(m)] Specific terms and conditions of certification. Specific terms and conditions of certification will [shall] be as specified in [accordance with] §289.226(l) of this subchapter, relating to terms and conditions of certificates of registration [title].

(11) Renewal of certification.

(A) A certification for a mammography system is valid for three years from the date of issuance unless the certification of the facility is suspended or revoked before such deadlines.

(B) A mammography facility filing an application for renewal of their certification must meet the quality standards in subsections (h) - (q) of this section and be accredited by an AB. The renewal must include a list of all IPs, MRTs, and medical physicists practicing at the facility and must be filed as specified in:

(i) §289.226(r) of this subchapter, relating to renewal of certificates of registration;

(ii) §289.204(d) and (g) of this chapter, relating to payment of fees;

(iii) subsection (f)(1)(C) of this section; and

(iv) subsection (f)(1)(D)(i) of this section.

(C) A mammography facility filing an application for renewal before the existing certification expires may continue to perform mammography until the application status has been determined by the department.

(D) A facility with mammography machines used for interventional breast radiography must apply for renewal as specified in subsection (w)(5) of this section and pay the fee specified in §289.204(d) of this chapter.

(12) Expiration of certification.

(A) Each certification expires at the end of the day on the expiration date listed on the mammography certificate unless the certificate is suspended or revoked before the expiration date. Expiration of the certification does not relieve the facility of the requirements of this chapter.

(B) If a facility does not apply for renewal of the certification as specified in paragraph (11) of this subsection, as applicable, the facility must:

(i) terminate use of all mammography machines;

(ii) notify the department in writing of the storage location of mammography images and address how the requirements of subsection (j)(7)(E) of this section will be met;

(iii) pay any outstanding fees specified in §289.204 of this chapter; and

(iv) submit a record of the disposition of the mammography machine to the department.

(13) Termination of certification. When a facility decides to terminate all activities involving mammography machines authorized under the certification, the facility must:

(A) notify the department and the AB within 30 days;

(B) request termination of the certification in writing;

(C) pay any outstanding fees specified in §289.204 of this chapter;

(D) notify the department, in writing, of the storage location of mammography images and address how the requirements of subsection (j)(7)(E) of this section will be met; and

(E) submit a record of the disposition of the mammography machine to the department.

(g) [(n)] Responsibilities of the facility [registrant].

(1) In addition to the requirements of §289.226(m)(3) - (7) of this subchapter, relating to responsibilities of the registrant, the facility must [title, a registrant shall] notify the department [agency certifying body] in writing, within 30 days, of [prior to] any changes rendering [that would render] the information contained in the application or the certification inaccurate, including the[- These include but are not limited to the following]:

(A) name of the facility; [and]

(B) mailing address;

(C) [(B)] street address where the machine is [machine(s) will be] used; [and]

[(C) mammography machines.]

(D) addition or removal of any mammography machine; or

(E) name and qualifications of the RSO or LIP.

(2) Before [Prior to] employing an individual [the individuals] listed in subparagraphs (A) - (E) of this paragraph, the facility [registrant] is required to verify and maintain a copy [copies] of the [their] qualifications of the [- If a facility makes a change in the RSO, the qualifications of the RSO shall be submitted to the agency within 30 days of such change. Written notification of a change in any of the following in subparagraphs (B) - (E) of this paragraph is required within 30 days of such change]:

(A) RSO [radiation safety officer];

- (B) LIP [lead interpreting physician];
- (C) IP [interpreting physicians];
- (D) MRT [medical radiologic technologists]; or
- (E) medical physicist.

(3) A facility [Registrants] utilizing an IP [interpreting physicians] or MRT [technologists] from a temporary staffing service must [shall] verify and maintain copies of the qualifications of these individuals for inspection by the department [agency]. The registrant does not need to notify the agency certifying body unless these personnel will be at the facility for a period exceeding four weeks.

(4) For accreditation, a facility adding or replacing a mammography machine must have a current accreditation or apply to the AB, unless exempted by subsection (d) of this section [All mammography facilities installing new or replacement mammography machines shall have either current accreditation or have submitted an application to an FDA-approved accreditation body for review unless exempted by subsection (e)(1) - (3) of this section. A mammography machine shall not be used to perform mammograms if an application for accreditation for that machine has been denied, or if the accreditation has been suspended or expired].

(5) For certification, a facility with an existing certificate may begin using a new or replacement machine before receiving an updated certificate if the facility submits to the department and AB an application with a medical physicist report as specified in subsection (l)(5) and (6) of this section [A facility with an existing certification may begin using a new or replacement machine before receiving an updated certification if the registrant submits to the agency certifying body and to the FDA-approved accreditation body, documentation with a medical physicist's report in accordance with subsection (v)(10) and (11) of this section, verifying compliance of the new machine with this section. The medical physicist's report is required prior to using the machine on patients].

(6) Loaner mammography machines may be used on patients for 60 days without adding the mammography machine to the certification. A medical physicist's report verifying compliance of the loaner mammography machine with this section must [shall] be completed before [prior to] use on patients. The results of the survey must be submitted to the department [agency] with a cover letter indicating period of use. If the use period will exceed 60 days, the facility must [shall] add the mammography machine to its certification and a fee will be assessed.

(7) Records of training and experience and all other records required by this section must [shall] be maintained for review as specified in [accordance with] subsection (x) [(ee)] of this section.

[(e) Renewal of certification.]

[(1) A certification for a mammography system is valid for three years from the date of issuance unless the certification of the facility is suspended or revoked prior to such deadlines.]

[(2) A mammography facility filing an application for renewal of their certification shall meet the quality standards in subsections (r) - (aa) of this section and be accredited by an FDA-approved accreditation body. The renewal shall be filed in accordance with the following:]

[(A) §289.226(e)(1) - (3), (5) and (7) of this title and §289.226(f)(4) and (5) of this title;]

[(B) signatures of appropriate personnel in accordance with subsection (f)(3) of this section;]

[(C) machine information and medical physicist's survey in accordance with subsection (f)(5)(B) and (C) of this section;]

[(D) fees in accordance with §289.204 of this title; and]

[(E) a list of all interpreting physicians, medical radiologic technologists and medical physicists practicing at the facility.]

[(3) A mammography facility filing an application for renewal before the existing certification expires may continue to perform mammography until the application status has been determined by the agency.]

[(4) A facility with mammography machines used for interventional breast radiography shall file an application for renewal in accordance with subsection (gg)(8) of this section and pay the fee required by §289.204 of this title.]

[(p) Expiration of certification.]

[(1) Except as provided by subsection (e) of this section, each certification expires at the end of the day in the month and year stated on the mammography certificate. Expiration of the certification does not relieve the registrant of the requirements of this chapter.]

[(2) If a registrant does not submit an application for renewal of the certification under subsection (e) of this section, as applicable, the registrant shall on or before the expiration date specified in the certification:]

[(A) terminate use of all mammography machines;]

[(B) notify the agency certifying body in writing of the film storage location of mammography patients' films and address how the requirements of subsection (t)(4)(D) of this section will be met;]

[(C) pay any outstanding fees in accordance with §289.204 of this title; and]

[(D) submit a record of the disposition of the mammography machine(s) to the agency certifying body. If the machine(s) was transferred, include to whom it was transferred.]

[(q) Termination of certification. When a registrant decides to terminate all activities involving mammography machines authorized under the certification, the registrant shall:]

[(1) notify the agency certifying body and the FDA-approved accreditation body immediately;]

[(2) request termination of the certification in writing;]

[(3) pay any outstanding fees in accordance with §289.204 of this title;]

[(4) notify the agency certifying body, in writing, of the film storage location of mammography patients' films and address how the requirements of subsection (t)(4)(D) of this section will be met; and]

[(5) submit a record of the disposition of the mammography machine(s) to the agency certifying body. If the machine(s) was transferred, include to whom it was transferred.]

[(h) [(r)] Personnel qualifications. The following requirements apply to all personnel involved in any aspect of mammography, including the production and interpretation of mammograms.

[(1) Interpreting physician. Each physician interpreting mammograms must [shall] hold a current Texas license issued by the Texas Medical Board and meet the following qualifications.

[(A) Initial qualifications. Before interpreting mammograms independently, the physician must [shall]:

(i) be certified by the American Board of Radiology, the American Osteopathic Board of Radiology, or one of the other bodies approved by the FDA to certify IPs [interpreting physicians] or have at least three months of documented formal training in the interpretation of mammograms and in topics related to mammography as specified in subparagraph (B) of this paragraph [accordance with subsection (hh)(2) of this section];

(ii) have completed [had] a minimum of 60 hours of documented category I CMEUs in mammography and at [At] least 15 of the 60 hours must [shall] have been acquired within three years immediately before [prior to] the date [that] the physician became qualified as an IP [hours [interpreting physician. Hours] spent in residency specifically devoted to mammography will be equivalent to category I CMEUs and accepted if documented in writing by the appropriate representative of the training institution]; and

(iii) have interpreted or multi-read, under the direct supervision of an IP [interpreting physician], at least 240 mammographic examinations within the six-month period immediately before [prior to] the date that the physician qualifies as an IP. The supervising interpreting physician's presence is not required when the physician being supervised makes the initial interpretation. However, the supervising physician must review and, if necessary, correct the final interpretation before it is given to the patient [interpreting physician].

(B) Subjects to be included in mammography training for interpreting physicians must include:

(i) radiation physics, including radiation physics specific to mammography;

(ii) radiation effects;

(iii) radiation protection; and

(iv) interpretation of mammograms. This must be under the direct supervision of a physician who meets the requirements of paragraph (1) of this subsection.

(C) [~~(B)~~] Exemptions.

(i) A physician [Physicians who] qualified as an IP as specified [interpreting physicians] in [accordance with] the requirements of §289.230 that were in effect before [prior to] April 28, 1999, or any other equivalent state or federal requirements in effect before [prior to] April 28, 1999, is [are] considered to have met the initial requirements of subparagraph (A) of this paragraph.

(ii) Physicians who have interpreted or multi-read at least 240 mammographic examinations under the direct supervision of an IP [interpreting physician] in any six-month [six month] period during the last two years of a diagnostic radiology residency and who became board certified at the first allowable time, are exempt from subparagraph (A)(iii) of this paragraph.

(D) [~~(C)~~] Continuing education. [and experience. The time period for completing continuing education is a 36-month period and the time period for completing continuing experience is a 24-month period. These periods begin when a physician completes the requirements to become an interpreting physician in subparagraph (A) of this paragraph. The facility shall choose one of the dates in clause (i) of this subparagraph to determine the 36-month continuing education period and one of the dates in clause (ii) of this subparagraph to determine the 24-month continuing experience period. Each interpreting physician shall maintain qualifications by meeting the following requirements:]

(i) Each IP must maintain continuing education by completing at least 15 category I mammography CMEUs, in a rolling 36-month period, by participating in or teaching mammogra-

phy courses. CMEUs earned through teaching a specific course can only be counted once during the 36-month period. [participating in education programs by completing at least 15 category I CMEUs in mammography or by teaching mammography courses. CMEUs earned through teaching a specific course can be counted only once during the 36-month period. The continuing education must be completed in the 36 months immediately preceding:]

(I) The period for the initial continuing education begins when a physician completes the requirements in subparagraph (A) of this paragraph. [the date of the registrant's annual inspection;]

(II) The facility chooses one of the dates in subclause (III) of this clause to determine the start of the subsequent 36-month continuing education period. [the last day of the calendar quarter preceding the inspection; or]

(III) Continuing education must be completed in the 36 months immediately preceding: [any date in between the two;]

(-a-) the date of the facility's inspection;

(-b-) the last day of the calendar quarter preceding the inspection; or

(-c-) any date in between the two.

(ii) Each IP must complete at least eight hours of training in any mammography modality in which the IP has not been previously trained, before independently using the new modality. [interpreting or multi-reading at least 960 mammographic examinations that must be completed during the 24 months immediately preceding:]

~~(I)~~ the date of the registrant's annual inspection;

~~(II)~~ the last day of the calendar quarter preceding the inspection; or]

~~(III)~~ any date in between the two; and]

(iii) accumulating at least eight hours of CMEUs in any mammography modality in which the interpreting physician has not been previously trained, prior to independently using the new modality.

(E) Continuing experience.

(i) Each IP must maintain continuing experience by interpreting or multi-reading at least 960 mammographic examinations.

(ii) The period for the initial continuing experience begins when a physician completed the requirements in subparagraph (A) of this paragraph.

(iii) The facility chooses one of the dates in clause (iv) of this subparagraph to determine the start of the subsequent 24-month continuing experience period.

(iv) Continuing experience must be completed in the 24 months immediately preceding:

(I) the date of the facility's inspection;

(II) the last day of the calendar quarter preceding the inspection; or

(III) any date in between the two.

(F) [~~(D)~~] Re-establishing qualifications. Before resuming independent interpretation of mammograms, an IP failing [interpreting physicians who fail] to maintain the required continuing education or experience must [requirements shall] re-establish their

qualifications by completing one or both of the following requirements, as applicable:

(i) obtain [a sufficient number of] additional category I CMEUs to bring the [their] total up to [the] 15 category I CMEU credits required in the previous 36 months; [and/or]

(ii) within the six months immediately before [prior to] resuming independent interpretation and under the direct supervision of a physician qualified as an IP [interpreting physician], interpret or multi-read one of the following, whichever is less:

(I) at least 240 mammographic examinations; or

(II) additional [a sufficient number of] mammographic examinations to bring the total up to 960 examinations for the prior 24 months.

(G) [(E)] Additional mandatory training. Additional mandatory training may be required by the department [agency] based on the recommendations of an AB, the department, [the American College of Radiology] or the FDA. Training is [Such training will be] developed on a case-by-case [ease by ease] basis.

(i) The department [agency] may require pre-approval of any additional mandatory training.

(ii) Documentation of the additional mandatory training must [shall] be submitted for review by the date specified by the department [agency].

(iii) Records of all additional mandatory training must [shall] be maintained by the facility [registrant] for inspection by the department as specified [agency] in [accordance with] subsection (x)(3)[(ee)(3)] of this section.

(2) Medical radiologic technologists (MRTs [operators of equipment]). Each individual [person] performing mammographic examinations must maintain current credentials as an ARRT(R) and MRT as specified in [shall have current certification as a medical radiologic technologist under] the Medical Radiologic Technologist Certification Act, Texas Occupations Code[, Chapter 601, and must [shall] meet the following qualifications.

(A) Initial requirements. Before performing mammographic examinations, the MRT must [operator of equipment shall have]:

(i) complete [completed] a minimum of 40 contact hours of training as specified [outlined] in subparagraph (B) [subsection (hh)(1)] of this paragraph [section] by a qualified instructor; and

(ii) perform [performed] a minimum of 25 mammographic examinations under the direct supervision of an individual qualified as specified in [accordance with the requirements of] this paragraph. The 25 mammographic examinations may be obtained concurrently with the 40 contact hours of training specified in clause (i) of this subparagraph but must [shall] not exceed 16 hours of the 40 contact hours.

(B) Subjects to be included in mammography training for an MRT must include the following:

(i) breast anatomy and physiology;

(ii) positioning and compression;

(iii) QA/QC techniques;

(iv) imaging of patients with breast implants; and

(v) at least eight hours of training in each mammography modality to be used by the MRT in performing mammography examinations.

(C) [(B)] Exemptions. MRTs [Equipment operators who] qualified [as medical radiologic technologists] to perform mammography as specified in [accordance with] the requirements of §289.230 that were in effect before [prior to] April 28, 1999, and any other federal requirements in effect before [prior to] April 28, 1999, are considered to have met the initial requirements of subparagraph (A) of this paragraph.

(D) [(C)] Continuing education. [and experience. The time period for completing continuing education is a 36-month period and the time period for completing continuing experience is a 24-month period. The period for continuing education begins when a technologist completes the requirements in subparagraph (A) of this paragraph. The period for continuing experience begins when a technologist completes the requirements in subparagraph (A) of this paragraph, or April 28, 1999, whichever is later. The facility shall choose one of the dates in clause (i) of this subparagraph to determine the 36-month continuing education period and one of the dates in clause (ii) of this subparagraph to determine the 24-month continuing experience period. Each medical radiologic technologist shall maintain qualifications by meeting the following requirements:]

(i) Each MRT must maintain continuing education by completing at least 15 mammography CEUs, in a rolling 36-month period, by participating in or teaching mammography courses. CEUs earned through teaching a specific course can only be counted once during the 36-month period. [participating in education programs by completing at least 15 CEUs in mammography or by teaching mammography courses. CEUs earned through teaching a specific course can be counted only once during the 36-month period. The continuing education must be completed in the 36 months immediately preceding:]

(I) The period for the initial continuing education begins when an MRT completes the requirements in subparagraph (A) of this paragraph, or April 28, 1999, whichever is later. [the date of the registrant's annual inspection:]

(II) The facility chooses one of the dates in subclause (III) of this clause to determine the start of the subsequent 36-month continuing education period. [the last day of the calendar quarter preceding the inspection; or]

(III) Continuing education must be completed in the 36 months immediately preceding: [any date in between the two:]

(-a-) the date of the facility's inspection;

(-b-) the last day of the calendar quarter preceding the inspection; or

(-c-) any date in between the two.

(ii) Each MRT must complete at least eight hours of CEUs in any mammography modality in which the MRT has not been previously trained, before independently using the new modality. [performing a minimum of 200 mammographic examinations that must be completed during the 24 months immediately preceding:]

{(I)} the facility's annual inspection;]

{(II)} the last day of the calendar quarter preceding the inspection; or]

{(III)} any date in between the two; and]

{(iii)} accumulating at least eight hours of CEUs in any mammography modality in which the medical radiologic technologist has not been previously trained, prior to independently using the new modality.]

(E) Continuing experience.

(i) Each MRT must maintain continuing experience by completing 200 mammographic examinations.

(ii) The period for the initial continuing experience begins when an MRT completes the requirements in subparagraph (A) of this paragraph.

(iii) The facility chooses one of the dates in clause (iv) of this subparagraph to determine the start of the subsequent 24-month continuing experience period.

(iv) Continuing experience must be completed in the 24 months immediately preceding:

(I) the date of the facility's inspection;

(II) the last day of the calendar quarter preceding the inspection; or

(III) any date in between the two.

(F) ~~(D)~~ Requalification. Before resuming independent performance of mammograms, MRTs ~~[medical radiologic technologists]~~ who fail to maintain the continuing education or experience requirements must [shall] re-establish their qualifications by completing one or both of the following requirements, as applicable:

(i) obtain [obtaining a sufficient number of] additional CEUs to bring the [their] total up to [the] 15 CEU credits required in the previous 36 months; [; at least six of which shall be related to each modality used by the technologist in mammography; and/or]

(ii) perform [performing] a minimum of 25 mammographic examinations under the direct supervision of a qualified MRT [medical radiologic technologist].

(G) ~~(E)~~ Additional mandatory training. Additional mandatory training may be required by the department ~~[agency]~~ based on the recommendations of an AB, the department, ~~[the American College of Radiology]~~ or the FDA. Training is [Such training will be] developed on a case-by-case [ease by ease] basis.

(i) The department [agency] may require pre-approval of any additional mandatory training.

(ii) Documentation of the additional mandatory training must [shall] be submitted for review by the date specified by the department [agency].

(iii) Records of all additional mandatory training must [shall] be maintained by the facility [registrant] for inspection by the department as specified in [agency in accordance with] subsection (x)(3)[~~(e)(3)~~] of this section.

(3) Medical physicist. Each medical physicist performing mammographic surveys, evaluating mammographic equipment, or providing oversight of the facility QA [quality assurance] program as specified in [accordance with] subsection (k) ~~[(t)]~~ of this section must [; shall] hold a current Texas license under the Medical Physics Practice Act, Texas Occupations Code~~;~~ Chapter 602, in diagnostic radiological physics. The medical physicist must [and] be registered with the department ~~[agency]~~ or employed by an entity registered with the department ~~[agency]~~, as specified in [accordance with] §289.226(j) of this subchapter ~~[title]~~ and the Act, unless exempted by §289.226(d)(7) ~~[(6)]~~ of this subchapter ~~[title]~~. Each medical physicist must [shall] meet the following qualifications.

(A) Initial qualifications. Before performing surveys and evaluating mammographic equipment independently, the medical physicist must have [shall]:

(i) [have] a master's [masters] degree or higher in a physical science from an accredited institution, with no less than 20 semester hours, 30 quarter hours, or equivalent [(30 quarter hours)] of college undergraduate or graduate level physics;

(ii) [have] 20 contact hours of documented specialized training in conducting surveys of mammography facilities; and

(iii) [have] experience conducting surveys of at least one mammography facility and a total of at least 10 ~~[ten]~~ mammography machines. Experience [After April 28, 1999, experience] conducting surveys must be acquired under the direct supervision of a medical physicist who meets the requirements of subparagraphs (A), ~~[and]~~ (C), and (D) of this paragraph. No more than one survey of a specific machine within a period of 60 days can be counted towards the total mammography machine survey requirement.

(B) Alternative initial qualifications. Individuals who qualified as a medical physicist as specified in [accordance with] the requirements of this section that were in effect before ~~[prior to]~~ April 28, 1999, or any other equivalent state or federal requirements in effect before ~~[prior to]~~ April 28, 1999, and have met the following additional qualifications before ~~[prior to]~~ April 28, 1999, are determined to have met the initial qualifications of subparagraph (A) of this paragraph:

(i) a bachelor's degree or higher in a physical science from an accredited institution with no less than 10 ~~[ten]~~ semester hours or equivalent of college undergraduate or graduate level physics;

(ii) 40 contact hours of documented specialized training in conducting surveys of mammography facilities; and

(iii) experience conducting surveys of at least one mammography facility and a total of at least 20 mammography machines. No more than one survey of a specific machine within a period of 60 days can be counted towards the total mammography machine survey requirement. The training and experience requirements must be met after fulfilling the degree requirements.

(C) Continuing education. ~~[and experience. The time period for completing continuing education is a 36-month period and the time period for completing continuing experience is a 24-month period. The period for continuing education will begin when a physicist completes the requirements in subparagraph (A) of this paragraph. The time period for continuing experience will begin when a physicist completes the requirements in subparagraph (A) of this paragraph, or April 28, 1999, whichever is later. The facility shall choose one of the dates in clause (i) of this subparagraph to determine the 36-month continuing education period and one of the dates in clause (ii) of this subparagraph to determine the 24-month continuing experience period. Each medical physicist shall maintain his/her qualifications by meeting the following requirements:]~~

(i) Each medical physicist must maintain continuing education by completing at least 15 mammography CEUs, in a rolling 36-month period, by participating in or teaching mammography courses. CEUs earned through teaching a specific course can only be counted once during the 36-month period. [participating in education programs, either by teaching or completing at least 15 CEUs in mammography that shall include hours of training appropriate to each mammographic modality evaluated by the medical physicist during his or her surveys. CEUs earned through teaching a specific course can be counted only once during the 36-month period. The continuing education must be completed in the 36 months immediately preceding:]

(I) The period for the initial continuing education begins when a medical physicist completes the requirements in subparagraph (A) of this paragraph, or April 28, 1999, whichever is later. [the date of the registrant's annual inspection;]

(II) The facility chooses one of the dates in subclause (III) of this clause to determine the start of the subsequent 36-month continuing education period. [by the last day of the calendar quarter preceding the inspection; or]

(III) Continuing education must be completed in the 36 months immediately preceding: [any date in between the two;]

(-a-) the date of the facility's inspection;

(-b-) the last day of the calendar quarter preceding the inspection; or

(-c-) any date in between the two.

(ii) Each medical physicist must also complete at least eight hours of training in any mammography modality in which the medical physicist has not been previously trained, before independently using the new modality. [performing surveys of two mammography facilities and a total of at least six mammography machines (no more than one survey of a specific facility within a ten-month period or a specific machine within a period of 60 days can be counted towards the total mammography machine survey requirement). The continuing experience must be completed during the 24 months immediately preceding:]

{(I) the date of the facility's annual inspection;}

{(II) by the last day of the calendar quarter preceding the inspection; or}

{(III) any date in between the two; and}

{(iii) accumulating at least eight hours of CEUs in any mammography modality in which the medical physicist has not been previously trained, prior to independently using the new modality.}

(D) Continuing experience.

(i) Each medical physicist must perform a survey of two mammography facilities and at least six mammography machines. No more than one survey of a specific facility within a 10-month period or a specific machine within 60 days can be counted toward the total mammography machine survey requirement.

(ii) The period for the initial continuing experience begins when a medical physicist completes the requirements in subparagraph (A) of this paragraph.

(iii) The facility chooses one of the dates in clause (iv) of this subparagraph to determine the start of the subsequent 24-month continuing experience period.

(iv) Continuing experience must be completed in the 24 months immediately preceding:

(I) the date of the facility's inspection;

(II) the last day of the calendar quarter preceding the inspection; or

(III) any date in between the two.

(E) [(D)] Re-establishing qualifications. Before resuming independent performance of surveys and equipment evaluations, medical physicists who fail to maintain the continuing education or experience requirements must [shall] reestablish their qualifications by completing one or both of the following requirements, as applicable:

(i) obtain [obtaining a sufficient number of] additional CEUs to bring the [their] total up to the 15 CEU credits required in the previous 36 months; [and/or]

(ii) perform [performing a sufficient number of] surveys, under the direct supervision of a qualified medical physicist, to

bring their total up to two mammography facilities and a total of at least six mammography machines for the prior 24 months. No more than one survey of a specific machine within a period of 60 days may [shall] be counted towards the total mammography machine survey requirement.

(4) Retention of personnel records. [Records documenting the qualifications, continuing education, and experience of personnel in subsection (F)(1) - (3) shall be maintained for inspection by the agency in accordance with subsection (ee) of this section.]

(A) Facilities must maintain records of training and experience relevant to their qualifications, as specified in subsection (h)(1) - (3) of this section, for personnel who work or have worked at the facility as IPs, MRTs, or medical physicists for review by the department.

(B) Records of personnel no longer employed by the facility must be maintained for at least 24 months from the date of the departure of the employee, and these records must be available for review at the time of an annual inspection occurring during those 24 months. Personnel records must be maintained by the facility for inspection by the department as specified in subsection (x) of this section.

(i) The facility must provide copies of these personnel records to current IPs, MRTs, and medical physicists upon their request.

(ii) The facility must provide personnel records to a former employee if the former employee communicates their request within 24 months of the date of their departure.

(I) If it has been greater than 24 months and the facility has maintained those records, the facility must provide those records to former employees upon request.

(II) If a facility closes or stops providing mammography services, it must arrange for current and former personnel to access their personnel qualification records before closing. Access may be provided by a permanent transfer of records to the personnel or the transfer of the records to a facility or other entity that will provide access to these records for at least 24 months from the date of facility closure of mammography services.

(i) [(s)] Machine Requirements. Mammographic machines must meet the following requirements [Equipment standards. Only systems meeting the following standards shall be used].

(1) System design. The equipment must be [shall have been] specifically designed and manufactured for mammography and as required by [in accordance with Title] 21[.] CFR[.] §§1010.2, 1020.30, and 1020.31.

(2) A mammography machine converted from one mammographic modality to another is considered a new machine at the facility under this subsection.

(A) Before clinical use, the mammography machine must undergo a mammography equipment evaluation and demonstrate compliance with applicable requirements.

(B) The facility must also follow the accreditation body's procedures for applying for accreditation of the unit.

(3) Screen-film mammography systems must meet the requirements of 21 CFR Part 900.

(4) [(2)] Motion of tube-image receptor assembly. The x-ray tube must remain physically stable during exposures. In cases where tubes are designed to move during exposure, the facility must ensure proper and free movement of the unit [The assembly shall be capable of being fixed in any position where it is designed to operate.

Once fixed in any such position, it shall not undergo unintended motion]. In the event of power interruption, this mechanism must [shall] not fail.

{(3) Image receptors. Systems using screen-film image receptors shall, at a minimum, provide for the following:}

{(A) operation with image receptors of 18 x 24 cm and 24 x 30 cm;}

{(B) operable moving grids matched to all image receptor sizes provided;}

{(C) operation with the grid removed from between the source and image receptor for systems used for magnification procedures; and}

{(D) image receptors to rest, post-loading, 15 minutes between exposures.}

(5) [(4)] Magnification. Systems used to perform diagnostic [noninterventional problem solving] procedures must [shall] have radiographic magnification capability available for use with[, at a minimum,] at least one magnification value within the range of 1.4 to 2.0.

(6) [(5)] Focal spot and target material selection. Selection of the focal spot or target material must [shall] be as follows.

(A) When more than one focal spot is provided, the system must [shall] indicate, before [prior to] exposure, which focal spot is selected.

(B) When more than one target material is provided, the system must [shall] indicate, before [prior to] exposure, the preselected target material.

(C) When the target material and [and/or] focal spot are [is] selected by a system algorithm [that is] based on the exposure [or on a test exposure], after the exposure, the system must [shall] display[, after the exposure,] the target material and [and/or] focal spot [actually] used during the exposure.

(7) [(6)] Compression. All mammography systems must [shall] incorporate a compression device.

(A) Application of compression. Each [Effective October 28, 2002, and thereafter, each] system must [shall] provide the following features operable from both sides of the patient:

(i) an initial power-driven compression activated by hands-free controls; and

(ii) fine adjustment compression controls.

(B) Compression paddle.

(i) Systems must [shall] be equipped with different sized compression paddles matching [that match] the sizes of all full-field image receptors provided for the system.

(ii) Compression paddles for special purposes, including those smaller than the full size of the image receptor (for example, spot compression) may be provided. Such paddles are not subject to the requirements of clauses (v) and (vi) of this subparagraph.

(iii) Except as provided in clause (iv) of this subparagraph, the compression paddle must [shall] be flat and parallel to the breast support table and must [shall] not deflect from parallel by more than 1.0 cm at any point on the surface of the compression paddle when compression is applied.

(iv) Equipment intended by the manufacturer's design to not be flat and parallel to the breast support table during com-

pression must [shall] meet the manufacturer's design specifications and maintenance requirements.

(v) The chest wall edge of the compression paddle must [shall] be straight and parallel to the edge of the image receptor.

(vi) The chest wall edge may be bent upward to allow for patient comfort, but must [shall] not appear on the image.

(8) [(7)] Technique factor selection and display. Technique factor selection and display must [shall] be as follows.

(A) Manual selection of milliamperes (mAs) or at least one of its component parts, milliamperes (mA) or [and/or] time, must [shall] be available.

(B) The technique factors (kVp [peak tube potential in kilovolts (kV)] and either tube current in mA and exposure time in mAs) [to be] used during an exposure must [shall] be indicated before the exposure begins, except when AEC [automatic exposure control (AEC)] is used, in which case the technique factors that are set before [prior to] the exposure must [shall] be indicated.

(C) When the AEC mode is used, the system must [shall] indicate the actual kVp and mAs used during the exposure. The mAs may be displayed as mA and time.

(9) [(8)] Automatic exposure control. Each [screen-film] system must [shall] provide an AEC mode [that is] operable in all combinations of equipment configuration provided, for example, [contact, magnification, and] various image receptor sizes.

(A) The positioning or selection of the detector must [shall] permit flexibility in the placement of the detector under the target tissue.

(i) The size and available positions of the detector must [shall] be clearly indicated at the x-ray input surface of the breast compression paddle.

(ii) The selected position of the detector must [shall] be clearly indicated.

(B) The system must [shall] provide means to vary the selected optical density from the normal, or zero, [(zero)] setting. [(9) X-ray film. The registrant shall use x-ray film for mammography that has been designated by the film manufacturer as appropriate for mammography.]

{(10) Intensifying screens. The registrant shall use intensifying screens for mammography that have been designated by the screen manufacturer as appropriate for mammography and shall use film that is matched to the screen's spectral output as specified by the manufacturer.}

{(11) Film processing solutions. For processing mammography films, the registrant shall use chemical solutions that are capable of developing the films used by the facility in a manner equivalent to the minimum requirements specified by the film manufacturer.}

{(12) Lighting. The registrant shall make available special lights for film illumination (hot lights) capable of producing light levels greater than that provided by the view box.}

{(13) Film masking devices. Registrants shall ensure that film masking devices that can limit the illuminated area to a region equal to or smaller than the exposed portion of the film are available to all interpreting physicians interpreting for the facility.}

(10) [(14)] Equipment variances. Facilities [Registrants] with mammography equipment with [that has been issued] variances

issued by the FDA as specified in [to Title] 21[.] CFR[.] §§1020.2, 1020.30, 1020.31, or have [has had] an alternative to [for] a quality standard for equipment approved by the FDA as required by [under the provisions of Title] 21[.] CFR[.] §900.18, must [shall] maintain copies of those variances or alternative standards.

(11) Each mammography machine must meet the following technical specifications.

(A) Kilovoltage peak accuracy and reproducibility. At the most used clinical settings of kVp, the coefficient of variation of reproducibility of the kVp must be equal to or less than 0.02. The kVp must be accurate to within plus or minus 5.0 percent of the indicated or selected kVp at the following:

(i) the lowest clinical kVp that can be measured by a kVp test device;

(ii) the most used clinical kVp; and

(iii) the highest available clinical kVp.

(B) Beam quality and half-value layer (HVL). The HVL must meet the specifications of 21 CFR §1020.30(m)(1) for the minimum HVL. These values, extrapolated to the mammographic range, are shown as follows. This test is performed using the clinical kVp on the standard breast. Values not shown in Table I may be determined by linear interpolation or extrapolation.

Figure: 25 TAC §289.230(i)(11)(B)

(C) Breast entrance air kerma and AEC reproducibility. The coefficient of variation for both air kerma and mAs must not exceed 0.05.

(D) Dosimetry. The average glandular dose delivered during a single view or DBT exposure of an FDA-accepted phantom simulating a standard breast must not exceed 3.0 milligray (mGy) (0.3 rad) per exposure.

(E) X-ray field, light field, image receptor, and compression paddle alignment. All systems must meet the following.

(i) Beam-limiting devices that allow the entire chest wall edge of the x-ray field to extend to the chest wall edge of the image receptor must provide means to ensure the x-ray field does not extend beyond any edge of the image receptor by more than 2.0 percent of the SID.

(ii) The light field passing through the x-ray beam limitation device must be aligned with the x-ray field so the total of any misalignment of the edges, along the length or the width of the visually defined field at the plane of the breast support surface, does not exceed 2.0 percent of the SID.

(iii) When tested with the compression paddle placed above the breast support surface at a distance equivalent to standard breast thickness, the chest wall edge of the compression paddle does not extend beyond the edge of the image receptor by greater than 1.0 percent of the SID. The shadow of the vertical edge of the compression paddle must not be visible in the image.

(12) ~~[(45)]~~ Light fields. For any mammography system with a light beam that passes through the x-ray beam-limiting device, the light must [shall] provide an average illumination of not less than 160 lux (15 foot candles) at 100 cm or the maximum SID [source-image receptor distance (SID)], whichever is less.

(j) ~~[(t)]~~ Medical records and mammography reports.

(1) Contents and terminology. Each facility must [registrant shall] prepare a written report of the results of each

mammographic examination performed. [mammography examination that shall include the following information:]

(2) The mammographic examination presented for interpretation must be in the original mammographic modality in which it was performed and must not consist of digital images produced through copying or digitizing hardcopy original images.

(3) The mammography report must include the:

(A) patient name [of the patient] and an additional patient identifier [date of birth];

(B) [date of the] examination date;

(C) facility name and location, including the city, state, zip code, and telephone number of the facility;

(D) ~~[(C)]~~ name and signature of the IP [interpreting physician] who interpreted the mammogram (electronic signatures are acceptable);

(E) ~~[(D)]~~ overall final assessment of findings using the final assessment categories as defined in clauses (i) - (vii) [subsection (e)] of this subparagraph, [section;] and classified in one of the following categories with the assessment statement, including only the word or phrase within the quotation marks:

(i) "Negative" indicates nothing to comment upon (if the IP is aware of clinical findings of symptoms, despite the negative assessment, these must be documented and addressed);

(ii) "Benign" indicates a normal result, with benign findings present, but no evidence of malignancy (if the IP is aware of clinical findings or symptoms, despite the benign assessment, these must be documented and addressed);

(iii) "Probably Benign" indicates a finding that has a high probability of being benign;

(iv) "Suspicious" indicates a finding without all the characteristic morphology of breast cancer but indicating a definite probability of being malignant;

(v) "Highly suggestive of malignancy" indicates a finding that has a high probability of being malignant;

(vi) "Known biopsy proven malignancy" is reserved for known malignancies being mammographically evaluated for definitive therapy; or

(vii) "Post procedure mammogram for marker placement" indicates a mammogram to confirm the deployment and position of a breast tissue marker; or

(F) in cases where the final assessment category cannot be assigned due to incomplete work-up, the IP must assign one of the following classification statements and reasons why the final assessment cannot be made:

(i) "Incomplete: Need additional imaging evaluation" is reserved for examinations where additional imaging needs to be performed before an assessment category identified in subparagraph (E)(i) - (vii) of this paragraph can be given; or

(ii) "Incomplete: Need prior mammograms for comparison" is reserved for examinations where comparison with prior mammograms should be performed before an assessment category identified in subparagraph (E) of this paragraph can be given; if this assessment category is used, a follow-up report with an assessment category identified in subparagraph (E)(i) - (v) of this paragraph must be issued within 30 calendar days of the initial report whether or not comparison views can be obtained;

(G) overall assessment of breast density, classified in one of the following categories:

- (i) "The breasts are almost entirely fatty";
- (ii) "There are scattered areas of fibroglandular density";
- (iii) "The breasts are heterogeneously dense, which may obscure small masses"; or
- (iv) "The breasts are extremely dense, which lowers the sensitivity of mammography"; and

(H) [~~E~~] recommendations made to the healthcare provider [physician] about what additional actions, if any, should be taken. All clinical questions raised by the referring healthcare provider must [physician shall] be addressed in the report to the extent possible, even if the assessment is negative or benign.

(4) [(2)] Communication of mammography results to the patient and healthcare [health care] providers [or physicians], as applicable. [Each registrant shall send reports as soon as possible, but no later than 30 days from the date of the mammography examination, to:]

(A) Each facility must send a mammography report to referring healthcare providers, or patients who do not name a healthcare provider to receive the mammography report, the report described in subsection (j)(3) of this section within 30 days of the mammography examination. If the assessment of the mammography report is "Suspicious" or "Highly suggestive of malignancy," the facility must send this report within seven calendar days of the mammography examination. [patients advising them of the results of the mammography examination and any further medical needs indicated. The report shall include a summary written in language easily understood by a lay person; and]

(B) Each facility must send a mammography report summary, written in plain language, to patients advising them of the results of the mammography examination and any further medical needs within 30 days of the mammography examination. If the assessment of the mammography report is "Suspicious" or "Highly suggestive of malignancy," the facility must send this report summary within seven calendar days of the final interpretation of the mammogram [referring physicians, or in the case of self-referral, to the physician indicated by the patient, advising them of the results of the mammography examination, containing the information specified in paragraph (4) of this subsection, and any further medical needs indicated].

(5) A summary of the report written in plain language must be provided within 30 days of interpretation and include:

- (A) patient name;
- (B) name, address, and telephone number of the facility performing the mammographic examination; and
- (C) assessment of breast density as described in subsection (j)(3)(G) of this section, as applicable.

(i) If the mammography report identifies the patient's breast density as "The breasts are almost entirely fatty" or "There are scattered areas of fibroglandular density," the summary must include the statement, "Breast tissue can be either dense or not dense. Dense tissue makes it harder to find breast cancer on a mammogram and also raises the risk of developing breast cancer. Your breast tissue is not dense. Talk to your healthcare provider about breast density, risks for breast cancer, and your individual situation."

(ii) If the mammography report identifies the breast density as "The breasts are heterogeneously dense, which may obscure small masses" or "The breasts are extremely dense, which lowers the

sensitivity of mammography," the summary must include the statement, "Breast tissue can be either dense or not dense. Dense tissue makes it harder to find breast cancer on a mammogram and also raises the risk of developing breast cancer. Your breast tissue is dense. In some people with dense tissue, other imaging tests in addition to a mammogram may help find cancers. Talk to your healthcare provider about breast density, risks for breast cancer, and your individual situation."

(6) [(3)] Follow-up with patients and healthcare provider [physicians]. Each facility must [registrant shall] follow-up to confirm if [the following]:

(A) [that] patients with positive findings and patients needing repeat examinations [exams] have received proper notification; and

(B) healthcare providers [that physicians] have received proper notification of patients with positive findings or needing repeat examinations [exams].

(7) [(4)] Retention of clinical images for a current, closed, or terminated facility [registrants].

(A) A facility must implement policies and procedures to minimize the possibility of loss of these records. The original mammograms must be retained, in retrievable form in the mammographic modality in which they were produced, for a minimum of five years. Original mammograms cannot be produced by copying or digitizing hardcopy originals [Each registrant that performs mammograms shall maintain mammography films and reports in a permanent medical record for a minimum of five years]. If [no] additional mammograms of the patient are not performed at the facility, the images [films] and reports must [shall] be maintained for a minimum of 10 [ten] years as specified in subsection (x) of this section.

(B) Each facility performing [registrant that performs] mammograms must [shall], within 15 calendar [30] days of request by or on behalf of the patient, permanently or temporarily transfer the original mammograms and copies of the patient's reports to a medical institution, a physician, or to the patient directly.

(i) Transferred mammograms must be in the mammographic modality in which they were produced and cannot be produced by copying or digitizing hardcopy originals.

(ii) For digital mammograms or DBT, if the examination is being transferred for final interpretation purposes, the facility must be able to provide the recipient with original digital images electronically.

(C) If the medical records are permanently forwarded, the receiving institution or physician must [shall] maintain and become responsible for the original images [film] until the fifth or tenth anniversary, as specified in subparagraph (A) of this paragraph.

(D) Any fee charged to a patient for providing the services in subparagraphs (B) - (C) of this paragraph must not exceed the documented costs associated with this service.

(E) [~~D~~] Closure [Upon closure] or termination.[;]

(i) The facility must [the registrant shall] maintain the mammography images [films] for five [5] years. [If the facility complies with the following:]

(ii) [(4)] Within [within] 180 days of closing, the facility must [registrant shall directly] notify each patient or patient's representative with instructions on how to access [retrieve] or authorize disposal of the patient's records.[; and]

(I) Access may be provided by the permanent transfer of mammographic records to the patient, the patient's health-care provider, or a facility or other entity that will provide access to patients and healthcare providers. Access to the records must be provided by the facility or other entity for the remainder of the time periods specified in subparagraph (A) of this paragraph.

(II) If a facility ceases to perform mammography but continues to operate as a medical entity and is able to satisfy the record keeping requirements of subparagraph (A) of this paragraph, it may choose to continue to retain the medical records rather than transfer them to another facility, unless a transfer is requested by, or on behalf of, the patient. The facility must notify the AB and department in writing of the arrangements it has made and must make reasonable efforts to notify all affected patients.

(iii) [(ii)] Within [within] 60 days of closing, the facility must [registrant shall] publish a notice in at least one newspaper, or publicly available media, [or more newspapers] covering the geographical area served by the closing facility. The notice must [shall] include:

(I) contact information for [on] retrieving patient records; and

(II) information that the records will be destroyed if not retrieved by the patient or the patient's representative within five [5] years.; [and]

(iv) [(iii)] If [if] records have not been retrieved by the patient or the patient's representative during [following] the five-year [5-year] period after closing, the registrant may destroy the records.

(8) [(5)] Mammographic image identification. Each mammographic image must include [shall have] the following information indicated on it in a permanent, legible manner and placed so it does [as] not [to] obscure anatomic structures:

(A) patient name [name of patient] and date of birth;

(B) date of examination;

(C) view and laterality, [(this information shall be] placed on the image in a position near the axilla[)];

(D) facility name and location, including [(at a minimum the location shall include] city, state, and zip code[)];

(E) MRT [technologist] identification;

(F) cassette [cassette/screen] identification, if applicable; [and]

(G) mammography machine identification, if there is more than one machine in the facility;[-]

(H) compressed breast thickness or degree of compression; and

(I) kVp.

[(6) Information shall also be maintained for each clinical image by utilizing a label on each film, recording on the film jacket, or maintaining a log or other means. The information shall include, but is not limited to, compressed breast thickness or degree of compression, and kVp.]

(k) [(t)] Quality assurance - general. Each facility must [registrant shall] establish and maintain a written quality assurance program to ensure the safety, reliability, clarity, and accuracy of mammography services performed at the mammography facility, including corrective actions [to be] taken if images are of poor quality.

(1) Responsible individuals. Responsibility for the QA [quality assurance] program and [for] each of its elements must [shall] be assigned to individuals who are qualified for their assignments and [who shall be] allowed adequate time to perform these duties.

(A) Lead interpreting physician. The facility must [registrant shall] identify a LIP [lead interpreting physician] who is responsible for [shall have the general responsibility of]:

(i) ensuring [that] the QA [quality assurance] program meets all requirements of this subsection and subsections (l) and (m)[(v) and (w)] of this section;

(ii) reviewing and documenting, with date and signature, the MRTs' QC [technologists' quality control] test results at least every three months or more frequently if consistency has not yet been achieved;

(iii) reviewing and documenting, with date and signature, the physicists' results within 60 days of the receipt of the results or more frequently when needed; and

(iv) assigning the individual and evaluating their [determining the individual's] qualifications to perform the QA [quality assurance] tasks in subparagraphs (B) - (D) of this paragraph.

(B) Interpreting physicians. All [interpreting] physicians interpreting mammograms for a facility must [the registrant shall]:

(i) follow the facility's [registrant's] procedures for corrective action when the images they are asked to interpret are of poor quality; these [- These] procedures must [shall] be included in the facility's operating and safety procedures (OSP); and

(ii) participate in the medical outcomes audit program.

(C) Medical physicist. Each facility must [registrant shall] use the services of a licensed medical physicist to survey mammography equipment and oversee the equipment-related QA [quality assurance] practices of the facility. At a minimum, the medical physicist is [shall be] responsible for performing the surveys, performing [and the] mammography equipment evaluations, and providing the facility with the reports described in subsection (l)(5) and (6)[(v)(10) and (11)] of this section.

(D) Quality control technologist. The QC [quality control] technologist, designated by the LIP [lead interpreting physician], must [shall] ensure performance of the items designated in subsection (l)(1) - (4), (7), and (9) [(v)(1) - (4), (7) - (9), (12), and (14)] of this section. If other personnel are assigned the QA [quality assurance] tasks in accordance with subparagraph (A)(iv) of this paragraph, the QC [quality control] technologist must ensure [shall insure that] the requirements of subsection (l)(1) - (4), (7), and (9) [(v)(1) - (4), (7) - (9), (12), and (14)] of this section are met.

(2) Quality assurance records.

(A) The LIP [lead interpreting physician], QC [quality control] technologist, and medical physicist must [shall] ensure [that] records concerning mammography technique and procedures, QC [quality control] (include monitoring data, corrective actions, and the effectiveness of the corrective actions), safety, protection, and employee qualifications related to [meet] assigned QA [quality assurance] tasks are properly maintained and updated.

(B) The QC [These quality control] records must [shall] be kept for each test specified in subsections (l) and (m)[(v) and (w)] of this section, as specified in [accordance with] subsection (x)[(ee)] of this section.

(1) [(+)] Quality assurance - equipment. [Registrants with screen-film systems shall perform the following quality control tests at the intervals specified. In addition to the intervals specified in paragraphs (4)(B) and (5)(H) of this subsection, the tests shall be performed prior to initial use.]

(1) Facilities with screen-film systems must perform QC tests as specified in 21 CFR Part 900 [Daily quality control tests. Film processors used to develop mammograms shall be adjusted and maintained to meet the technical development specifications for the mammography film in use. A processor performance test shall be completed and the results charted on each day that clinical films are processed before any clinical films are processed that day].

[(A) Processor performance test. Using mammography film used clinically at the facility; sensitometer tests shall include assessment of the following:]

[(i) base plus fog density that shall be within plus 0.03 of the established operating level;]

[(ii) mid-density that shall be within plus or minus 0.15 of the established operating level; and]

[(iii) density difference that shall be within plus or minus 0.15 of the established operating level.]

[(B) Film processors being used for mammography at multiple locations, such as a mobile service operation, shall be subject to the requirements of this paragraph.]

[(C) Film processors utilized for mammography shall be adjusted to and operated at the specifications recommended by the mammographic film manufacturer, or at other settings such that the sensitometric performance is at least equivalent.]

[(D) Each registrant shall utilize the same film processor for clinical and phantom images. Clinical images shall be processed within an interval not to exceed 24 hours from the time the first clinical image is taken. Facilities utilizing batch processing shall do the following:]

[(i) use a container to transport clinical images that will protect the film from exposure to light and radiation; and]

[(ii) maintain a log to include each patient name and unique identification number, date, and time of the first exam of each batch, and date and time of batch development.]

(2) Systems with image receptor modalities, other than screen-film, must follow a QA program that is substantially the same as the one recommended by the image receptor manufacturer [Weekly quality control tests. These tests shall be performed at an interval no greater than seven days. If mammography is not being performed on the date the test is due and more than seven days have past since the last test, the tests shall be performed prior to resuming mammography. An image quality evaluation test, using an FDA-accepted phantom, shall meet the following parameters].

[(A) The optical density of the film at the center of an image of a standard FDA-accepted phantom shall be at least 1.20 when exposed under a typical clinical condition and shall not change by more than plus or minus 0.20 from the established operating level.]

[(B) The density difference between the background of the phantom and an added test object, used to assess image contrast, shall be measured and shall not vary by more than plus or minus 0.05 from the established operating level.]

[(C) The phantom image shall be made on the standard mammographic film in use at the facility with techniques used for clinical

images of a standard breast. The phantom image shall meet the requirements in subparagraphs (A) and (B) of this paragraph and clause (i) of this subparagraph. No mammograms shall be taken on patients if any of these minimums are not met.]

[(i) The mammographic machine shall be capable of producing images of the mammographic phantom in accordance with the phantom image scoring protocol in subsection (hh)(4) of this section or paragraph (7) of this subsection.]

[(ii) Each phantom image and a record of the evaluation of that image shall be maintained at the location where the mammography image was produced or with the radiographic equipment for mobile service operations.]

[(3) Quarterly quality control tests. These tests shall be performed within the calendar quarter at an interval not to exceed 90 days.]

[(A) Fixer retention in film. The residual fixer shall be no more than 5 micrograms per square cm.]

[(B) Repeat analysis. A repeat analysis on clinical images repeated or rejected shall be performed, analyzed, and documented. The total repeat or reject rate shall not exceed 5.0%. If the total repeat or reject rate changes from the previously determined rate by more than 2.0% of the total films included in the analysis, the reason(s) for the change shall be determined. Corrective action shall be taken and documented if the total repeat or reject rate for the facility exceeds 5.0% or changes from the previously determined rate by more than 2.0% of the total films included in the analysis. Test films, cleared films, or film processed as a result of exposure of a film bin are not to be included in the count for repeat analysis. Films included in the repeat analysis are not required to be kept after completion of the analysis.]

[(4) Semiannual quality control tests. These tests shall be performed at an interval not to exceed six months.]

[(A) Darkroom fog. The optical density attributable to darkroom fog shall not exceed 0.05 when a mammography film of the type used in the facility, which has a mid-density of no less than 1.2 OD, is exposed to typical darkroom conditions for two minutes while such film is placed on the counter top, emulsion side up. If the darkroom has a safelight used for mammography film, it shall be on during this test.]

[(B) Screen-film contact. Testing for screen-film contact shall be conducted using 40 mesh copper screen. The entire area of the cassette that may be clinically exposed shall be tested. This shall include all cassettes used for mammography in the facility.]

[(C) Compression device performance. The maximum compression force for the initial power drive shall be between 25 pounds and 45 pounds. The system shall be capable of compressing the breast with a force of at least 25 pounds and shall be capable of maintaining this compression for at least 15 seconds.]

[(5) Annual quality control tests. These tests shall be performed at an interval not to exceed (14) months.]

[(A) Automatic exposure control performance. The AEC shall be capable of maintaining film optical density within plus or minus 0.15 of the mean optical density when thickness of a homogeneous material is varied over a range of 2 to 6 cm and the kVp is varied appropriately for such thicknesses over the kVp range and in the AEC mode used clinically in the facility.]

[(B) Kilovoltage peak accuracy and reproducibility. At the most commonly used clinical settings of kVp, the coefficient of variation of reproducibility of the kVp shall be equal to or less than

0.02. The kVp shall be accurate to within plus or minus 5.0% of the indicated or selected kVp at the following:}]

{(i) the lowest clinical kVp that can be measured by a kVp test device;}]

{(ii) the most commonly used clinical kVp; and}]

{(iii) the highest available clinical kVp.}]

{(C) Focal spot condition. Facilities shall evaluate focal spot condition by determining the system resolution as follows:}]

{(i) Each system used for mammography, in combination with the mammography screen-film combination used in the facility, shall provide a minimum resolution of 11 cycles/millimeter (mm) (line-pairs/mm) when a high contrast resolution bar test pattern is oriented with the bars perpendicular to the anode-cathode axis; and a minimum resolution of 13 line-pairs/mm when the bars are parallel to that axis.}]

{(ii) The bar pattern shall be placed 4.5 cm above the breast support surface, centered with respect to the chest wall edge of the image receptor, and with the edge of the pattern within 1 cm of the chest wall edge of the image receptor.}]

{(iii) When more than one target material is provided, the measurement in clause (i) of this subparagraph shall be made using the appropriate focal spot for each target material.}]

{(iv) When more than one SID is provided, the test shall be performed at the SID most commonly used clinically.}]

{(v) Test kVp shall be set at the value used clinically by the facility for a standard breast and shall be performed in the AEC mode, if available. If necessary, a suitable absorber may be placed in the beam to increase exposure times. The screen-film cassette combination used by the facility shall be used to test for this requirement and shall be placed in the normal location used for clinical procedures.}]

{(D) Beam quality and half-value layer (HVL). The HVL shall meet the specifications of Title 21, CFR, §1020.30(m)(1) for the minimum HVL. These values, extrapolated to the mammographic range, are shown as follows. This test is performed using the clinical kVp on the standard breast. Values not shown in Table I may be determined by linear interpolation or extrapolation.}]
[Figure: 25 TAC §289.230(v)(5)(D)]

{(E) Breast entrance air kerma and AEC reproducibility. The coefficient of variation for both air kerma and mAs shall not exceed 0.05.}]

{(F) Dosimetry. The average glandular dose delivered during a single cranio-caudal view of an FDA accepted phantom simulating a standard breast shall not exceed 3.0 milligray (mGy) (0.3 rad) per exposure.}]

{(G) X-ray field/light field/image receptor/compression paddle alignment. All systems shall meet the following:}]

{(i) All systems shall have beam-limiting devices that allow the entire chest wall edge of the x-ray field to extend to the chest wall edge of the image receptor and provide means to assure that the x-ray field does not extend beyond any edge of the image receptor by more than 2.0% of the SID.}]

{(ii) If a light field that passes through the x-ray beam limitation device is provided, it shall be aligned with the x-ray field so that the total of any misalignment of the edges of the light field and the x-ray field along either the length or the width of the visually defined field at the plane of the breast support surface shall not exceed 2.0% of the SID.}]

{(iii) The chest wall edge of the compression paddle shall not extend beyond the chest wall edge of the image receptor by more than 1.0% of the SID when tested with the compression paddle placed above the breast support surface at a distance equivalent to standard breast thickness. The shadow of the vertical edge of the compression paddle shall not be visible on the image.}]

{(H) Uniformity of screen speed. Uniformity of screen speed of all the cassettes in the facility shall be tested and the difference between the maximum and minimum optical densities shall not exceed 0.30. Screen artifacts shall also be evaluated during this test.}]

{(I) System artifacts. System artifacts shall be evaluated with a high-grade, defect-free sheet of homogeneous material large enough to cover the mammography cassette and shall be performed for all cassette sizes used in the facility using a grid appropriate for the cassette size being tested. System artifacts shall also be evaluated for all available focal spot sizes and target filter combinations used clinically.}]

{(J) Radiation output. The system shall be capable of producing a minimum output of 7.0 mGy air kerma per second (800 milliroentgen (mR) per second) when operating at 28 kVp in the standard mammography mode at any SID where the system is designed to operate. The system shall be capable of maintaining the required minimum radiation output averaged over a 3.0 second period.}]

{(K) Decompression. If the system is equipped with a provision for automatic decompression after completion of an exposure or interruption of power to the system, the system shall be tested to confirm that it provides the following:}]

{(i) an override capability to allow maintenance of compression;}]

{(ii) a continuous display of the override status; and}]

{(iii) a manual emergency compression release that can be activated in the event of power or automatic release failure.}]

{(L) The technique settings used for subparagraph (F) of this paragraph and paragraph (2) of this subsection shall be those used by the facility for its clinical images of a standard breast.}]

{(6) Densitometer and sensitometer. The calibration of the densitometer and sensitometer must be in accordance with the manufacturer's specifications.}]

{(7) Quality control tests - other modalities. For systems with image receptor modalities other than screen-film, the quality assurance program shall be substantially the same as the quality assurance program recommended by the image receptor manufacturer, except that the maximum allowable dose shall not exceed the maximum allowable dose for screen-film systems in paragraph (5)(F) of this subsection.}]

(3) [(8)] Mobile service operation.

(A) The mobile facility must [registrant shall] verify [that] mammography machines used to produce mammograms at more than one location meet the requirements in paragraphs (1) and (2) [(4) - (7)] of this subsection.

(B) At [In addition; at] each examination location, before any examinations are conducted, the facility must [registrant shall] verify satisfactory performance of the mammography machines by using a testing [test] method, as required by the manufacturer, establishing [that establishes] the adequacy of the image quality produced by the machine.

(C) Processor performance testing must be completed as required by 21 CFR Part 900 [shall be in accordance with paragraph (1) of this subsection].

(4) [(9)] Use of test results. After completion of the tests specified in paragraphs (1) and (2) [(1) - (8)] of this subsection, the following must [shall] occur.

(A) The facility must [registrant shall] compare the test results to the [corresponding specified action limits; or, for nonscreen-film modalities, to the] manufacturer's recommended action limits[; or for post-move, pre-examination testing of mobile mammography machines, to the limits established in the test method used by the facility].

(B) If components [Components] of the mammography system [that] fail QA [quality assurance] tests, the facility must follow [shall have] corrective actions required by 21 CFR Part 900, or the QA program recommended by the image receptor manufacturer [as indicated in the following].

[(i)] If components in subclause (I) and (II) of this clause fail, corrective action shall be taken before any mammography films are processed;]

[(I)] paragraph (1) of this subsection describing processor quality control; and]

[(II)] paragraph (4)(A) of this subsection describing darkroom fog;]

[(ii)] If components in subclause (I) - (VI) of this clause fail, corrective action shall be taken before any mammography examinations are performed;]

[(I)] paragraph (2) of this subsection describing phantom image quality;]

[(II)] paragraph (4)(B) of this subsection describing screen-film contact;]

[(III)] paragraph (4)(C) of this subsection describing compression device performance;]

[(IV)] paragraph (5)(F) of this subsection describing dosimetry;]

[(V)] paragraph (7) of this subsection describing quality control tests of other modalities; and]

[(VI)] paragraph (8) of this subsection describing quality control tests for mobile mammography machines;]

[(iii)] If components in the remaining quality assurance tests in subsection (v) of this section fail, corrective action shall be taken within 30 days of the test date;]

(C) Documentation of the tests and the corrective actions described in subparagraph (B) of this paragraph must [shall] be maintained as specified in [accordance with] subsection (x) [(ee)] of this section.

(5) [(40)] Surveys. Annually, not to exceed 14 months from the date of the previous survey [At least once a year], each mammography system must [facility shall] undergo a survey by a medical physicist, or [by] an individual under the direct supervision of a medical physicist, as specified in paragraphs (1) - (3) of this subsection.

[(A) At a minimum, this survey shall include the following;]

[(i)] performance of tests to ensure that the facility meets the quality assurance requirements of the weekly phantom image quality test described in paragraph (2) of this subsection; the annual tests described in paragraph (5) of this subsection; and if applicable, quality control tests as described for other modalities in paragraph (7)

and for mobile service operations as described in paragraph (8) of this subsection; and]

[(ii)] evaluation of the adequacy of the results of all tests conducted by the facility as well as written documentation of any corrective actions taken and their results in accordance with paragraphs (1) - (4) of this subsection; and, if applicable, paragraphs (7) and (8) of this subsection;]

(A) [(B)] The medical physicist must [shall] provide a written survey report to the facility within 30 days of the date of the survey. The report must [shall] include a summary of the test performed, all test conditions, specifications, results, and recommendations for corrective actions[; in accordance with subparagraph (A)(i) and (ii) of this paragraph].

(B) [(C)] If any deficiencies require immediate corrective action as specified in paragraphs (1) - (3) of this subsection [the following tests indicate deficiencies], the physicist must [shall] give a preliminary [oral or] written report to the facility within 72 hours of the survey;:]

[(i)] processor quality control in accordance with paragraph (9)(B)(i)(I) of this subsection;]

[(ii)] phantom images, screen-film contact, compression device performance, or dosimetry in accordance with paragraph (9)(B)(ii)(I) - (IV) of this subsection;]

[(iii)] quality control tests for other modalities, if applicable, in accordance with paragraph (9)(B)(ii)(V) of this subsection; or]

[(iv)] quality control tests for mobile mammography machines, if applicable, in accordance with paragraph (9)(B)(ii)(VI) of this subsection;]

(C) [(D)] The survey report must include the: [shall be dated and signed by the medical physicist performing or supervising the survey. If the survey was performed entirely or in part by another individual under the direct supervision of the medical physicist, that individual and the part of the survey that individual performed shall also be identified in the survey;]

[(i)] date, name, and signature of the medical physicist performing or supervising the survey;

[(ii)] name and signature of each individual under the direct supervision of the medical physicist performing any part of the survey, as applicable;

[(iii)] name of the facility;

[(iv)] address of facility;

[(v)] registration number of the facility;

[(vi)] make, model, and serial number from the machine control panel;

[(vii)] registration number of the service provider performing the survey;

[(viii)] service provider email address;

[(ix)] business mailing address of the service provider performing the survey; and]

[(x)] date of the last calibration of testing equipment.

(D) [(E)] The facility must maintain the survey report as specified [shall be maintained by the registrant] in [accordance with] subsection (x)[(ee)] of this section.

(6) [(14)] Mammography equipment evaluations. Additional evaluations of mammography machines must follow manufacturer specifications. Screen-film mammography machines must follow applicable requirements in 21 CFR Part 900. The mammography equipment evaluation and dosimetry must be performed by a medical physicist or an individual under the direct supervision of a medical physicist [or image processors shall be conducted whenever a new mammography machine or processor is installed, a mammography machine or processor is disassembled and reassembled at the same or a new location, major components of mammography machine are changed or repaired, or a processor is overhauled or reconditioned. These evaluations shall be used to determine whether the new or changed equipment meets the requirements of applicable standards in this subsection and subsection (s) of this section].

[(A) All problems shall be corrected before the new or changed equipment is put into service for examinations or film processing.]

[(B) The mammography equipment evaluation and dosimetry shall be performed by a medical physicist or by an individual under the direct supervision of a medical physicist.]

(7) Each diagnostic review workstation (RWS) used to interpret images must follow manufacturer specifications for display conditions and quality control. If the RWS manufacturer does not specify QC procedures, then a QA program that is substantially the same as the QA program recommended by the image receptor manufacturer must be established and followed.

[(12) Facility cleanliness. The registrant shall establish and implement adequate protocols for maintaining darkroom, screen, and view box cleanliness and shall document that all cleaning procedures are performed at the frequencies specified in the protocols.]

(8) [(13)] Calibration of air kerma measuring instruments. Instruments used by medical physicists in their annual survey and mammography equipment evaluation to measure the air kerma or air kerma rate from a mammography machine must [shall] be calibrated at least once every two years and each time the instrument is repaired. The instrument calibration must be traceable to a national standard and calibrated with an accuracy of plus or minus six percent, or 95 percent confidence level, [6.0% (95% confidence level)] in the mammography energy range.

(9) [(14)] Infection control. Facilities must [shall] establish and comply with a system specifying procedures [to be followed by the facility] for cleaning and disinfecting mammography equipment after contact with blood or other potentially infectious materials. This system must [shall] specify the methods for documenting facility compliance with the infection control procedures established and must [shall]:

(A) comply with all applicable federal, state, and local regulations pertaining to infection control; and

(B) comply with the manufacturer's recommended procedures for the cleaning and disinfection of the mammography equipment used in the facility; or

(C) if adequate manufacturer's recommendations are not available, comply with generally accepted guidance on infection control, until such recommendations become available.

(m) [(w)] Quality assurance - mammography medical outcomes audit. Each registrant must [shall] establish and maintain a mammography medical outcomes audit program to followup [follow-up] positive mammographic assessments and to correlate pathology results with the IP's [interpreting physician's] findings.

The [This] program must [shall] be designed to ensure the reliability, clarity, and accuracy of the interpretation of mammograms.

(1) General requirements.

(A) Each facility must [registrant shall] establish a system to collect and review outcome data for all mammograms performed, including follow-up on the disposition of all positive mammograms and correlation of pathology results with the IP's [interpreting physician's] mammography report.

(B) For cases of breast cancer among patients imaged at the facility that become known to the facility, the facility must initiate a follow-up on surgical and pathology results and a review of the mammographic examinations taken before the diagnosis of a malignancy.

(C) The [Analysis of these] outcome data must [shall] be made individually and collectively for all IPs [interpreting physicians] at the facility and include determinations of the following. [In addition, any cases of breast cancer among women imaged at the facility that subsequently become known to the facility shall prompt the facility to initiate follow-up on surgical and/or pathology results and review of the mammograms taken prior to the diagnosis of a malignancy.]

(i) Positive predictive value. The percent of patients with positive mammograms who are diagnosed with breast cancer within one year of the date of the mammographic examination.

(ii) Cancer detection rate. Of the patients initially examined with screening mammograms who receive an assessment of "Incomplete: Need additional imaging evaluation," "Suspicious," or "Highly Suggestive of Malignancy" on the screening mammogram or on a subsequent diagnostic mammogram, the number of patients who are diagnosed with breast cancer within one year of the date of the initial screening mammogram, expressed as a ratio per 1,000 patients.

(iii) Recall rate. The percentage of screening mammograms given an assessment of "Incomplete: Need additional imaging evaluation."

(2) Frequency of audit analysis. The facility's first audit analysis must begin within [shall be initiated no later than] 12 months of the facility becoming certified, and completed within the following 12 months [after the date the facility becomes certified or 12 months after April 28, 1999, whichever date is the latest. This audit analysis shall be complete within an additional 12 months] to permit completion of diagnostic procedures and data collection.

(A) Subsequent audit analyses will be conducted at least once every 12 months.

(B) The facility must maintain the audit analysis as specified in [These shall be maintained in accordance with] subsection (x)[(ee)] of this section.

(3) Reviewing interpreting physician. Each LIP [lead interpreting physician] or an interpreting physician designated by the LIP must [lead interpreting physician shall] review the medical outcomes audit data at least annually, not to exceed [once every] 12 months following the data collection period. This individual must [shall] analyze the results of the audit and is [shall be] responsible for the following:

(A) recording the dates of the audit period [period(s)];

(B) documenting the results;

(C) notifying other IPs [interpreting physicians] of their results and the facility's collective [registrant's aggregate] results; [and]

(D) documenting any follow up actions and the nature of the follow up; and[-]

(E) recording the audit completion by providing a signature and date on the audit.

(n) [(x)] Mammographic procedure and techniques for mammography of patients with breast implants. Each registrant must [shall] have a procedure to inquire if [whether or not] the patient has breast implants before [prior to] the mammographic exam. Except where contraindicated, or unless modified by a physician's directions, patients with breast implants must [shall] have mammographic views to maximize the visualization of breast tissue.

(o) [(y)] Complaints. Each accredited facility must [shall] do the following:

(1) establish a written procedure for collecting and resolving consumer complaints;

(2) maintain a record of each serious complaint received by the facility as specified in [accordance with] subsection (x) [(ee)] of this section; [and]

(3) provide the consumer with adequate directions for filing serious complaints with the facility's AB if the facility is unable to resolve a serious complaint to the consumer's satisfaction; and

(4) [(3)] report unresolved serious complaints to the facility's AB [FDA-approved accreditation body] within 30 days of receiving the complaint.

(p) [(z)] Clinical image quality. Clinical images produced by any certified facility must continue to comply with the standards for clinical image quality established by the [that] facility's AB [accreditation body].

(q) [(aa)] Additional mammography review, targeted clinical reviews, and patient notification.

(1) If the department [agency certifying body] believes the [that] mammography quality at a facility is [may have been] compromised and presents a serious risk to human health, the facility must [shall] provide clinical images and other relevant information, as specified by the department [agency certifying body], for review by the AB [FDA-approved accreditation body]. The additional mammography review will assist the department with determining:

(A) the facility's compliance with this section; and

(B) if there is a need to notify affected patients, their healthcare provider, or the public that the reliability, clarity, and accuracy of the interpretation of mammograms has been compromised.

(2) If the department [agency certifying body] determines the [that] mammography quality at a facility has been compromised and presents a serious risk to human health, the facility must [shall] provide clinical images and other relevant information, as specified by the department [agency certifying body], for review by the AB [FDA-approved accreditation body]. The department [agency certifying body] may require such facility to notify patients who received mammograms[;] and their referring healthcare provider [physicians]. The notification must occur within a time frame and in a manner specified by the department. The notification must: [shall include the deficiencies presenting such risk, the potential consequences to the patient, appropriate remedial measures, and such other relevant information as the agency certifying body may require. Such notification shall occur within a time frame and in a manner specified by the agency.]

(A) inform the patient the mammography system failed to satisfy the department and AB's standards;

(B) recommend the patient consult with the patient's healthcare provider regarding the need for another mammogram;

(C) list three non-affiliated facilities closest to the original testing facility that have a certified mammography system; and

(D) include the deficiencies presenting such risk, the potential consequences to the patient, appropriate remedial measures, and other relevant information required by the department.

(3) If the facility is unable or unwilling to perform such notification, the department may notify patients and their referring physicians or other healthcare providers individually or through the mass media.

(4) [(3)] The department, the AB [agency certifying body, the agency accreditation body or another FDA-approved accreditation body], or the FDA may request a targeted clinical image review [due to, but not limited to, serious complaints or severe items of non-compliance].

(r) [(bb)] Self-referral mammography. Any person proposing to conduct a self-referral mammography program must [shall] not initiate such a program without prior approval from [of] the department [agency]. When requesting such approval, the [that] person must [shall] submit the following information:

(1) the number and type of views (or projections);

(2) the age of the population to be examined and the frequency of the exam following established, nationally recognized criteria, such as those of the American Cancer Society, American College of Radiology (ACR), or the National Council on Radiation Protection and Measurements;

(3) written procedures to include methods of:

(A) advising a patient [patients] and healthcare provider [private physicians] of the results of the mammography examination as specified in [accordance with] subsection (j)(4) [(t)(2)] of this section;

(B) follow-up with patients and healthcare provider as specified [physicians] in [accordance with] subsection (j)(6) [(t)(3)] of this section; and

(C) recommending a healthcare provider to patients who do not have a healthcare provider when clinically indicated, to include when a patient's mammogram assessment is probably benign, suspicious, or highly suggestive of malignancy [physician means of selecting a physician]; and

(4) methods for educating mammography patients in breast self-examination techniques and on the necessity for follow-up by a physician.

(s) [(ee)] Medical research and investigational devices.

(1) Any research using radiation producing devices on humans must be approved by an IRB as required by [Title] 45[;] CFR[;] Part 46 and [Title] 21[;] CFR[;] Part 56. The IRB must include at least one licensed physician to direct any use of radiation as specified in [accordance with] §289.231(b) of this subchapter [title].

(2) Facilities with mammography machines with investigational device exemptions [that are] involved in clinical studies must comply with primary regulations governing [that govern] the conduct of clinical studies and that apply to the manufacturers, sponsors, clinical investigators, institutional review boards, and the medical device. These regulations include [the following]:

[(A) 21 CFR, Part 812, Investigational Device Exemptions;]

(A) ~~(B)~~ 21 CFR~~;~~ Part 50, Protection of Human Subjects;~~(C) 21 CFR, Part 56, Institutional Review Boards;~~

(B) ~~(D)~~ 21 CFR~~;~~ Part 54, Financial Disclosure by Clinical Investigators;

(C) 21 CFR Part 56, Institutional Review Boards;

(D) 21 CFR Part 812, Investigational Device Exemptions; and

(E) 21 CFR~~;~~ Part 820 [824], Subpart C, Design Controls [of the Quality System Regulation].

(t) ~~(dd)~~ Operating and safety [Other operating] procedures (OSP).

(1) Each facility must implement and maintain written OSP [Operating and safety procedures. Each registrant shall have and implement written operating and safety procedures that shall be made available to each individual operating x-ray equipment, including any restrictions of the operating technique required for the safe operation of the particular system. These procedures shall include, but are not limited to, the items in subsection (hh)(3) of this section].

(2) The OSP must be available to each individual operating x-ray equipment, including any restrictions of the operating technique required for the safe operation of the particular system.

(3) The facility's OSP must address the following requirements, as applicable:

(A) §289.203(b) of this chapter, related to posting notices to workers;

(B) §289.203(c) of this chapter, related to instructions to workers;

(C) §289.203(d) of this chapter, related to notifications and reports to individuals;

(D) §289.231(b) of this subchapter, related to ordering x-ray examinations;

(E) §289.231(m) of this subchapter, related to occupational dose requirements;

(F) §289.231(n) and (q) of this subchapter, related to personnel monitoring requirements;

(G) §289.231(x) and (y) of this subchapter, related to posting of a radiation area;

(H) subsection (h) of this section, related to credentialing requirements for LIPs, IPs, MRTs, and medical physicists;

(I) subsection (j)(7) of this section, related to retention of clinical images;

(J) subsections (k) - (m) of this section, related to quality assurance program;

(K) subsection (k)(1)(B)(i) of this section, related to image quality and corrective action for images of poor quality;

(L) subsection (l)(1) - (3) of this section, related to repeat analysis;

(M) subsection (n) of this section, related to procedures and techniques for mammography patients with breast implants;

(N) subsection (o) of this section, related to the procedure to handle complaints;

(O) subsection (r) of this section, related to self-referral mammography;

(P) subsection (u)(2) of this section, related to the use of a technique chart;

(Q) subsection (u)(5) of this section, related to exposure of individuals other than the patient;

(R) subsection (u)(6) of this section, related to use of protective devices; and

(S) subsection (u)(7) of this section, related to holding of patients or image receptors.

(u) Other operating procedures.

(1) Phantom image scoring protocol must be performed as specified in (l)(1) - (3) of this section.

(2) Technique chart. A technique chart or manual must [shall] be provided and followed. It must be [or electronically] displayed in the vicinity of the control panel of each machine that specifies technique factors used for a [to be utilized versus] patient's anatomical size. [The technique chart shall be used by all operators.]

(3) Receipt, transfer, and disposal of mammography machines. Each registrant must [shall] maintain records showing the receipt, transfer, and disposal of mammographic machines. These records must [shall] include the date of receipt, transfer, and [or] disposal; the name and signature of the person [individual] making the record; and the manufacturer's model name and serial number from the control panel of the mammographic machine. Records must [shall] be maintained as specified in [accordance with] subsection (x)[(ee)] of this section for inspection by the department [agency].

(4) Viewing system. Windows, mirrors, closed circuit television, or an equivalent system must [shall] be provided to permit the operator to continuously observe the patient during irradiation. The operator must [shall] be able to maintain verbal, visual, and aural contact with the patient.

(5) Exposure of an individual [individuals] other than the patient. Only the staff and ancillary personnel required for the medical procedure or training may [shall] be in the room during the radiation exposure unless such individual's assistance is required.

(6) Protective devices. Protective devices must [shall] be utilized when required, as in paragraph (7) of this subsection.

(A) Protective devices must [shall] be of no less than 0.25 millimeter (mm) lead equivalent material.

(B) Protective devices, including aprons, gloves, and shields must [shall] be checked annually for defects such as holes, cracks, and tears. These checks may be performed by the registrant by visual or tactile means, or x-ray imaging. If a defect is found, protective devices must [shall] be replaced or removed from service until repaired. A record of this test must [shall] be made and maintained by the registrant as specified in [accordance with] subsection (x)[(ee)] of this section for inspection by the department [agency].

(7) Holding of patient or image receptor.

(A) When a patient or image receptor must be held in position during radiography, mechanical supporting or restraining devices must [shall] be used when the exam permits.

(B) If a patient or image receptor must be held by an individual during an exposure, the [that] individual must [shall] be protected with appropriate shielding devices described in paragraph (6) of this subsection.

(C) The facility's [registrant's] written OSP specified in subsection (t) [operating and safety procedures required by paragraph (1)] of this section must [subsection shall] include the following:

(i) a list of circumstances in which mechanical holding devices cannot be routinely utilized; and

(ii) a procedure used for selecting an individual to hold or support the patient or image receptor.

(D) In those cases where the patient must hold the image receptor, any portion of the body other than the area of clinical interest struck by the useful beam must [shall] be protected by not less than 0.25 mm lead equivalent material.

(8) Calibration, maintenance, and modifications. Each registrant must [shall] maintain records showing calibrations, maintenance, and modifications performed on each mammographic machine. These records must [shall] include the date of the calibration, maintenance, or modification performed; the name of the individual making the record; and the manufacture's model name and serial number of the control panel of the mammographic machine. These records must [shall] be maintained as specified in [accordance with] subsection (x) [(ee)] of this section.

[(ee) Record requirements. Records required by this section shall be maintained for inspection by the agency in accordance with paragraph (3) of this subsection. Records may be maintained electronically in accordance with §289.231(ff)(3) of this title.]

[(1) Records for mammography machines authorized for mobile service operations.]

[(A) Copies of the following shall be kept with mammography machines authorized for mobile services:]

[(i) operating and safety procedures in accordance with subsection (dd)(1) of this section;]

[(ii) medical radiologic technologists' credentials;]

[(iii) current quality control records for at least the last 90 calendar days for on-board processors in accordance with subsection (v)(1) of this section;]

[(iv) current §289.203 of this title, §289.226 of this title, §289.230 of this title, §289.231 of this title, and §289.234 of this title if accredited by the agency accreditation body;]

[(v) copy of certification;]

[(vi) certification of inspection in accordance with subsection (ff)(5) of this section;]

[(vii) notice of failure from last inspection in accordance with subsection (ff)(6) of this section, if applicable; and]

[(viii) copy of mammography accreditation.]

[(B) Copies of all other records required by this section shall be maintained at a specified location.]

[(2) Records required at separate authorized use locations. Copies of the following shall be kept at each separate authorized use location:]

[(A) credentials for interpreting physicians operating at that location in accordance with subsection (r)(1) of this section;]

[(B) credentials for medical radiologic technologists operating at that location in accordance with subsection (r)(2) of this section;]

[(C) credentials for medical physicists operating at that location in accordance with subsection (r)(3) of this section;]

[(D) continuing education and experience records for interpreting physicians, medical radiologic technologists, and medical physicists operating at that location in accordance with subsection (r)(1)(C), (2)(C), and (3)(C) of this section;]

[(E) mandatory training records for interpreting physicians and medical physicists operating at that location in accordance with subsection (r)(1)(E) and (2)(E) of this section, if applicable;]

[(F) current physicist annual survey of the mammography system;]

[(G) current §289.203 of this title, §289.226 of this title, §289.230 of this title, §289.231 of this title, and §289.234 of this title if accredited by the agency accreditation body;]

[(H) copy of certification;]

[(I) quality assurance program in accordance with subsections (u), (v), and (w) of this section;]

[(J) quality control records in accordance with subsection (u)(2) of this section;]

[(K) operating and safety procedures in accordance with subsection (dd)(1) of this section;]

[(L) records of receipts, transfers, and disposal in accordance with subsection (dd)(3) of this section;]

[(M) calibration, maintenance, and modification records in accordance with subsection (dd)(8) of this section;]

[(N) certification of inspection in accordance with subsection (ff)(5) of this section;]

[(O) notification of failure in accordance with subsection (ff)(6), if applicable;]

[(P) records of notification of patients in accordance with subsection (ff)(10) this section; and]

[(Q) copy of mammography accreditation.]

(v) [(ff)] Inspections. In addition to the requirements of §289.231(kk) of this subchapter [title], the following applies to inspections of mammography systems.

(1) The department [agency] may inspect each mammography system that receives a certification as specified in [accordance with] this chapter no [not] later than the 60th day after the date the certification is issued.

(2) The department [agency] may inspect, at least once annually, each mammography system that receives a certification.

(3) To protect the public health, the department [agency] may conduct more frequent inspections than required by this subsection.

(4) The department [agency] may make reasonable attempts to coordinate inspections in this section with other inspections required as specified in [accordance with] this chapter for the facility where the mammography system is used.

(5) After each satisfactory inspection, the department issues [agency shall issue] a certificate of inspection for each mammography system inspected. The certificate of inspection must [shall] be posted at a conspicuous place on or near the place where the mammography system is used. The certificate of inspection includes [may include] the [following]:

(A) specific identification of the mammography system inspected;

(B) [the] name and address of the facility where the mammography system was used at the time of the inspection; and

(C) [the] date of the inspection.

(6) Any severity level I violation involving a mammography system, determined [found] by the department [agency], as specified in [accordance with] §289.205 of this chapter [title], constitutes grounds for posting notice of failure of the mammography system to satisfy department [agency] requirements.

(A) Notification of such failure must [shall] be posted:

(i) on the mammography machine at a conspicuous place if the violation is machine-related; or

(ii) near the place where the mammography system practices if the violation is personnel-related; and

(iii) in a sufficient number of places to permit the patient to observe the notice.

(B) The notice of failure must [shall] remain posted until the facility is authorized to remove it by the department [agency]. A facility may post documentation of corrections of the violations submitted to the department [agency] along with the notice of failure until approval to remove the notice of failure is received from the department [agency].

(7) Facilities that receive a severity level I violation and are deemed a serious risk to human health must [shall] notify patients as specified in (q)(2) of this section. [on whom the facility performed a mammogram during the period in which the system failed to meet the agency's certification standards. The facility shall:]

[(A) inform the patient that the mammography system failed to satisfy the agency certifying body's standards;]

[(B) recommend that the patient consult with the patient's physician regarding the need for another mammogram; and]

[(C) list the three facilities closest to the original testing facility that have a certified mammography system.]

(8) In addition to the requirements of paragraph (7) of this subsection, the department [agency] may require a facility to notify a patient of any other failure of the facility's mammography system to meet the department's [agency's] certification standards.

(9) The patient notification must [shall] include the following:

(A) an explanation of the mammography system failure to the patient; and

(B) the potential consequences to the mammography patient.

(10) The facility must [registrant shall] make a record of the mammography patients notified as specified in [accordance with] paragraphs (7) and (8) of this subsection for inspection by the department [agency].

(A) The record must [records shall] include the name and address of each mammography patient notified, date of notification, and a copy of the text sent to the individual.

(B) The record must [records shall] be maintained as specified in [accordance with] subsection (x) [(ee)] of this section.

(w) [(gg)] Requirements for interventional breast radiography machines.

[(1) Prohibitions.]

[(A) The agency may prohibit use of interventional breast radiography machines that pose a significant threat or endanger public health and safety, in accordance with §289.231 and §289.205 of this title.]

[(B) Individuals shall not be exposed to the useful beam except for healing arts purposes and unless such exposure has been authorized by a licensed physician. The provision specifically prohibits intentional exposure of an individual for training, demonstration, or other non-healing arts purposes.]

[(2) Exemptions.]

[(A) Machines used exclusively for interventional breast radiography are not required to be accredited by an FDA-approved accreditation body.]

[(B) Loaner machines as described in subsection (n)(6) of this section are exempt for the inspection requirements in subsection (ff) of this section.]

[(C) All interventional breast radiography registrants are exempt from the posting of radiation area requirements of §289.231(x) of this title provided that the operator has continuous surveillance and access control of the radiation area.]

(1) [(3)] Interventional [Requirements for interventional] breast radiography machine certificate of registration (COR) [certification].

(A) A person who receives, possesses, uses, owns, or acquires [Each person having] an interventional breast radiography machine must apply for a certificate of registration as specified [shall submit an application] in [accordance with] §289.226(c) [(4) - (3), (5), and (7)] of this subchapter, relating to general requirements for application and registration [title], and must [shall] receive a COR [certification] from the department before using an interventional breast radiography machine on humans [agency within 30 days of beginning use].

(B) An application for a COR must [certification shall] be signed by:

(i) a licensed physician, and

(ii) the RSO [applicant and the RSO].

(C) An application for a COR [certification] may contain information on multiple interventional breast radiography machines. Each machine must be identified by referring to the machine's manufacturer, model name, and serial number located on the control panel.

(D) Each applicant must [shall] submit documentation of [evidence that] a [medical physicist's] survey [has been] performed by a medical physicist, as specified in [accordance with] paragraph (11)[(43)] of this subsection.

(2) [(4)] Issuance of a certificate of registration [certification].

(A) [Certification.] A COR [certification] for interventional breast radiography machines will be issued if the department [agency] determines the [that an] application meets the requirements of the Act and [the requirements of] this chapter. The COR [certification] authorizes the proposed operations and includes [activity in such form and contains such] conditions and limitations [as] the department [agency] deems [appropriate or] necessary.

(B) Conditions [Requirements and conditions]. The department [agency] may incorporate in the COR [certification] at the time of issuance, or [thereafter] by amendment, [such] additional requirements and conditions for [with respect to] the facility's [registrant's] possession, use, and transfer of radiation machines [subject to this chapter as it deems appropriate or] necessary [in order] to:

(i) minimize danger to occupational and public health and safety;

(ii) require additional reports and maintain [the keeping of] additional records as [may be appropriate or] necessary; and

(iii) prevent loss or theft of radiation machines subject to this section.

(C) Additional information. The department [agency] may request[; and the registrant shall provide,] additional information after the certification has been issued to enable the department [agency] to determine whether the certification should be modified as specified in [accordance with] §289.226(r) of this subchapter relating to renewal of a certificate of registration [title].

(3) [~~(5)~~] Modification, suspension, or revocation of the certificate of registration [certification]. Modification, suspension, or revocation of the COR must occur as specified [certification shall be] in [accordance with] §289.226(s)[(†)] of this subchapter [title].

(4) [~~(6)~~] Specific terms and conditions of the certificate of registration [certification]. Specific terms and conditions of the COR, as specified [certification shall be] in [accordance with] §289.226 [(4)] of this subchapter, must be followed [title].

(5) Renewal of certification. The registrant must file an application for renewal of the COR as follows.

(A) A person who receives, possesses, uses, owns, or acquires an interventional breast radiography machine must apply for renewal as specified in §289.226(e)(1) - (3), (5), and (7) of this subchapter.

(B) An application for renewal must be signed by a licensed physician and the RSO.

(C) An application for renewal must include a medical physicist's survey as specified in paragraph (11) of this subsection.

(D) If a registrant files an application for renewal in proper form at least 30 days before the existing certification expires, the existing certification does not expire until the application status has been determined by the department.

(6) Expiration of the certificate of registration.

(A) COR of an interventional breast radiography machine expires at the end of the day in the month and year stated on the certificate. Expiration of the COR does not relieve the registrant of the requirements of this chapter.

(B) If a registrant does not apply for renewal of the certification under paragraph (8) of this subsection, as applicable, the registrant must:

(i) terminate use of all interventional breast radiography machines;

(ii) pay any outstanding fees as specified in §289.204 of this chapter; and

(iii) submit a record of the disposition of the interventional breast radiography machine to the department. If the machine was transferred, include to whom it was transferred.

(7) Each diagnostic review workstation (RWS) used to interpret images must follow manufacturer specifications for display conditions and quality control. If the RWS manufacturer does not specify QC procedures, then a QA program that is substantially the same as the QA program recommended by the image receptor manufacturer must be established and followed.

(8) Renewal of certification. The registrant shall file an application for renewal of certification as follows.

(A) Each person having an interventional breast radiography machine shall submit an application for renewal in accordance with §289.226(e)(1) - (3), (5), and (7) of this title.

(B) An application for renewal shall be signed by the RSO, licensed physician, and the applicant.

(C) An applicant for renewal shall submit a medical physicist's survey in accordance with paragraph (13) of this subsection.

(D) If a registrant files an application for renewal in proper form at least 30 days before the existing certification expires, such existing certification shall not expire until the application status has been determined by the agency.

(9) Expiration of certification.

(A) Each certification of interventional breast radiography machine expires at the end of the day in the month and year stated on the certificate. Expiration of the certification does not relieve the registrant of the requirements of this chapter.

(B) If a registrant does not submit an application for renewal of the certification under paragraph (8) of this subsection, as applicable, the registrant shall on or before the expiration date specified in the certification:

(i) terminate use of all interventional breast radiography machines;

(ii) pay any outstanding fees in accordance with §289.204 of this title; and

(iii) submit a record of the disposition of the interventional breast radiography machine(s) to the agency. If the machine(s) was transferred, include to whom it was transferred.

(10) Termination of certification. When a registrant decides to terminate all activities involving interventional breast radiography machine(s) authorized under the certification, the registrant shall notify the agency immediately and do the following:

(A) request termination of the certification in writing signed by the RSO, owner, or an individual authorized to act on behalf of the registrant;

(B) pay any outstanding fees in accordance with §289.204 of this title; and

(C) submit a record of the disposition of the interventional breast radiography machine(s) to the agency certifying body. If the machine(s) was transferred, include to whom it was transferred.

(11) Personnel requirements.

(A) A medical radiologic technologist (operators of equipment) shall hold a current general certificate in accordance

with the Medical Radiologic Technologist Certification Act, Texas Occupations Code, Chapter 601.

(B) A medical physicist shall hold a current Texas license under the Medical Physics Practice Act, Texas Occupations Code, Chapter 602, in diagnostic radiological physics and be registered with the agency or employed by an entity registered with the agency, in accordance with §289.226(j) of this title and the Act, unless exempted by §289.226(d)(6) of this title.

(12) Requirements to have a written quality assurance program. Requirements to have a written quality assurance program as described by the manufacturer and/or the medical physicist to ensure the safety, reliability, clarity, and accuracy of services performed at the facility shall comply with the following.

(A) If any failures are noted, corrective actions shall be taken within the time frame indicated/established by the manufacturer or medical physicist. In the event, that no time frames are indicated, corrective action shall be completed within 30 days of the failure.

(B) If any component tested fails the dosimetry test, the corrective action will be taken before any further interventional breast radiography examinations are performed.

(13) Interventional breast radiography machine evaluations and annual survey.

(A) Interventional breast radiography machines are required to have a medical physicist perform a survey:

(i) whenever a new interventional breast radiography machine is installed, disassembled, and reassembled at the same or a new location;

(ii) whenever major components of an interventional breast radiography machine are changed or repaired; and

(iii) on an annual basis.

(B) The following quality assurance tests shall be performed: AEC, kVp, focal spot condition, HVL, collimation, alignments, and dosimetry tests in accordance with subsection (v)(5)(A) - (G) of this section.

(C) The medical physicist shall provide the facility with a preliminary oral or written report of deficiencies within 72 hours of the survey if it involves dosimetry.

(D) The medical physicist shall prepare a written report for the facility within 30 days of the date of the survey to include the following:

(i) a written survey report that includes a summary of the tests performed, all test conditions, specifications, results, and recommendations for corrective actions; and

(ii) date and signature of the medical physicist performing or supervising the survey. If the survey was performed entirely or in part by another individual under the direct supervision of the medical physicist, that individual and the part of the survey that individual performed shall also be identified in the survey.

(14) Operating and safety procedures. Each registrant shall have and implement written operating and safety procedures that shall be made available to each individual operating x-ray equipment, including any restrictions of the operating technique required for the safe operation of the particular system. These procedures shall include, but are not limited to:

(A) posting notices to workers in accordance with §289.203(b) of this title;

(B) instructions to workers in accordance with §289.203(c) of this title;

(C) notifications and reports to individuals in accordance with §289.203(d) of this title;

(D) ordering x-ray exams in accordance with §289.231(b) of this title;

(E) occupational dose requirements in accordance with §289.231(m) of this title;

(F) personnel monitoring requirements in accordance with §289.231(n) and (q) of this title;

(G) credentialing requirements for medical radiologic technologists, and medical physicists in accordance with paragraph (11) of this subsection;

(H) use of a technique chart in accordance with paragraph (22) of this subsection;

(I) exposure of individuals other than the patient in accordance with paragraph (18) of this subsection; and

(J) holding of patients or image receptors in accordance with subsection (dd)(7) of this section.

(15) Receipt, transfer, and disposal of interventional breast radiography machines. Each registrant shall maintain records showing the receipt, transfer, and disposal of interventional breast radiography machines. These records shall include the date of receipt, transfer, or disposal; the name and signature of the individual making the record; and the manufacturer's model name and serial number on the control panel. These records shall be maintained in accordance with subsection (ee) of this section for inspection by the agency.

(16) Calibration, maintenance, and modifications. Each registrant shall maintain records showing calibrations, maintenance, and modifications performed on each interventional breast radiography machine. These records shall include the date of the calibration, maintenance, or modification performed; the name of the individual making the record; and the manufacturer's model name and serial number on the control panel. These records shall be maintained in accordance with subsection (ee) of this section for inspection by the agency.

(17) Viewing system. Windows, mirrors, closed circuit television, or an equivalent system shall be provided to permit the operator to continuously observe the patient during irradiation. The operator shall be able to maintain verbal, visual, and aural contact with the patient.

(18) Exposure of individuals other than the patient. Only the staff and ancillary personnel required for the medical procedure or training shall be in the room during the radiation exposure unless such individual's assistance is required.

~~[(19) Maintenance of records. Maintenance of applicable records in subsection (ee) of this section.]~~

~~[(20) Inspection requirements. Inspection requirements in accordance with subsection (ff)(2) - (4) of this section.]~~

~~[(21) Equipment requirements. Equipment requirements in accordance with §289.227(h) of this title (relating to Use of Radiation Machines in the Healing Arts)-]~~

(19) [(22) Technique chart. A chart or manual must [shall] be provided or electronically displayed in the vicinity of the control panel of each interventional breast radiography machine that specifies

technique factors used for a [to be utilized versus] patient's anatomical size. The technique chart must [shall] be used by all operators.

(x) Record requirements. Records specified in this section must be maintained for inspection by the department as specified in paragraph (3) of this subsection. Records may be maintained electronically as specified in §289.231(ff)(3) of this subchapter.

(1) Records for mammography machines authorized for mobile service operations.

(A) Copies of the following must be kept with mammography machines authorized for mobile services:

(i) OSP as specified in subsection (t)(1) of this section;

(ii) operator's credentials;

(iii) current quality control records for at least the last 90 calendar days for on-board processors as specified in subsection (l)(1) of this section;

(iv) current copies of §289.203, §289.226, §289.230, and §289.231 of this chapter;

(v) copy of certification;

(vi) certification of inspection as specified in subsection (v)(5) of this section;

(vii) notice of failure from last inspection as specified in subsection (v)(6) of this section, if applicable; and

(viii) copy of mammography accreditation.

(B) Copies of all other records specified in this section must be maintained at a specified location.

(2) Records required at separate authorized use locations. Copies of the following must be kept at each separate authorized use location:

(A) credentialing, continuing education, and continuing experience records for IPs, MRTs, and medical physicists operating at the location specified in subsection (h) of this section;

(B) mandatory training records for IPs and medical physicists operating at the location specified in subsection (h) of this section, if applicable;

(C) current physicist annual survey of the mammography system;

(D) current copies of §289.203, §289.226, §289.230, and §289.231 of this chapter;

(E) copy of certification;

(F) QA program as specified in subsections (k), (l), and (m) of this section;

(G) quality control records as specified in subsection (k)(2) of this section;

(H) OSP as specified in subsection (t)(1) of this section;

(I) records of receipts, transfers, and disposal as specified in subsection (u)(3) of this section;

(J) calibration, maintenance, and modification records as specified in subsection (t)(8) of this section;

(K) certification of inspection as specified in subsection (v)(5) of this section;

(L) notification of failure as specified in subsection (v)(6), if applicable;

(M) records of notification of patients as specified in subsection (v)(10) this section; and

(N) copy of mammography accreditation.

(3) Retention requirements for record keeping. Time requirements for record keeping must be according to the following chart. Figure: 25 TAC §289.230(x)(3)

[(hh) Appendices:]

[(+1) Subjects to be included in mammography training for medical radiologic technologists shall include, but not be limited to, the following:]

[(A) breast anatomy and physiology;]

[(B) positioning and compression;]

[(C) quality assurance/quality control techniques;]

[(D) imaging of patients with breast implants; and]

[(E) at least eight hours of training in each mammography modality to be used by the technologist in performing mammography exams.]

[(2) Subjects to be included in mammography training for interpreting physicians shall include, but not be limited to, the following:]

[(A) radiation physics, including radiation physics specific to mammography;]

[(B) radiation effects;]

[(C) radiation protection; and]

[(D) interpretation of mammograms. This shall be under the direct supervision of a physician who meets the requirements of subsection (r)(1) of this section.]

[(3) Operating and safety procedures. The registrant's operating and safety procedures shall include, but are not limited to, the following procedures as applicable:]

[(A) posting notices to workers in accordance with §289.203(b) of this title;]

[(B) instructions to workers in accordance with §289.203(e) of this title;]

[(C) notifications and reports to individuals in accordance with §289.203(d) of this title;]

[(D) ordering x-ray exams in accordance with §289.231(b) of this title;]

[(E) occupational dose requirements in accordance with §289.231(m) of this title;]

[(F) personnel monitoring requirements in accordance with §289.231(n) and (q) of this title;]

[(G) posting of a radiation area in accordance with §289.231(x) and (y) of this title;]

[(H) credentialing requirements for lead interpreting physicians, interpreting physicians, medical radiologic technologists, and medical physicists in accordance with subsection (r) of this section;]

[(I) retention of clinical images in accordance with subsection (t)(4) of this section;]

[(J) quality assurance program in accordance with subsections (u) - (w) of this section;]

[(K) image quality and corrective action for images of poor quality in accordance with subsection (u)(1)(B)(i) of this section;]

[(L) repeat analysis in accordance with subsection (v)(3)(B) of this section;]

[(M) procedures and techniques for mammography patients with breast implants in accordance with subsection (x) of this section;]

[(N) procedure to handle complaints in accordance with subsection (y) of this section;]

[(O) self-referral mammography in accordance with subsection (bb) of this section;]

[(P) use of a technique chart in accordance with subsection (dd)(2) of this section;]

[(Q) exposure of individuals other than the patient in accordance with subsection (dd)(5) of this section;]

[(R) use of protective devices in accordance with subsection (dd)(6) of this section; and]

[(S) holding of patients or image receptors in accordance with subsection (dd)(7) of this section.]

[(4) Phantom image scoring protocol for film-screen modality. Each of the following object groups are to be scored separately. In order to receive a passing score on the phantom image, all three test object groups must pass. A failure in any one of the areas results in a phantom failure.]

[(A) Fibers. A score of 4.0 for fibers is required to meet the evaluation criteria. The diameter size of fibers are 1.56 mm, 1.12 mm, 0.89 mm, 0.75 mm, 0.54 mm, and 0.40 mm. Score the fibers as follows:]

[(i) Begin with the largest fiber and move down in size, adding one point for each full fiber until a score of zero or one half is given. Stop counting at the first point where you lose visibility of objects.]

[(ii) If the entire length of the fiber can be seen and its location and orientation are correct, that fiber receives a score of one.]

[(iii) If at least half, but not all, of the fiber can be seen and its location and orientation are correct, that fiber receives a score of one half.]

[(iv) If less than one half of a fiber can be seen or if the location or orientation are incorrect, that fiber receives a score of zero.]

[(v) After determining the last fiber to be counted, look at the overall background for artifacts. If there are background objects that are fiber-like in appearance and are of equal or greater brightness than the last visible half or full fiber counted, subtract the last half or full fiber scored.]

[(B) Speck groups. A score of 3.0 for speck groups is required to meet the evaluation criteria. Diameter sizes of speck groups are 0.54 mm, 0.40 mm, 0.32 mm, 0.24 mm, and 0.16 mm. There are six specks per group. Score the speck groups as follows:]

[(i) Begin with the largest speck group and move down in size adding one point for each full speck group until a score of one half or zero is given, then stop.]

[(ii) If at least four of the specks in any group are visualized, the speck group is scored as one.]

[(iii) If two or three specks in a group are visualized, the score for the group is one half.]

[(iv) If one speck or no specks from a group are visualized, the score is zero.]

[(v) After determining the last speck group to receive a full or one-half point, look at the overall background for artifacts. If there are speck-like artifacts within the insert region of the phantom that are of equal or greater brightness than individual specks counted in the last visible half or full speck group counted, subtract the artifact speck from the observed specks in the last group scored, one by one. Note that the highest number of speck-like artifacts that can potentially be subtracted is the number of visible specks that were scored in the last group. Repeat the scoring of the last visible speck group after these deductions.]

[(C) Masses. A score of 3.0 is required to meet the evaluation criteria. Diameter sizes of masses are 2.00 mm, 1.00 mm, 0.75 mm, 0.50 mm, and 0.25 mm. Score the masses as follows:]

[(i) Begin with the largest mass and add one point for each full mass observed until a score of one half or zero is assigned.]

[(ii) Score one for each mass that appears as a minus density object in the correct location that can be seen clearly enough to observe round, circumscribed borders.]

[(iii) Score one half if the mass is clearly present in the correct location, but the borders are not visualized as circular.]

[(iv) After determining the last full or half mass to be counted, look at the overall background for artifacts. If there are background objects that are mass-like in appearance and are of equal or greater visibility than the last visible mass, subtract the last full or half point assigned from the original score.]

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

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Cynthia Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: March 23, 2025
For further information, please call: (512) 834-6655



25 TAC §289.234

STATUTORY AUTHORITY

The repeal is authorized by Texas Health and Safety Code Chapter 401 (the Texas Radiation Control Act), which provides for DSHS radiation control rules and regulatory program to be compatible with federal standards and regulations; §401.051, which provides the required authority to adopt rules and guidelines relating to the control of sources of radiation; §401.064, which provides for the authority to adopt rules relating to inspection of x-ray equipment; Chapter 401, Subchapter J, which authorizes enforcement of the Act; Chapter 401, Subchapter L, which provides for the Certification of Mammography Systems;

and Texas Government Code §531.0055 and Texas Health and Safety Code §1001.075, which authorize the Executive Commissioner of HHSC to adopt rules and policies for the operation and provision of health and human services by DSHS and the administration of Texas Health and Safety Code Chapter 1001.

§289.234. *Mammography Accreditation.*

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

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Cynthia Hernandez

General Counsel

Department of State Health Services

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 257. CASE MANAGEMENT FOR CHILDREN AND PREGNANT WOMEN

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes new §257.1, concerning Purpose and Application; §257.3, concerning Definitions; §257.5, concerning Client Eligibility; §257.7, concerning Client Rights; §257.9, concerning Client Confidentiality; §257.11, concerning Components of Case Management for Children and Pregnant Women Services; §257.15, concerning Provider Qualifications and Approval Process; §257.17, concerning Provider Responsibilities; §257.19, concerning Case Manager Qualifications; §257.21, concerning Case Manager Responsibilities; and §257.23, concerning Compliance with Utilization Reviews and Quality Assurance Reviews and Overpayments.

BACKGROUND AND PURPOSE

Case Management for Children and Pregnant Women (CPW) services assist eligible Medicaid clients in gaining access to necessary medical, social, educational, and other services related to the client's health conditions and health risks. To be eligible for services, a client must be either a child with a health condition or health risk or a pregnant woman with a high-risk condition. The client must also be Medicaid-eligible in Texas, need case management for CPW services, and choose such services.

HHSC proposes to repeal Chapter 27, Case Management for Children and Pregnant Women, in Title 25, Part 1, Texas Administrative Code (TAC), and proposes a new Chapter 257, Case Management for Children and Pregnant Women, in Title 26, Part 1, TAC. The purpose for moving the CPW rules from Title 25 to Title 26 is to conform administrative rules to current HHSC practices based on Senate Bill (S.B.) 200, 84th Legislature, Regular Session, 2015. S.B. 200 consolidated functions in the Texas Health and Human Services delivery system and transferred programs, to include CPW, from the Department of State Health Services (DSHS) to HHSC. The repeal of the CPW rules in 25

TAC Chapter 27 is proposed elsewhere in this issue of the *Texas Register*.

In addition to relocating the CPW rules from DSHS to HHSC, the proposal makes amendments to the CPW rules in accordance with House Bill (H.B.) 133, 87th Legislature, Regular Session, 2021, that directs HHSC to deliver CPW services through managed care organizations (MCOs). The proposal also makes amendments to the CPW rules to implement certain requirements of House Bill (H.B.) 1575, 88th Legislature, Regular Session, 2023. H.B. 1575 authorizes case management services to pregnant women with a high-risk condition to address non-medical needs; adds two new provider types, doula and community health worker, as eligible to provide CPW services; and establishes CPW provider qualifications for doulas and community health workers. The proposal also updates the CPW rules with appropriate references and terminology and includes organizational and minor editing changes for clarity.

SECTION-BY-SECTION SUMMARY

Sections 27.1 through 27.27 in Title 25, Part 1, TAC are repealed and replaced by sections 257.1 through 257.23 in Title 26, Part 1, TAC, except that sections 27.13 and 27.27 were repealed and not replaced.

New Subchapter A, General Provisions

Proposed new §257.1, Purpose and Application, replaces repealed §27.1 and summarizes the purpose of CPW services. The proposed rule differs from the repealed rule by removing references to the Department State Health Services and clarifying that the rules apply to fee-for-service and managed care clients.

Proposed new §257.3, Definitions, replaces repealed §27.3 and explains the meaning of terms used in the rules. The proposed rule differs from the repealed rule by adding new definitions for face-to-face, HHSC, nonmedical need, and provider. The proposed rule amends the definition for access by adding a reference to nonmedical needs. The proposed rule also removes definitions for active providers, application process, prior authorization, and state because the terms are no longer used in the proposed new Chapter 257.

New Subchapter B, Client Services

Proposed new §257.5, Client Eligibility, replaces repealed §27.5 and defines who qualifies to receive the services. The proposed rule differs from the repealed rule by clarifying that a client chooses, rather than desires, to receive CPW services.

Proposed new §257.7, Client Rights, replaces repealed §27.7 and establishes that a client's use of case management services in CPW is voluntary. The proposed rule provides a client the right to actively participate in case management decisions, receive services free from abuse or harm, have the freedom to choose a provider, and request a fair hearing. The proposed rule differs from the repealed rule by clarifying that a client who receives CPW services through an MCO must exhaust internal MCO appeals before requesting a fair hearing.

Proposed new §257.9, Client Confidentiality, replaces repealed §27.9 and defines the circumstances in which client information can and cannot be shared.

Proposed new §257.11, Components of Case Management for Children and Pregnant Women Services and Reimbursement, replaces repealed §27.11 and outlines the services that are provided and the components that are billable. The proposed rule differs from the repealed rule by adding that a service plan must

be signed by the Medicaid provider. The proposal also adds nonmedical needs as a component of CPW and updates requirements for follow-up visits by a case manager. The proposal also removes references to prior authorization and adds that services are not reimbursable when a client is an inpatient at a hospital or other treatment facility.

New Subchapter C, Provider Qualifications and Responsibilities

Proposed new §257.15, Provider Qualifications and Approval Process, replaces repealed §§27.15 and 27.17 and indicates the steps necessary to become a provider of services. The proposed rule differs from the repealed rule by updating a reference to the U.S. HHS Office of Inspector General List of Excluded Individuals/Entities (LEIE); clarifying that interested providers must complete a pre-planning process with HHSC; adding a requirement that providers must complete the HHSC standardized case management training provided by HHSC; and generally condensing the approval process. The proposed rule also differs from the repealed rule by removing references to response times and Medicaid claims administrator and the requirement for a new application if twelve months have lapsed since initial approval was received.

Proposed new §257.17, Provider Responsibilities, replaces repealed §27.19 and specifies what providers must do to maintain the duties of providing services through CPW, including outreach activities.

Proposed new §257.19, Case Manager Qualifications, replaces repealed §27.21 and specifies qualifications to be a case manager in CPW. The proposed rule differs from the repealed rule by adding references to the Texas Occupations Code for advanced practice registered nurse, registered nurse, and social worker and adding community health worker and doula to the list of provider qualifications as required by H.B. 1575.

Proposed new §257.21, Case Manager Responsibilities, replaces repealed §27.23 and describes the requirement to have appropriate and current licensure or certification, provide services convenient to a client, and coordinate services.

Proposed new §257.23, Compliance with Utilization Reviews and Quality Assurance Reviews and Overpayments, replaces repealed §27.25 and explains that the purpose of a utilization review is to ensure fiscal integrity and describes the providers' responsibility in participating in quality and utilization reviews. The proposed rule differs from the repealed rule by requiring providers to ensure services to a client are within the scope of the client's service plan; referencing quality assurance and utilization reviews without specifying frequency or timeline for the reviews as compared to reviews being conducted each fiscal year; and removing reference to reviews of inactive providers. The proposed rule also replaces references to "the department" with references to HHSC.

FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years that the rule will be in effect, there will be an estimated additional cost to state government as a result of enforcing and administering the rules as proposed. Enforcing or administering the rules does have foreseeable implications relating to costs or revenues of local government.

The effect on state government for each year of the first five years the proposed rules are in effect is an estimated cost of \$665,000 in State Funds and \$665,000 in Federal Funds for fis-

cal year (FY) 2024, \$0 in FY 2025, \$0 in FY 2026, \$0 in FY 2027, and \$0 in FY 2028.

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities to comply with the proposed new rules because provider and client participation in CPW is optional.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules do not impose a cost on regulated persons and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Emily Zalkovsky, State Medicaid Director, has determined that for each year of the first five years the rules are in effect, the public benefit will be having a greater number of providers available for CPW clients to choose from.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because provider and client participation in CPW services is optional.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4601 West Guadalupe Street, Austin, Texas 78751; or emailed to HHSRulesCoordinationOffice@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When faxing or emailing comments, please indicate "Comments on Proposed Rule 24R049" in the subject line.

SUBCHAPTER A. GENERAL PROVISIONS

26 TAC §257.1, §257.3

STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules as necessary to carry out the commission's duties; and Human Resources Code §32.021 and Texas Government Code §531.021(a), which authorize HHSC to administer the federal medical assistance (Medicaid) program.

The new sections implement Texas Government Code §531.651, §531.652, §531.653, §531.654, §531.655, and §531.656.

§257.1. Purpose and Application.

(a) Case Management for Children and Pregnant Women is a Medicaid benefit that assists an eligible client in gaining access to the necessary medical, social, educational, and other service needs related to a child with a health condition or health risk or a pregnant woman with a high-risk condition.

(b) The rules in this chapter apply to Case Management for Children and Pregnant Women services delivered in fee-for-service and through a Medicaid managed care organization.

§257.3. Definitions.

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

(1) Access--The ability of an eligible client to obtain health and health-related services and other services related to nonmedical needs, as determined by factors such as:

- (A) the availability of Texas Health Steps services;
- (B) service acceptability to the eligible child, pregnant woman, or both;
- (C) the location of health care facilities and other resources;
- (D) transportation;
- (E) hours of facility operation; and
- (F) length of time available to see providers of health and health-related services or other services related to nonmedical needs.

(2) Applicant--An agency, organization, or individual who submits an application to enroll as a state Medicaid provider of Case Management for Children and Pregnant Women services.

(3) Case manager--An individual qualified under §257.19 of this title (relating to Case Manager Qualifications) who provides

Case Management for Children and Pregnant Women services. A case manager may be an independent provider or an employee or contractor of a Medicaid-enrolled case management provider.

(4) Case management services--Services provided under this chapter to an eligible client to assist the client in gaining access to necessary medical, social, educational, and other services for a child with a health condition or health risk or a pregnant woman with a high-risk condition. In this chapter, these services are also referred to as Case Management for Children and Pregnant Women services.

(5) Child with a health condition or health risk--A child from birth through 20 years of age who has or is at risk for a medical condition, illness, injury, or disability that results in limitation of function, activities, or social roles in comparison with healthy peers of the same age in the general areas of physical, cognitive, emotional, or social growth and development.

(6) Client--An individual who is eligible for and enrolled in the Texas Medicaid Program and meets the eligibility requirements listed in §257.5 of this chapter (relating to Client Eligibility) or the client's parent or legal guardian.

(7) Client choice--A client is given the freedom to choose a provider, to the extent possible, from among providers available to the client.

(8) Face-to-face--A visit conducted by a case manager with a client in person or utilizing synchronous audiovisual communications.

(9) Family--A basic unit in society having at its nucleus:

(A) one or more adults living together and cooperating in the care and rearing of the adult's or adults' biological or adopted children; or

(B) a person or persons acting as an individual's family, foster family, guardian, or identifiable support person or persons.

(10) Health and health-related services--Services that are provided to meet the preventive, primary, tertiary, and specialty health needs of an eligible client, including, medical and dental checkups, immunizations, acute care visits, pediatric specialty consultations, physical therapy, occupational therapy, audiology, speech language services, mental health professional services, pharmaceuticals, medical supplies, prenatal care, family planning, adolescent preventive health, durable medical equipment, nutritional supplements, prosthetics, eyeglasses, and hearing aids.

(11) HHSC--The Texas Health and Human Services Commission or its designee, including a Medicaid managed care organization.

(12) High-risk condition--Applies to a woman who is pregnant and has a medical or psychosocial condition that places the woman and the woman's fetus at a greater than average risk for complications, either during pregnancy, delivery, or after birth.

(13) Medicaid--Medical assistance program implemented by the state under the provisions of Title XIX of the Social Security Act, as amended, at 42 U.S.C., §1396, et seq.

(14) Nonmedical need--Nonmedical drivers of health are the conditions in the place where a person lives, learns, works, and plays and that affect a wide range of health risks and outcomes.

(15) Provider--May be:

(A) an agency approved by HHSC to provide Case Management for Children and Pregnant Women services and that is enrolled as a Medicaid provider; or

(B) an individual approved by HHSC to provide Case Management for Children and Pregnant Women services and who is enrolled as a Medicaid provider.

(16) Quality assurance review--A review conducted by HHSC of a provider's client records, internal quality assurance policy, outreach materials, and compliance with HHSC's rules and policies, including the qualifications of the provider's case managers as listed in §257.19 of this chapter.

(17) TMPPM--Texas Medicaid Provider Procedures Manual.

(18) Utilization review--A review conducted by HHSC of a provider's claims data in which trends have been identified that could indicate potential concerns with the delivery of case management services.

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-2910



SUBCHAPTER B. CLIENT SERVICES

26 TAC §§257.5, 257.7, 257.9, 257.11

STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules as necessary to carry out the commission's duties; and Human Resources Code §32.021 and Texas Government Code §531.021(a), which authorize HHSC to administer the federal medical assistance (Medicaid) program.

The new sections implement Texas Government Code §531.651, §531.652, §531.653, §531.654, §531.655, and §531.656.

§257.5. Client Eligibility.

A client eligible for services under this chapter must be either a child with a health condition or health risk or a pregnant woman with a high-risk condition who:

- (1) is Medicaid-eligible in Texas;
- (2) is in need of Case Management for Children and Pregnant Women services; and
- (3) chooses such services.

§257.7. Client Rights.

(a) Use of services is voluntary. Acceptance or refusal of services does not affect eligibility for or receipt of any other Medicaid services, or for future case management services.

(b) All records about a client are considered confidential information, in accordance with the standards and requirements described in §257.9 of this subchapter (relating to Client Confidentiality).

(c) A client has the right to:

- (1) actively participate in case management decisions, including the right to refuse services from a case manager;
- (2) receive services free from abuse or harm from a case manager;
- (3) have freedom of choice to choose a provider in the client's county of residence or service area, as applicable;
- (4) have freedom to request a transfer to another available case manager at any time; and
- (5) except as described in subsection (d) of this section, request a fair hearing, conducted in accordance with the rules in 1 TAC, Chapter 357, Subchapter A (relating to Uniform Fair Hearing Rules), within 90 days after receiving written notification that services have been denied, reduced, suspended, or terminated.

(d) A client receiving Case Management for Children and Pregnant Women services through a Medicaid managed care organization (MCO) must:

- (1) use the MCO's complaint and appeal procedure as prescribed in 1 TAC §353.415 (relating to Member Complaint and Appeal Procedures); and
- (2) exhaust internal MCO appeals before requesting a fair hearing as described in subsection (c)(5) of this section.

§257.9. Client Confidentiality.

(a) Federal and state laws and regulations prohibit the disclosure of information about a Medicaid client without effective consent by the client or the client's parent or legal guardian, except for purposes directly connected with the administration of the Medicaid program, as described in:

- (1) 42 U.S.C. §1396a(a)(7);
 - (2) 42 C.F.R. §§431.301 - 431.306;
 - (3) Texas Human Resources Code §12.003 and §21.012;
- and
- (4) Texas Government Code §552.101.

(b) A provider is not considered directly connected with the administration of the program. Although a provider is not entitled to confidential information without prior consent, the provider may verify a client's eligibility status.

(c) An entity with which HHSC contracts to perform certain administrative functions, including contractors for outreach, informing, and transportation services, may receive confidential information without a client's consent, but only to the extent necessary to perform and administer the contract. A contracted entity is bound by the same standards of confidentiality applicable to the Medicaid program, and the entity must provide effective safeguards to ensure confidentiality.

§257.11. Components of Case Management for Children and Pregnant Women Services.

The following are the essential components of Case Management for Children and Pregnant Women services and an explanation of billable components.

(1) Intake--A case manager's visit with a client, family, or guardian that includes the case manager collecting demographic infor-

mation, health information, and other information relevant to determining the client's eligibility.

(2) Comprehensive visit--A required visit conducted by a case manager face-to-face with a client, family, or guardian that includes the case manager completing the following:

(A) Family Needs Assessment. A comprehensive assessment completed by a case manager to determine a client's need for any medical, educational, social, or other services required to address the client's short- and long-term health and well-being. A case manager must document this assessment on a Family Needs Assessment form, which must include:

(i) taking a client's history;

(ii) identifying the client's needs, assessing and addressing family issues that impact the client's health condition, health risk, high-risk condition, or nonmedical needs; and

(iii) gathering information from other sources, such as family members, medical providers, social workers, and educators, if necessary, to form a complete assessment of the client.

(B) Service Plan. A plan for case management services completed by a case manager with a client or the client's parent or legal guardian that determines a planned course of action based on the information collected through the assessment required in paragraph (2)(A) of this section. A case manager must document the Service Plan on a Service Plan form, which must:

(i) include activities and goals developed by the client in consultation with the case manager to address the medical, social, educational, and other services needed by the client;

(ii) identify a course of action to respond to the assessed needs of the client, including identifying the individual responsible for contacting the appropriate service providers, and designating the time frame within which the client should access services; and

(iii) be dated and signed by the Medicaid provider.

(3) Referral and related activities. To help manage a client's care, a case manager making referrals and conducting related activities, such as scheduling appointments for the client, conducting collateral contacts with a non-eligible individual that are directly related to identify and help the client obtain needed services and link the client with:

(A) medical, social, and educational providers; and

(B) other programs and services that can provide services the client needs.

(4) Follow-up visits by a case manager.

(A) A case manager must make a follow-up visit:

(i) as frequently as necessary to ensure a client's Service Plan is implemented and adequately addresses the client's needs;

(ii) annually for a client who is eligible for case management for longer than 12 consecutive months; and

(iii) as needed during the eligible postpartum period for a client who is a pregnant woman with a high-risk condition who may also have nonmedical needs.

(B) During a follow up visit, a case manager must:

(i) determine if:

(I) services have been furnished to a client in accordance with the client's Service Plan; and

(II) services in the initial Service Plan are adequate to address the client's needs; and

(ii) complete a Service Plan Addendum form if the case manager identifies there has been a change in the client's needs or status and the initial Service plan needs to be revised.

(5) The essential components of Case Management for Children and Pregnant Women services that are eligible for Medicaid reimbursement are the comprehensive visit and each follow-up visit performed in accordance with this section.

(6) Case management services are not reimbursable if the services are provided:

(A) to a client who does not meet the client eligibility requirements in §257.5 of this subchapter (relating to Client Eligibility);

(B) to a client who has already received another case management service on the same day from the same billing provider; or

(C) when a client is an inpatient at a hospital or other treatment facility.

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

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Chief Counsel

Health and Human Services Commission

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SUBCHAPTER C. PROVIDER QUALIFICATIONS AND RESPONSIBILITIES

26 TAC §§257.15, 257.17, 257.19, 257.21, 257.23

STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules as necessary to carry out the commission's duties; and Human Resources Code §32.021 and Texas Government Code §531.021(a), which authorize HHSC to administer the federal medical assistance (Medicaid) program.

The new sections implement Texas Government Code §531.651, §531.652, §531.653, §531.654, §531.655, and §531.656.

§257.15. *Provider Qualifications and Approval Process.*

(a) To be approved by HHSC as a provider, an applicant must:

(1) not be listed on the HHSC Office of Inspector General's Excluded Individual/Entities nor on the U.S. HHS Office of Inspector General List of Excluded Individuals/Entities (LEIE);

(2) complete:

(A) a pre-planning process with HHSC that includes a review of case manager qualifications listed in §257.19 of this subchapter (relating to Case Manager Qualifications) and an overview of case management activities as listed in §257.21 (Case Manager Responsibilities); and

(B) the HHSC standardized case management training provided by HHSC; and

(3) agree to:

(A) employ or contract with one or more case managers who each meet at least one of the qualifications listed in §257.19 of this subchapter (relating to Case Manager Qualifications); and

(B) comply with:

(i) the rules, policies, and procedures of HHSC relating to Case Management for Children and Pregnant Women; and

(ii) applicable state and federal laws governing participation of providers in the Medicaid program and enrollment as a state Medicaid provider.

(b) HHSC notifies an applicant that complies with subsection (a) of this section whether HHSC approves the applicant's enrollment to be a Medicaid provider of Case Management for Children and Pregnant Women services.

§257.17. Provider Responsibilities.

A provider must:

(1) operate in accordance with the laws, rules, regulations, and standards of care relating to the practice of the provider's respective license or certifications;

(2) ensure the provider's case managers operate:

(A) within the laws, rules, regulations, and standards of care relating to the practice of the case manager's respective license, or certification; and

(B) only within the scope of the case manager's respective license or certification;

(3) provide services:

(A) according to policies and procedures as published in the TMPPM and Medicaid bulletins; and

(B) in accordance with the policies and procedures of HHSC;

(4) cease providing services and notify HHSC if the professional license of a case manager is suspended or revoked, with such notification to be provided to HHSC no later than seven calendar days after the date that the suspension or revocation is imposed;

(5) assure that the provider's case managers attend required trainings provided by HHSC;

(6) develop and maintain a quality management system for the provision of services with the primary goal of assisting clients in accessing necessary medical, social, educational, and other services related to the client's health condition, health risk, high-risk condition, or nonmedical need;

(7) ensure that outreach activities:

(A) do not impede freedom of client choice; and

(B) comply with 1 TAC §371.27 (relating to Prohibition against Solicitation of Medicaid or CHIP Recipients); and

(8) ensure that a client is given freedom of choice to choose a provider for case management.

§257.19. Case Manager Qualifications.

A provider that is an agency or an individual approved by HHSC to provide case management services must ensure a case manager meets at least one of the following qualifications:

(1) an advanced practice registered nurse who holds a license, other than a provisional or temporary license, under Texas Occupations Code Chapter 301;

(2) a registered nurse who holds a license, other than a provisional or temporary license, under Texas Occupations Code Chapter 301 and:

(A) has a baccalaureate degree in nursing; or

(B) has an associate degree in nursing and has:

(i) at least two years of cumulative paid full-time work experience; or

(ii) at least two years of cumulative, supervised full-time educational internship or practicum experience obtained in the last 10 years that included assessing the psychosocial and health needs of and making community referrals for:

(I) children up to age 21; or

(II) pregnant women;

(3) a social worker who holds a license, other than a provisional or temporary license, under Texas Occupations Code Chapter 505, appropriate for the individual's practice, including the independent practice of social work;

(4) a community health worker, as defined by Texas Health and Safety Code §48.001, that is certified as a community health worker by the Department of State Health Services; or

(5) a doula who is certified in alignment with nationally recognized standards, as determined by HHSC, unless the doula qualifies as a certified community health worker under paragraph (4) of this subsection.

§257.21. Case Manager Responsibilities.

A case manager must:

(1) comply with all licensure or certification requirements of the appropriate issuing agency or state licensure or examining board, including the obligation to report all suspected child abuse or neglect;

(2) cease providing services and notify HHSC if the case manager's professional license or certification is suspended or revoked, with such notification to be provided to HHSC no later than seven calendar days after the date that the suspension or revocation is imposed;

(3) provide services convenient to a client, either in the client's home, an office setting, or other place of the client's preference; and

(4) have knowledge of, and coordinate services with, providers of health and health-related services, non-covered services, and other active community resources.

§257.23. Compliance with Utilization Reviews and Quality Assurance Reviews and Overpayments.

(a) The purpose of a utilization review and a quality assurance review is:

- (1) to ensure program fiscal integrity;
- (2) to address the federal mandate requiring program funds be spent only as allowed under federal and state laws and regulations; and
- (3) to ensure that a case manager provided Case Management for Children and Pregnant Women services to a client within the scope of the client's Service Plan.

(b) HHSC conducts quality assurance and utilization reviews of all active providers to monitor claims, the quality of case management services, and compliance with Case Management for Children and Pregnant Women rule and policy.

(c) A provider must cooperate with the quality assurance and utilization reviews. A provider will be given notification of upcoming reviews in accordance with the policies and procedures established by HHSC.

(d) If the results of a provider's utilization review or quality assurance review as determined by HHSC, indicates overpayment, HHSC notifies the provider of the overpayment and gives the provider information about how to arrange for repayment.

(e) If a provider becomes aware that the provider received an overpayment, the provider must notify the Medicaid claims administrator to arrange for repayment.

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

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Karen Ray

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 21. TRADE PRACTICES

SUBCHAPTER J. PROHIBITED TRADE PRACTICES

28 TAC §21.1008

The Texas Department of Insurance (TDI) proposes new 28 TAC §21.1008, prohibiting individuals and entities engaged in the business of insurance from tying together the sale of personal automobile policies and residential property policies. Proposed new §21.1008 implements Insurance Code §541.003.

EXPLANATION. Insurance Code §541.003 provides that a "person may not engage in this state in a trade practice that is defined in this chapter as or determined under this chapter to be an unfair method of competition or an unfair or deceptive act or practice in the business of insurance." Insurance Code §541.401 gives the commissioner the authority to "adopt and enforce reasonable

rules the commissioner determines necessary to accomplish the purpose of this chapter." Insurance Code §541.001 states that the purpose of Chapter 541 "is to regulate trade practices in the business of insurance by: (1) defining or providing for the determination of trade practices in this state that are unfair methods of competition or unfair or deceptive acts or practices; and (2) prohibiting those trade practices." In addition, Insurance Code §§541.107, 541.201, 541.204, 541.301, 541.351, and 541.352 reinforce that TDI has the authority to adopt and enforce rules that define when a method of competition, act, or practice is considered unfair or unlawful. Also, Insurance Code §31.002(4) and (5) impose on TDI the duty to "protect and ensure the fair treatment of consumers" and "ensure fair competition in the insurance industry in order to foster a competitive market."

Insurance Code Chapter 541 delegates the authority to define acts as unfair or unlawful by rule in order to ensure the public policy of protecting consumers in the business of insurance. This delegation gives TDI the ability to prevent unforeseen, unfair practices that the Legislature cannot conveniently address and assure that the purpose of Chapter 541 is met.

Proposed new §21.1008 implements Insurance Code §541.003 by specifying that making the purchase of a residential property insurance policy contingent on purchasing a personal automobile insurance policy from a specific person, or vice versa, is an unfair act or practice in the business of insurance.

"Tying," also known as "tying arrangements" and "tie-in arrangements," includes "an arrangement whereby a seller sells a product to a buyer only if the buyer purchases another product from the seller." *Black's Law Dictionary* (12th ed., 2024). Tying can also describe when the sale of a product is conditioned on the purchase of another product from a particular person. Proposed new §21.1008 solely addresses business practices where the purchaser does not have a choice of buying the tied products separately. TDI encourages consumers to shop around and compare options to find coverage and pricing that most meet their needs. This rule helps ensure that consumers have the freedom to make the best choices for themselves and their families.

Proposed new §21.1008 does not prohibit insurers or agents offering Texas consumers the option of choosing to purchase personal automobile and residential property policies from the same person. It also does not prohibit insurers offering an actuarially justified premium discount if a consumer chooses to "bundle" multiple products that are separately available for sale. The distinction between bundling discounts and tying can be compared with the practices of a grocer: a grocer may provide a coupon that gives a customer who buys lunch meat a discount on the purchase of bread, but the grocer does not require the customer buying lunch meat to also buy bread.

The rule treats tying and bundling discounts differently because the consumer protection concerns for these business practices are different. A bundling discount introduces an added opportunity for a consumer to save money by purchasing multiple policies from the same company, while preserving the consumer's ability to shop for a better price or coverage by purchasing separate policies from unrelated companies. Tying achieves the opposite: a consumer who chooses, for example, a homeowners policy from a company engaging in tying then loses the ability to shop for an auto policy from another company. By purchasing or renewing a tied homeowners policy, the consumer's marketplace options for auto insurance are reduced from many to just one.

Proposed new §21.1008 is necessary to protect consumers from being unfairly pressured or compelled to purchase multiple products from one source instead of being able to choose the insurance coverage they want from any source they want. Usually, consumers must buy insurance to get a home loan or to comply with Texas motorist laws. Because consumers must have home and auto insurance, it underscores the importance of protecting their ability to freely shop for each policy. Tying arrangements can also pressure consumers to purchase unwanted coverage when they need or want only one policy and not the other tied to it. For example, a consumer who cannot drive or does not own a vehicle could be pressured to purchase an unwanted auto policy in order to purchase the homeowners policy the consumer prefers.

Prohibiting the tying of personal auto and residential property policies will also help prevent unfair competition among insurance companies and agents. Tying may give a company an unfair advantage by leveraging sales of one product to require sales of an unrelated product. This can make it difficult for new or rival companies to obtain sales. For example, if a company requires its homeowners policyholders to purchase auto policies from it, other companies could not compete for the personal auto business unless a consumer also chooses to switch the consumer's home insurance. Also, some companies cannot sell both residential property and personal auto insurance. For example, farm mutual insurance companies can write residential property insurance but are prohibited from writing personal automobile insurance.

The rule does not apply to all insurance products. The rule does not prohibit insurers tying commercial insurance products. It also does not prohibit tying products that supplement underlying coverage, such as personal umbrella or excess insurance policies which are often designed to work in tandem with an underlying homeowners or personal auto policy by extending liability coverage beyond the limits of the underlying policy. The rule's prohibition focuses on the tying of policies that provide coverage for two separate risks: the risk of damage to a person's home and belongings versus a person's risk as a driver and vehicle owner. While residential property owners frequently also need automobile coverage, it is not fair for an insurer or agent to refuse to sell one kind of coverage unless the consumer also purchases insurance from the insurer or agent for a fundamentally unrelated risk.

Subsection (a) of proposed new §21.1008 provides the purpose of the section--to protect consumers from being forced to purchase a product they do not want. The subsection also clarifies that it applies to any step of the purchasing process, including policy delivery, issuance, and renewal.

Subsection (b) of proposed new §21.1008 provides definitions for the section. The definition of "person" comes from Insurance Code §541.002(2), which is a wide-reaching definition, making the chapter and this rule applicable to any individual or other legal entity engaged in the business of insurance. The prohibition addresses both an insurer's underwriting practices and an insurer's or agent's sales practices. In addition to the broad definition, other sections in the Insurance Code affirm the applicability of Insurance Code Chapter 541 to various insurance entities. For example, Insurance Code §911.001 affirms applicability to farm mutual insurance companies; Insurance Code §912.002 affirms applicability to county mutual insurance companies; and Insurance Code §981.073 affirms applicability to surplus lines insurance. The definitions of "personal automobile

insurance," "residential property insurance," and "underwriting guideline" come from Insurance Code §38.002, which relates to underwriting guidelines for personal automobile and residential property insurance policies. To avoid confusion and help ensure that protection is extended to farms and ranches, the definition for "residential property insurance" clarifies that this rule also includes farm and ranch insurance and farm and ranch owners insurance.

Subsection (c) of proposed new §21.1008 sets out the prohibition against certain tying requirements. It identifies tying that occurs through either a purchase requirement or an underwriting guideline as an unfair trade practice under Insurance Code Chapter 541. It limits the rule's prohibition to tying the purchase of a residential property insurance policy and a personal automobile insurance policy from a specific person. Tying arrangements for other types of insurance may be contrary to statute or rule and require a fact-based determination for each specific situation.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. David Muckerheide, assistant director of the Property and Casualty Lines Office, has determined that during each year of the first five years the proposed new section is in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the new section, other than that imposed by statute. Mr. Muckerheide made this determination because the proposed new section does not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed new section.

Mr. Muckerheide does not anticipate a measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed new section is in effect, Mr. Muckerheide expects that administering it will have the public benefit of ensuring that TDI is (1) implementing Insurance Code §541.003, (2) helping insurers comply with Insurance Code Chapter 541, (3) ensuring fair competition in the insurance industry, and (4) protecting the fair treatment of consumers.

Mr. Muckerheide expects that the proposed new section will increase the cost of compliance with Insurance Code Chapter 541 for persons engaged in tying personal automobile and residential property insurance. TDI is currently aware of only one company currently engaged in the type of tying this rule addresses. Companies that engage in tying will need to revise their underwriting guidelines and file them with TDI to comply with the rule. The cost to comply will vary depending on insurers' operations. Companies can still offer actuarially justified discounts for optional bundled policies.

While it is not feasible to determine the actual time required or the cost of employees needed to comply with the requirements, Mr. Muckerheide estimates that updating underwriting guidelines and filing them with TDI would take a range of one to five hours to complete and would likely require both software programming and clerical staff. According to the May 2023 Bureau of Labor Statistics Occupation and Employment Wage Statistics at www.bls.gov/oes/current/oes_nat.htm, the national mean hourly wage for the "Software and Web Developers, Programmers, and Testers" classification is \$62.74, and the national mean hourly wage for the "Secretaries and Administrative Assistants, Except Legal, Medical, and Executive" classification is \$21.87.

Any costs associated with this proposed new section are costs that are necessary to implement statute under Government Code §2001.0045(c)(9).

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed new section will not have an adverse economic effect on small or micro businesses, or on rural communities. The proposed new section might have a favorable effect on small and microbusinesses by eliminating tying arrangements that could unfairly constrict the market. Insurance companies or agents that are small businesses focused on selling only automobile insurance would not lose potential market share because a tying arrangement requires potential clients to purchase automobile coverage from a competitor. The same is true for insurance companies or agents that are small businesses focused on selling only residential property insurance. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE. §2001.0045. TDI has determined that this proposal does impose a cost on regulated persons engaged in tying personal automobile and residential property insurance. However, no additional rule amendments are required under Government Code §2001.0045 because the proposed new section is necessary to (1) implement legislation; and (2) protect the health, safety, and welfare of the residents of this state.

Insurance Code Chapter 541 repeatedly charges the commissioner to adopt and enforce rules that establish what actions constitute a violation of the chapter; see Insurance Code §§541.107, 541.201, 541.204, 541.301, 541.351, 541.352, and 541.401. The requirement that the commissioner identify specific unfair acts or practices that are putting the Texas market or consumers at risk is an ongoing duty under Chapter 541 and is necessary to accomplish the purpose of the chapter. The proposed new section is also necessary to protect the health, safety, and welfare of the residents of this state, as addressed by Government Code §2001.0045(c)(6), because prospective consumers would be otherwise subject to unfair trade practices by being compelled to purchase a product they do not want and hindering their ability to shop the market.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed new section is in effect, the proposed rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will create a new regulation;
- will not expand, limit, or repeal an existing regulation;
- will increase the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

The proposed new section will identify a new act or practice as unfair under Insurance Code Chapter 541.

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

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on March 24, 2025. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

The commissioner of insurance will also consider written and oral comments on the proposal in a public hearing under Docket No. 2852 at 10:00 a.m. central time, on March 10, 2025, in Room 2.035 of the Barbara Jordan State Office Building, 1601 Congress Avenue, Austin, Texas 78701.

STATUTORY AUTHORITY. TDI proposes new §21.1008 under Insurance Code §541.401 and §36.001.

Insurance Code §541.401 provides that the commissioner may adopt and enforce reasonable rules the commissioner determines necessary to accomplish the purposes of Insurance Code Chapter 541.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Proposed new §21.1008 implements Insurance Code §§31.002(4) and (5), 541.001, 541.003, 541.008, and 541.401.

§21.1008. Prohibited Tying Requirements.

(a) Purpose. The purpose of this section is to protect purchasers of either a personal automobile insurance policy or a residential property insurance policy from being required to purchase a policy of the other type as a condition of policy delivery, issuance, or renewal.

(b) Definitions. The following words and terms, when used in this section, have the following meanings:

(1) Person--As defined in Insurance Code §541.002(2), concerning Definitions.

(2) Personal automobile insurance--As defined in Insurance Code §38.002(a), concerning Underwriting Guidelines for Personal Automobile and Residential Property Insurance; Filing; Confidentiality.

(3) Residential property insurance--As defined in Insurance Code §38.002(a), but also includes farm and ranch insurance and farm and ranch owners insurance.

(4) Underwriting guideline--As defined in Insurance Code §38.002(a).

(c) Prohibited tying requirements. It is an unfair trade practice in violation of Insurance Code Chapter 541, concerning Unfair Methods of Competition and Unfair or Deceptive Acts or Practices, for a person to make the purchase of or use an underwriting guideline that makes the purchase of:

(1) a residential property insurance policy contingent on the purchase of a personal automobile insurance policy from any specific person; or

(2) a personal automobile insurance policy contingent on the purchase of a residential property insurance policy from any specific person.

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

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

TRD-202500453

Jessica Barta

General Counsel

Texas Department of Insurance

Earliest possible date of adoption: March 23, 2025

For further information, please call: (512) 676-6555



TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 53. FINANCE

The Texas Parks and Wildlife Department proposes amendments to 31 TAC §§53.1 - 53.6, concerning Fees, §53.18, concerning License Issuance Procedures, Fees, Possession, and Exemption Rules - Provisions for Digital Products, and §53.60, concerning Stamps. The amendments would, in conjunction with other proposed rules affecting 31 TAC Chapter 57, Subchapter N, concerning the Statewide Recreational and Commercial Fishing Proclamations, and Chapter 65, Subchapter A, concerning the Statewide Hunting Proclamation, published elsewhere in this issue of the *Texas Register*, expand the current provisions regarding the issuance and use of digital products to include and apply to all recreational hunting, fishing, and combination hunting and fishing licenses and stamp endorsements currently issued by the department directly to hunters and anglers, as well as the Annual Public Hunting Permit, Limited Use Permit, Harvest Information Program certification, Hunter Education Deferral Option, federal sandhill crane permit, and controlled exotic snake permit.

The 87th Texas Legislature (2021) enacted House Bill (H.B.) 3081, which authorized the commission to develop and implement a program for the issuance of digital tags for animals, including birds, to holders of hunting licenses authorizing the taking of those animals. The department accordingly initiated a pilot program in 2022 to determine the public receptivity to and logistical feasibility of the concept of digital licenses, stamp endorsements, and tags for hunting and fishing, which resulted in the creation of digital versions of the super combination hunting and "all water" fishing license and the lifetime resident super combination hunting and "all water" fishing package (47 TexReg 88). In 2022, after an analysis of customer purchasing behavior with respect to digital licenses and products, the department determined that it was appropriate to offer a digital version of the youth hunting license, the lifetime resident hunting license, and the lifetime fishing license for the license year beginning September 1, 2023, as well as the exempt angler red drum tag, which allows persons who are exempt from fishing license and stamp

endorsement requirements to harvest red drum. The department is now confident, based on these pilot programs, that all recreational hunting and fishing licenses, stamp endorsements, tags, and selected permits that are sold directly to users can be made available to the public as digital products, which is the purpose of this proposed rulemaking.

The proposed amendments to §53.1, concerning Applicability, would add definitions for "digital product," "electronic acquisition - electronically," "physical product," and "virtual documentation" in order to provide precise and unambiguous meanings for those terms as they are used in the proposed rules.

The proposed amendments to §53.2, concerning License Issuance Procedures, Fees, Possession, and Exemption Rules, §53.3, concerning Combination Hunting and Fishing License Packages, §53.4, concerning Lifetime Licenses, §53.5, concerning Recreational Hunting Licenses, Stamps, and Tags, and §53.6, concerning Recreational Fishing Licenses, Stamps, and Tags, would make conforming changes necessary to comport with the proposed amendment to §53.18, concerning License Issuance Procedures, Fees, Possession, and Exemption Rules - Provisions for Digital Products, which would be retitled "Digital Products," and become the controlling authority for all digital products offered by the department.

The proposed amendment to §53.18, concerning License Issuance Procedures, Fees, Possession, and Exemption Rules - Provisions for Digital Products, would retitle the section and make the provisions of the section applicable to all recreational hunting and fishing licenses, stamp endorsements, tags sold directly to the public, as well as the selected permits mentioned previously in this preamble. The effect of the proposed amendment would be to make digital versions of all recreational hunting and fishing licenses, stamp endorsements, tags, and select permits currently directly available to the public (in addition to the traditional versions of those products).

The proposed amendment to §53.60, concerning Stamps, also would make conforming changes necessary to comport with the proposed amendment to §53.18.

Chris Cerny, Business Analyst, has determined that for each of the first five years that the rules as proposed are in effect, there will be minimal fiscal implications for the department, if any, and those fiscal implications will be positive.

There will be no implications for other units of state or local governments as a result of administering or enforcing the rules.

Mr. Cerny also has determined that for each of the first five years that the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the proposed rules will be the provision of additional licensing options for the convenience and enjoyment of the public.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses, micro-businesses, or rural communities. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impacts to small businesses, micro-businesses, or rural communities. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose,

the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that the proposed rules will not result in direct adverse impacts on small businesses, micro-businesses, or rural communities because the proposed rules regulate various aspects of recreational license privileges that allow individual persons to pursue and harvest public wildlife resources in this state and therefore do not directly affect small businesses, micro-businesses, or rural communities. Therefore, neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rules as proposed, if adopted, will:

(1) neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of any fee; not create, repeal, or limit a regulation; expand a regulation (by making all recreational hunting and fishing licenses and certain permits available as digital license products); neither increase nor decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposal may be submitted to Chris Cerny at (512) 389-4594, e-mail: chris.cerny@tpwd.texas.gov. Comments also may be submitted via the department's website at http://www.tpwd.texas.gov/business/feedback/public_comment/.

SUBCHAPTER A. FEES

DIVISION 1. LICENSE, PERMIT, AND BOAT AND MOTOR FEES

31 TAC §§53.1 - 53.6, 53.18

The amendments are proposed under the authority of Parks and Wildlife Code, §42.010, which requires the department to prescribe the form and issuance of hunting licenses authorized under Parks and Wildlife Code, Chapter 42; §42.0101, which authorizes the commission to promulgate rules for the issuance of digital tags for animals, including birds, to holders of hunting licenses authorizing the taking of those animals, including rules allowing a person using a digital tag to create a digital record at the time of the taking of an animal that includes information required by the department as soon as possible after the taking of the animal and requiring a person using a digital tag to

retain in the person's possession documentation of a required digital record at all times before the carcass is finally processed; §42.0177, which authorizes the commission to modify or eliminate the tagging, carcass, final destination, and final processing requirements of Chapter 42; §42.006, which authorizes the commission to prescribe requirements relating to possessing a license issued under Chapter 42 by rule; §46.0085, which authorizes the department to issue tags for finfish species allowed by law to be taken during each year or season from coastal waters of the state to holders of licenses authorizing the taking of finfish species; §46.0086, which authorizes the commission to prescribe tagging requirements for the take of finfish; §50.004, which requires the department to issue and prescribe the form and manner of issuance for combination hunting and fishing licenses, including identification and compliance requirements; §61.052, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; and §61.054 which requires the commission to specify the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

The proposed amendments affect Parks and Wildlife Code, Chapters 42, 46, 50, and 61.

§53.1. *Applicability; Definitions.*

(a) Except for the fees established in Chapter 59 of this title (relating to Parks) and Chapter 69, Subchapter H, of this title (relating to Issuance of Marl, Sand, and Gravel Permits), the fees established by this chapter prevail over all other chapters in this title.

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

(1) Digital product (digital license, digital stamp endorsement, digital tag, digital permit)--A license, stamp endorsement, tag, or permit issued by the department that is not a physical license, physical stamp endorsement, physical tag, or physical permit but serves as virtual documentation of a person's hunting and/or fishing privileges and compliance with the applicable license and permit requirements of the Parks and Wildlife Code and rules of the commission.

(2) Electronic acquisition (electronically)--Acquisition of a license, stamp endorsement, tag, or permit, issued in either digital or physical form, from the department by phone or online.

(3) Physical product (physical license, physical stamp endorsement, physical tag, or physical permit)--A tangible, material license, stamp endorsement, tag, or permit issued by the department that serves as tangible documentation of a person's specific hunting and/or fishing privileges and compliance with the applicable license and permit requirements of the Parks and Wildlife Code and the rules of the commission.

(4) Virtual documentation--An electronic record obtained from and maintained by the department indicating the purchase, possession, or acquisition of a digital product.

§53.2. *License Issuance Procedures, Fees, Possession, and Exemption Rules.*

(a) Hunting license [possession].

(1) (No change.)

(2) A person may hunt in this state without having a valid physical hunting license in immediate possession if that person has acquired a license electronically and has either:

(A) a receipt, notification, or application data from the department on a smart phone, computer, tablet, or similar device indicating acquisition of an appropriate digital product identified in §53.18 of this title (relating to Digital Products); [a digital license described in §53.3(a)(12) of this title (relating to Combination Hunting and Fishing License Packages) or §53.4(a)(1) of this title (relating to Lifetime Licenses);] or

(B) (No change.)

(3) - (4) (No change.)

(b) Fishing license; Tags [possession].

(1) A person may fish in this state without having a valid physical fishing license in immediate possession if that person:

(A) (No change.)

(B) has acquired a license electronically and has either:

(i) a receipt, notification, or application data from the department on a smart phone, computer, tablet, or similar device indicating acquisition of a digital product identified in §53.18 of this title [license described in §53.3(a)(12) of this title or §53.4(a)(1) of this title]; or

(ii) (No change.)

(2) No person may catch and retain a red drum or spotted seatrout exceeding the maximum length limit established in Chapter 57, Subchapter N, Division 2, of this title (relating to Statewide Recreational Fishing Proclamation [over 28 inches in length]) in the coastal waters of this state without having a valid physical fishing license, saltwater sportfishing stamp (unless exempt), and valid appropriate (red drum or spotted seatrout) tag in immediate possession, unless the person has purchased a valid digital product identified in §53.18 of this title [license described in §53.3(a)(12) of this title or a valid license with digital tags under §53.4(a)(1) of this title].

~~[(3) No person may catch and retain a spotted seatrout 28 inches or greater in length in the coastal waters of this state without having a valid fishing license, saltwater sportfishing stamp (unless exempt), and valid Spotted Seatrout tag in immediate possession, unless the person has purchased a valid digital license described in §53.3(a)(12) of this title or a valid license with digital tags under §53.4(a)(1) of this title.]~~

(c) Issuance of licenses and stamp endorsements electronically (on-line or by telephone).

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

(3) The fees established by this subsection also apply to the electronic acquisition of a digital product [license] identified in §53.18 of this title [§53.3(a)(12) of this title or §53.4(a)(1)] of this title.

(d) - (g) (No change.)

(h) A person who has purchased a valid physical hunting, fishing, or combination hunting and fishing license product but is not in physical possession of that physical license product [license] in any circumstance for which physical possession of the license product [the license] is required may use a wireless communications device (laptop, cellphone, smart phone, electronic tablet, phablet, or similar device) to satisfy applicable license possession requirements.

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

§53.3. *Combination Hunting and Fishing License Packages.*

(a) Combination hunting and fishing license packages may be priced at an amount less than the sum of the license and stamp prices of the individual licenses and stamps included in the package.

(1) - (11) (No change.)

~~[(12) Digital super combination hunting and "all water" fishing license package. The licenses listed in paragraphs (7) and (8) of this subsection are available in a digital version that does not include the license log or the physical license tags found on the physical license.]~~

~~[(A) The fee for a digital license identified in this paragraph shall be the same as the fee specified for that license in paragraphs (7) and (8) of this section.]~~

~~[(B) A person who acquires a digital license is ineligible to acquire any other form of recreational hunting or fishing license in the same license year.]~~

~~[(C) The digital licenses identified in this paragraph are available only through the department's website at www.tpwd.texas.gov.]~~

~~[(D) The provisions of §65.8 of this title (relating to Alternative Licensing System) do not apply to a digital license.]~~

~~(12) [(13)] Replacement combination or replacement super combination packages--\$10 except for a replacement disabled veteran super combination hunting and "all water" fishing package or a Texas resident active-duty [active duty] military super combination hunting and "all water" fishing package, which shall be replaced at no charge.~~

(b) (No change.)

§53.4. *Lifetime Licenses.*

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

~~[(d) The licenses listed in this section are available with a digital tag option that does not require the license log or the physical license tags found on the physical license.]~~

~~[(1) The digital tag option is available beginning the year after the year of purchase of the license (and each year thereafter); and]~~

~~[(2) the provisions of §53.3(a)(12)(B) - (D) of this title (relating to Combination Hunting and Fishing License Packages) apply.]~~

§53.5. *Recreational Hunting Licenses, Stamps, and Tags.*

(a) Hunting Licenses:

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

(3) youth hunting--\$7.

~~[(A) Valid for any person under 17 years of age on the date of license purchase.]~~

~~[(B) This license is available in a digital version that does not include the license log or the physical license tags found on the physical license.]~~

(4) - (9) (No change.)

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

§53.6. *Recreational Fishing Licenses, Stamps, and Tags.*

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

(e) Fishing tags:

(1) exempt angler red drum tag (provides a red drum tag for persons that are exempt by statute or rule from the purchase of a resident or non-resident fishing license of any type or duration)--\$3;

~~[(A) Provides a red drum tag for persons that are exempt from the purchase of a resident or non-resident fishing license of any type or duration.]~~

~~[(B) This tag is available in a digital version. At the time of execution, the user must be in possession of a smart phone, computer, tablet, or similar device indicating acquisition of the digital tag.]~~

(2) bonus red drum tag (provides a second red drum tag to persons who [that] have previously received a red drum tag)--\$3. [This tag is available in a digital version. At the time of execution, the user must be in possession of a smart phone, computer, tablet, or similar device indicating acquisition of the digital tag;]

(3) exempt angler spotted seatrout tag (provides a spotted seatrout tag for persons who are exempt by statute or rule from the purchase of a resident or non-resident fishing license of any type or duration)--\$3;

~~[(A) provides a spotted seatrout tag for persons that are exempt from the purchase of a resident or non-resident fishing license of any type or duration.]~~

~~[(B) this tag is available in a digital version. At the time of execution, the user must be in possession of a smart phone, computer, tablet, or similar device indicating acquisition of the digital tag.]~~

(4) bonus spotted seatrout tag ([-] provides a second spotted seatrout tag to persons who [that] have previously received a spotted seatrout tag)--\$3. [This tag is available in a digital version. At the time of execution, the user must be in possession of a smart phone, computer, tablet, or similar device indicating acquisition of the digital tag;]

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

§53.18. [License Issuance Procedures, Fees, Possession, and Exemption Rules - Provisions for] Digital Products.

(a) Digital Products. [The provisions of this section are in addition to the provisions of §53.2 of this title (relating to License Issuance Procedures, Fees, Possession, and Exemption Rules) and to the extent that any provision of this section conflicts with the provisions of §53.2 of this title, this section controls].

(1) The licenses, stamp endorsements, and tags listed in §§53.3, 53.4, 53.5(a) and (c), and 53.6(a) - (c) and (c)(1) - (4) of this title (relating to Combination Hunting and Fishing License Packages; Lifetime Licenses; Recreational Hunting Licenses, Stamps, and Tags; and Recreational Fishing Licenses, Stamps, and Tags) are available as a digital product. Digital licenses do not include the license log or the physical license tags found on the traditional physical license.

(2) In addition to the license products identified in paragraph (1) of this subsection, the following items are available as digital products:

(A) the public hunting permits identified in §53.10(a)(1) and (3) of this title (relating to Public Hunting Permits and Fees);

(B) the federal sandhill crane permit required by §65.318 of this title (relating to Sandhill Crane);

(C) the hunter education deferral option established in §51.80 of this title (relating to Mandatory Hunter Education);

(D) the reptile and amphibian stamp required by Parks and Wildlife Code, Chapter 43, Subchapter W; and

(E) the recreational controlled exotic snake permit required by §55.652 of this title (relating to Controlled Exotic Snakes).

(b) General Provisions.

(1) To the extent that any provision of this section conflicts with the provisions of §53.2 of this title, this section controls.

(2) A person who acquires a digital license is ineligible to acquire any other form of recreational hunting or fishing license in the same license year.

(3) The fees established in this division also apply to the issuance of the digital products identified in this section.

(4) The digital products associated with items enumerated in §53.4 of this title are available beginning the year after the year of purchase of the license (and each year thereafter).

(5) A person who has acquired a digital product may engage in an activity permitted or authorized by the digital product, provided the person Hunting license possession. A person may hunt in this state without having a valid physical hunting license in immediate possession if that person has acquired a license electronically and] has a receipt, notification, or application data from the department on a smart phone, computer, tablet, or similar device indicating acquisition of the appropriate digital product. [a digital license described in §53.3(a)(12) of this title (relating to Combination Hunting and Fishing License Packages); §53.4 of this title (relating to Lifetime Licenses); or §53.5(a)(3) of this title (relating to Recreational Hunting Licenses, Stamps, and Tags);]

(6) The provisions of §65.8 of this title (relating to Alternative Licensing System) do not apply to a digital license.

(7) Because a digital product does not physically exist, the provisions of this subchapter that apply to replacement licenses do not apply to digital products.

(c) Fishing [license possession].

[(4)] A person may fish in this state without having an appropriate, [a] valid physical fishing license product in immediate possession if that person has acquired a license electronically and has a receipt, notification, or application data from the department on a smart phone, computer, tablet, or similar device indicating acquisition of an appropriate [a] digital product [license described in §53.3(a)(12) of this title or §53.4 of this title].

[(2) A person may catch and retain a red drum over 28 inches in length in the coastal waters of this state without having a valid fishing license, saltwater sportfishing stamp, and valid red drum tag in immediate possession, if the person has:]

[(A) obtained a valid digital exempt angler red drum tag; or]

[(B) purchased a valid digital license described in §53.3(a)(12) of this title or a valid license with digital tags under 53.4 of this title.]

[(3) A person may catch and retain a spotted seatrout 28 inches or greater in length in the coastal waters of this state without having a valid fishing license, saltwater sportfishing stamp, and valid spotted seatrout tag in immediate possession, if the person has:]

[(A) obtained a valid digital exempt angler spotted seatrout tag; or]

[(B) purchased a valid digital license described in §53.3(a)(12) of this title or a valid license with digital tags under 53.4 of this title.]

(d) Fees. [Issuance of licenses, stamp endorsements, and tags electronically (on-line or by telephone)-]

[(1) A person may acquire a tag electronically from the department by agreeing to pay a convenience fee of up to \$5 in addition to the normal tag fee, if a fee is required. This fee shall not be charged if the tag is acquired in the same transaction with a license.]

[(2)] The fees established by this subsection apply to the electronic acquisition of a digital product [~~license, stamp endorsement, or tag~~] identified in subsection (a) of this section [~~§53.3(a)(12) of this title, 53.4 of this title, §53.5(a)(3) of this title, or §53.6 of this title (relating to Recreational Fishing Licenses, Stamps, and Tags)~~].

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

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James Murphy

General Counsel

Texas Parks and Wildlife Department

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For further information, please call: (512) 389-4775



SUBCHAPTER B. STAMPS

31 TAC §53.60

The amendment is proposed under the authority of Parks and Wildlife Code, §42.010, which requires the department to prescribe the form and issuance of hunting licenses authorized under Parks and Wildlife Code, Chapter 42; §42.0101, which authorizes the commission to promulgate rules for the issuance of digital tags for animals, including birds, to holders of hunting licenses authorizing the taking of those animals, including rules allowing a person using a digital tag to create a digital record at the time of the taking of an animal that includes information required by the department as soon as possible after the taking of the animal and requiring a person using a digital tag to retain in the person's possession documentation of a required digital record at all times before the carcass is finally processed; §42.0177, which authorizes the commission to modify or eliminate the tagging, carcass, final destination, and final processing requirements of Chapter 42; §42.006, which authorizes the commission to prescribe requirements relating to possessing a license issued under Chapter 42 by rule; §46.0085, which authorizes the department to issue tags for finfish species allowed by law to be taken during each year or season from coastal waters of the state to holders of licenses authorizing the taking of finfish species; §46.0086, which authorizes the commission to prescribe tagging requirements for the take of finfish; §50.004, which requires the department to issue and prescribe the form and manner of issuance for combination hunting and fishing licenses, including identification and compliance requirements; §61.052, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; and §61.054 which requires the commission to specify the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area,

body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

The proposed amendments affect Parks and Wildlife Code, Chapters 42, 46, 50, and 61.

§53.60. *Stamps.*

(a) Stamp Form, Design and Manner of Issuance.

(1) (No change.)

(2) A digital combination license or combination license package issued under the provisions of §53.18 of this title (relating to Digital Products [§53.3(a)(12) of this title (relating to Combination Hunting and Fishing License Packages)]) includes all required endorsements.

(b) Stamp Purchase Identification and Possession Requirements.

(1) A person may hunt without a required state hunting stamp endorsement in immediate possession if the person:

(A) possesses a valid digital product [~~license~~] issued under the provisions of §53.18 of this title [~~§53.3(a)(12) of this title, a valid license with digital tags under §53.4 of this title (relating to Lifetime Licenses) or §53.5(a)(3) of this title (relating to Recreational Hunting Licenses, Stamps, and Tags)~~]; or

(B) has acquired a stamp endorsement electronically and has a valid authorization number in possession while awaiting fulfilment of the physical tag. Authorization numbers shall only be valid for 20 days from purchase date.

(2) A person may fish without a required fishing stamp endorsement in immediate possession if the person:

(A) possesses a valid digital product [~~license~~] issued under the provisions of §53.18 of this title [~~§53.3(a)(12) of this title or a valid license with digital tags under §53.4 of this title~~]; or

(B) has acquired a stamp endorsement electronically and has a valid authorization number in possession while awaiting fulfilment of the physical tag. Authorization numbers shall only be valid for 20 days from purchase date.

(c) - (e) (No change.)

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

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James Murphy

General Counsel

Texas Parks and Wildlife Department

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CHAPTER 57. FISHERIES

The Texas Parks and Wildlife Department proposes amendments to 31 TAC §§57.156, 57.252, and 57.253, concerning Fisheries.

The proposed amendment to §57.156, concerning Definitions, would remove a reference to a publication that no longer is ap-

pliable to the rule. The Texas Parks and Wildlife Commission finds that removing the reference is necessary to eliminate possible confusion.

The proposed amendment to §57.252, concerning General Provisions, would, for the sake of clarity, add a provision repeating the statutory prohibition (Parks and Wildlife Code, §66.015) of the act of introducing any species of fish, shellfish, or aquatic plant into the public water of the state without a permit issued by the department.

The proposed amendment to §57.253, concerning Permit Application, would eliminate subsection (c)(2)(B)(i), which is no longer necessary because the Texas Department of Agriculture no longer regulates aquaculture.

The proposed amendments are a result of the department's review of its regulations under the provisions of Government Code, §2001.039, which requires each state agency to review each of its regulations no less frequently than every four years and to re-adopt, adopt with changes, or repeal each rule as a result of the review.

Robert Macdonald, Regulations Coordinator, has determined that for each of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state or local governments as a result of administering or enforcing the rules.

Mr. Macdonald also has determined that for each of the first five years that the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the proposed rules will be accurate department regulations.

There will be no adverse economic effect on persons required to comply with the rules as proposed, as the rules apply only to internal department administrative processes.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses, micro-businesses, or rural communities. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small and microbusinesses and rural communities. Those guidelines state that an agency need only consider a proposed rule's direct adverse economic impacts to determine if any further analysis is required. The department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that the proposed rules would result in no direct economic effect on any small businesses, micro-businesses, or rural community, as the rules apply only to internal department administrative processes and not to any business or person. Therefore, neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rules as proposed, if adopted, will not create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of an existing fee; not create, expand, or repeal an existing regulation; not increase or decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposed rules may be submitted to Robert Macdonald at (512) 389-4775, e-mail: robert.macdonald@tpwd.texas.gov. Comments also may be submitted via the department's website at http://www.tpwd.texas.gov/business/feedback/public_comment/.

SUBCHAPTER B. MUSSELS AND CLAMS

31 TAC §57.156

The amendment is proposed under Parks and Wildlife Code, §78.006, which authorizes the to regulate the taking, possession, purchase, and sale of mussels and clams.

The proposed amendment affects Parks and Wildlife Code, Chapter 11.

§57.156. Definitions.

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

(1) (No change.)

(2) Freshwater mussel--Bivalve mollusks of the family Unionidae [~~collectively including Amblimidae and Margaritiferidae~~ as listed by the American Fisheries Society Special Publication 29].

(3) - (5) (No change.)

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

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James Murphy
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SUBCHAPTER C. INTRODUCTION OF FISH, SHELLFISH AND AQUATIC PLANTS

31 TAC §57.252, §57.253

The amendment is proposed under the authority of Parks and Wildlife Code, §66.007, which requires the department to make rules to carry out the provisions of that section.

The proposed amendment affects Parks and Wildlife Code, Chapter 66.

§57.252. *General Provisions.*

(a) No person may place any species of fish, shellfish, or aquatic plant into the public water of the state without a permit issued by the department.

(b) [(a)] An offshore aquaculture permit under this subchapter may be issued to an individual, corporation, company, or other entity that meets all requirements of Texas law for transacting business in this state and the requirements of this subchapter applicable to offshore aquaculture permits.

(c) [(b)] A permit under this subchapter other than for an offshore aquaculture facility may be issued to a named individual only and not to a corporation, partnership, or other entity.

(d) [(c)] A permit issued under this subchapter shall not be sold or transferred except with the approval of the department.

(e) [(d)] Except as provided by the terms and conditions of the permit, a one-time introduction permit, for releases other than those made into an offshore aquaculture facility, is valid for 60 days from the date of issuance or until the permitted introduction has been completed, whichever comes first.

(f) [(e)] For offshore aquaculture facilities:

(1) - (7) (No change.)

(g) [(f)] A holder of an offshore aquaculture permit must:

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

(h) [(g)] A permit is not required for any person, while fishing, to place goldfish (*Carassius auratus*), common carp (*Cyprinus carpio*), native shrimp, crabs, crawfish and nongame fish into public waters or to immediately release any fish that does not comply with size and bag limits for that species.

(i) [(h)] An employee of the department acting at the direction of the executive director is exempt from the permit requirements specified by these sections.

§57.253. *Permit Application.*

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

(c) An application for an offshore aquaculture facility:

(1) (No change.)

(2) must include:

(A) (No change.)

(B) proof that the applicant has obtained:

~~[(i)] a valid license issued by the Texas Department of Agriculture to operate an aquaculture facility (Agriculture Code Chapter 134);~~

(i) [(ii)] all applicable state and/or federal permits or authorizations relating to water quality standards;

(ii) [(iii)] all applicable state and federal permits, authorizations, or clearances related to navigational hazards; and

(iii) [(iv)] any approval or permit required by the General Land Office;

(C) - (G) (No change.)

(d) - (f) (No change.)

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

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James Murphy

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CHAPTER 57. FISHERIES

The Texas Parks and Wildlife Department proposes the repeal of 31 TAC §57.984 and §57.985 and amendments to §57.981 and §57.992, concerning the Statewide Recreational and Commercial Fishing Proclamations.

The repeal of §57.984, concerning Special Provisions - Digital Exempt Angler Tags is necessary to comport current rules with proposed provisions published elsewhere in this issue that would make all recreational fishing license products (licenses, stamp endorsements, tags, and selected permits) available as digital products.

The proposed repeal of §57.985, concerning Spotted Seatrout - Special Provisions, is necessary to remove temporary interim provisions governing the take of spotted seatrout, adopted as a stand-alone section in 2024 to avoid conflict with other proposed rulemaking, in order to move them to §57.981, concerning Bag, Possession, and Length Limits, where they properly belong.

In February of 2021, Winter Storm Uri resulted in the largest freeze-related fish kill on the Texas Gulf coast since the 1980s, severely impacting spotted seatrout populations coastwide. In an effort to accelerate recovery of the spotted seatrout population, the department promulgated a series of rules that implemented reduced bag and "slot" (a mechanism to protect certain age classes) limits. Department monitoring has continuously indicated lower post-freeze catch rates (compared to the previous ten-year average), and the commission accordingly acted to implement continued measures to enhance and accelerate population recovery, adopting rules that reduced the bag limit and narrowed the slot limit for spotted seatrout. In January 2024, the commission directed staff to develop a mechanism to allow the retention of "oversized" fish (fish in excess of the maximum length established by rule) at a level not likely to compromise or defeat recovery measures, resulting in the adoption of §57.985, which also replaced the previous daily limit for the retention of oversized spotted seatrout with an annual limit.

The proposed amendment to §57.981, concerning Bag, Possession, and Length Limits, would incorporate the contents of current §57.985, concerning Spotted Seatrout - Special Provisions, for reasons discussed earlier in this preamble. The proposed repeal and amendment are not substantive, do not alter the applicability of the rules currently in force and effect, and serve only to consolidate all provisions governing spotted seatrout harvest in a single place. The proposed amendment also would make conforming changes to accommodate proposed amendments to

Chapter 53, concerning Finance, published elsewhere in this issue, that would provide for the issuance of all recreational fishing licenses, stamp endorsements, and tags as digital products. In 2021, the department launched a pilot program to determine the feasibility of implementing digital versions of physical licenses, tags, and permits. The results of the pilot program were favorable, and the department is therefore proceeding with respect to making all recreational fishing licenses, stamp endorsements, and tags available as digital products.

The proposed amendment to §57.992, concerning Bag, Possession, and Length Limits, would liberalize commercial harvest regulations for greater amberjack in Texas state waters by increasing the maximum length (currently 34 total inches) to match the current federal standard, which is 40 inches (total length). The amendment is intended to make commercial harvest regulations for greater amberjack consistent with federal regulations, which the department believes will prevent confusion and enhance compliance, administration, and enforcement.

Robert Macdonald, Regulations Coordinator, has determined that for each of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state or local governments as a result of administering or enforcing the rules.

Mr. Macdonald also has determined that for each of the first five years that the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the proposed rules will be the dispensation of the agency's statutory duty to protect and conserve the resources of this state, the duty to equitably distribute opportunity for the enjoyment of those resources among the citizens, and the execution of the commission's policy to maximize recreational opportunity within the precepts of sound biological management practices.

There will be no adverse economic effect on persons required to comply with the rules as proposed.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses, micro-businesses, or rural communities. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small and microbusinesses and rural communities. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to determine if any further analysis is required. The department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that the proposed repeals and the proposed amendment to §57.982 regulate various aspects of recreational license privileges that allow individual persons to pursue and harvest wildlife resources in this state and therefore do not directly affect small businesses, micro-businesses, or rural communities. Therefore, neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required. With respect to the proposed amendment to §57.992, which affects commercial fisheries, the rules are necessary to comport state rules with federal rules and affect conduct that would be unlawful under federal law without respect to state action. Therefore, neither the economic

impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not exert a direct economic impact on local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rules as proposed, if adopted, will: neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of any fee; not create a new regulation, but modify existing regulations; will repeal an existing regulation, but will not limit an existing regulation; neither increase nor decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposal may be submitted to Dakus Geeslin (Coastal Fisheries), at (512) 389-8734 (email: Dakus.Geeslin@tpwd.texas.gov). Comments also may be submitted via the department's website at http://www.tpwd.texas.gov/business/feedback/public_comment/.

SUBCHAPTER N. STATEWIDE RECREATIONAL AND COMMERCIAL FISHING PROCLAMATION

DIVISION 2. STATEWIDE RECREATIONAL FISHING PROCLAMATION

31 TAC §57.981

The amendment is proposed under the authority of Parks and Wildlife Code, Parks and Wildlife Code, §46.0085, which authorizes the department to issue tags for finfish species allowed by law to be taken during each year or season from coastal waters of the state to holders of licenses authorizing the taking of finfish species; §46.0086, which authorizes the commission to prescribe tagging requirements for the take of finfish; §50.004, which requires the department to issue and prescribe the form and manner of issuance for combination hunting and fishing licenses, including identification and compliance requirements; and Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

The proposed amendment affects Parks and Wildlife Code, Chapters 46 and 61.

§57.981. *Bag, Possession, and Length Limits.*

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

(c) There are no bag, possession, or length limits on game or non-game fish, except as provided in this subchapter.

(1) - (4) (No change)

(5) Except as provided in subsection (d) of this section, the statewide daily bag and length limits shall be as follows.

(A) - (F) (No change.)

(G) Drum, red.

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

(iv) Except as provided in this subparagraph for red drum taken under a digital product issued under the provisions of §53.18 of this title (relating to Digital Products), [During a license year,] one red drum exceeding the maximum length limit established by this subparagraph may be retained per license year when affixed with a properly executed Red Drum Tag, a properly executed Exempt Angler Red Drum Tag, or with a properly executed Duplicate Exempt Red Drum Tag, and one red drum over the stated maximum length limit may be retained when affixed with a properly executed Bonus Red Drum Tag. Any fish retained under authority of a Red Drum Tag, an Exempt Angler Red Drum Tag, a Duplicate Exempt Red Drum Tag, or a Bonus Red Drum Tag may be retained in addition to the daily bag and possession limit as provided in this section.

(v) A person who lawfully takes a red drum exceeding the maximum length limit under a digital product [license] issued under the provisions of §53.18 of this title [§53.3(a)(12) this title (relating to Super Combination Hunting and Fishing License Packages) or under a lifetime license with the digital tagging option provided by §53.4(a)(1) of this title (relating to Lifetime Licenses) that exceeds the maximum length limit established by this subparagraph] is exempt from any requirement of Parks and Wildlife Code or this subchapter regarding the use of physical [license] tags for that species; however, that person shall immediately upon take ensure that a harvest report is created and submitted via a mobile or web application provided by the department for that purpose. If the absence of data connectivity prevents the receipt of a confirmation number from the department following the report required by this subparagraph, the person who took the red drum is responsible for ensuring that the report required by this subparagraph is uploaded to the department immediately upon the availability of network connectivity.

(vi) It is an offense for any person to possess a red drum exceeding the maximum length established by this subparagraph under a digital product [license or digital tagging] option without being in immediate physical possession of an electronic device that is:

(I) - (II) (No change.)

(vii) (No change.)

(H) - (N) (No change.)

(O) Seatrout, spotted.

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

(iv) Except as provided in clause (v)(II) of this subparagraph, a person may retain [Only] one spotted seatrout greater than 28 [30] inches [may be retained] per license year [day]. A spotted seatrout retained under this clause [subclause] counts as part of the daily bag and possession limit.

(v) During a license year, a person fishing under an appropriate physical product may:

(I) retain one spotted seatrout exceeding the length limit established by clause (iv) this subparagraph, provided a properly executed Spotted Seatrout Tag, a properly executed Exempt Angler Spotted Seatrout Tag, or a properly executed Duplicate Exempt Spotted Seatrout Tag has been affixed to the fish; and

(II) additionally, may retain one spotted seatrout exceeding the length limit established by clause (iv) of this subparagraph in addition to a spotted seatrout retained under the provisions of subclause (I) of this clause, provided a properly executed Bonus Spotted Seatrout Tag or properly executed Duplicate Bonus Spotted Seatrout Tag has been affixed to the fish.

(vi) It is an offense for any person to possess a spotted seatrout exceeding the length limit established by clause (iv) of this subparagraph under a digital product issued under the provisions of §53.18 of this title (relating to Digital Products) without being in immediate physical possession of an electronic device that is:

(I) loaded with the mobile or web application designated by the department for harvest reporting under this section; and

(II) capable of uploading the harvest report required by this section.

(vii) A person who takes a spotted seatrout under a digital product issued under the provisions of §53.18 of this title or under a lifetime license with the digital tagging option provided by §53.4(a)(1) of this title (relating to Lifetime Licenses) that exceeds the length limit established by clause (iv) of this subparagraph is exempt from any requirement of Parks and Wildlife Code or this subchapter regarding the use of physical license products for spotted seatrout; however, that person shall immediately upon take ensure that a harvest report is created and submitted via a mobile or web application provided by the department for that purpose. If the absence of data connectivity prevents the receipt of a confirmation number from the department following the report required by this subparagraph, the person who took the spotted seatrout is responsible for ensuring that the report required by this subsection is uploaded to the department immediately upon the availability of network connectivity.

(viii) A person who is fishing under a license identified in §53.4(a)(1) of this title and selected the fulfillment of physical tags must comply with the tagging requirements of this chapter that are applicable to the tagging of spotted seatrout.

(P) - (Y) (No change.)

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

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James Murphy

General Counsel

Texas Parks and Wildlife Department

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31 TAC §57.984, §57.985

The repeals are proposed under the authority of Parks and Wildlife Code, §46.0085, which authorizes the department to issue tags for finfish species allowed by law to be taken during each year or season from coastal waters of the state to holders of licenses authorizing the taking of finfish species; §46.0086, which authorizes the commission to prescribe tagging requirements for the take of finfish; §50.004, which requires the department to issue and prescribe the form and manner of issuance for combination hunting and fishing licenses, including identification and compliance requirements; and Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

The proposed repeals affect Parks and Wildlife Code, Chapters 46 and 61.

§57.984. *Special Provisions - Digital Exempt Angler Tags.*

§57.985. *Spotted Seatrout- Special Provisions.*

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

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DIVISION 3. STATEWIDE COMMERCIAL FISHING PROCLAMATION

31 TAC §57.992

The amendment is proposed under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

The proposed amendment affects Parks and Wildlife Code, Chapter 61.

§57.992. *Bag, Possession, and Length Limits.*

- (a) (No change.)

(b) There are no bag, possession, or length limits on game fish, non-game fish, or shellfish, except as otherwise provided in this subchapter.

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

(A) Amberjack, greater.

(i) (No change.)

(ii) Minimum length: 40 [34] inches.

(iii) (No change.)

(B) - (N) (No change.)

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

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CHAPTER 58. OYSTERS, SHRIMP, AND FINFISH

The Texas Parks and Wildlife Department proposes amendments to 31 TAC §58.21 and §58.164.

The proposed amendment to §58.21, concerning Taking or Attempting to Take Oysters from Public Oyster Beds; General Rules, would eliminate provisions that expired on their own terms on November 1, 2024, and are therefore no longer necessary.

The proposed amendment to §58.164, concerning Shrimping Inside Waters - Commercial Bait Shrimping, would make nonsubstantive changes to insert a missing preposition in subsection (b)(2)(A) and eliminate duplicated language in subsection (d). The Texas Parks and Wildlife Commission finds that the alterations are prudent because they eliminate possible confusion.

The proposed amendments are a result of the department's review of its regulations under the provisions of Government Code, §2001.039, which requires each state agency to review each of its regulations no less frequently than every four years and to re-adopt, adopt with changes, or repeal each rule as a result of the review.

Robert Macdonald, Regulations Coordinator, has determined that for each of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state or local governments as a result of administering or enforcing the rules.

Mr. Macdonald also has determined that for each of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the proposed rules will be accurate regulations.

There will be no adverse economic effect on persons required to comply with the rules as proposed.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses, micro-businesses, or rural communities. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small and microbusinesses and rural communities. Those guidelines state that an agency need only consider a proposed rule's direct adverse economic impacts to determine if any further analysis is required. The department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that the proposed rules do not affect small businesses, micro-businesses, or rural communities. Therefore, neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rules as proposed, if adopted, will: neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of any fee; not create a new regulation; not limit, expand, or repeal an existing regulation; neither increase nor decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposed rules may be submitted to Robert Macdonald (512) 389-4775, email: robert.macdonald@tpwd.texas.gov. Comments also may be submitted via the department's website at http://www.tpwd.texas.gov/business/feedback/public_comment/.

SUBCHAPTER A. STATEWIDE OYSTER FISHERY PROCLAMATION

31 TAC §58.21

The amendment is proposed under Parks and Wildlife Code, §76.301, which authorizes the commission to regulate the taking, possession, purchase and sale of oysters, including prescribing the times, places, conditions, and means and manner of taking oysters.

The proposed amendment affects Parks and Wildlife Code, Chapter 76.

§58.21. *Taking or Attempting to Take Oysters from Public Oyster Beds: General Rules.*

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

(c) Area Closures.

(1) (No change.)

(2) No person may take or attempt to take oysters within an area described in this paragraph. The provisions of subparagraphs (A)(i)-(ii) cease effect on November 1, 2025. The provisions of subparagraph (A)(iii)-(iv) cease effect on November 1, 2026. [The provisions of subparagraph (B) of this paragraph cease on November 1, 2024.]

(A) Galveston Bay.

(i) - (iv) (No change.)

~~[(B) Espiritu Santo Bay- Josephine's Reef. The area within the boundaries of a line beginning at 28° 18' 42.6"N, 96° 35' 48.9"W (28.311833°N, -96.596916°W; corner marker buoy A); thence, to 28° 18' 34.7"N, 96° 35' 42.0"W (28.309651°N, -96.594988°W; corner marker buoy B); thence to 28° 18' 22.1"N, 96° 36' 00.3"W (28.306142°N, -96.600075°W; corner marker buoy C); thence to 28° 18' 30.0"N, 96° 36' 07.2"W (28.308324°N, -96.602004°W; corner marker buoy D); and thence back to corner marker buoy A.]~~

~~[(B) [(C)] Christmas Bay, Brazoria County.~~

~~[(C) [(D)] Carancahua Bay, Calhoun and Matagorda County.~~

~~[(D) [(E)] Powderhorn Lake, Calhoun County.~~

~~[(E) [(F)] Hynes Bay, Refugio County.~~

~~[(F) [(G)] St. Charles Bay, Aransas County.~~

~~[(G) [(H)] South Bay, Cameron County.~~

~~[(H) [(I)] Mesquite Bay, Aransas and Calhoun counties.~~

~~[(I) [(J)] Carlos Bay, Aransas County. The area within the boundaries of Carlos Bay from the border of Mesquite Bay to a line beginning at 28° 06' 52.19"N, 96° 55' 32.52"W (28.11450°N, -96.92570°W) and ending at 28° 06' 38.19"N, 96° 53' 17.41"W (28.11061°N, -96.88817°W).~~

~~[(J) [(K)] Ayres Bay, Calhoun County. The area within the boundaries of Ayres Bay from the border of Mesquite Bay to a line beginning at 28° 12' 50.18"N, 96° 48' 44.53"W (28.21394°N, -96.81237°W) and ending at 28° 11' 17.05"N, 96° 47' 32.38"W (28.18807°N, -96.79233°W).~~

~~[(K) [(L)] Areas along all shorelines extending 300 feet from the water's edge, including all oysters (whether submerged or not) landward of this 300-foot line.~~

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

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James Murphy

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: March 23, 2025

For further information, please call: (512) 389-4775

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SUBCHAPTER B. STATEWIDE SHRIMP FISHERY PROCLAMATION

31 TAC §58.164

The amendment is proposed under Parks and Wildlife Code, §77.007, which authorizes the commission to regulate the catching, possession, purchase, and sale of shrimp.

The proposed amendment affects Parks and Wildlife Code, Chapter 77.

§58.164. *Shrimping Inside Waters' Commercial Bait Shrimping.*

(a) (No change.)

(b) Commercial bait-shrimp season.

(1) (No change.)

(2) Legal shrimping hours.

(A) From August 15 through March 31 legal shrimping hours are 30 minutes before sunrise to 30 minutes after sunset.

(B) - (C) (No change.)

(c) (No change.)

(d) Size limits [Size limits]: Shrimp of any size may be retained when caught lawfully during commercial bait-shrimp operations in inside waters.

(e) (No change.)

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

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James Murphy

General Counsel

Texas Parks and Wildlife Department

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CHAPTER 65. WILDLIFE

The Texas Parks and Wildlife Department proposes amendments to 31 TAC §§65.7, 65.8, 65.10, 65.29, 65.42, 65.62, and 65.64, concerning the Statewide Hunting Proclamation.

The proposed amendments to §65.7, concerning Application, §65.8, concerning Alternative Licensing System, and §65.10, concerning Possession of Wildlife Resources, would make conforming changes to accommodate proposed amendments to Chapter 53, concerning Finance, published elsewhere in this issue of the *Texas Register*, that would provide for the issuance of digital versions of all recreational hunting licenses, stamp endorsements, tags, and selected permits that are currently available directly to the public as physical products. In 2021, the department launched a pilot program to determine the feasibility of implementing digital versions of physical licenses, stamp endorsements, tags, and permits. The results of the pilot program were favorable, and the department is therefore proceeding

with respect to making all recreational license products currently available directly to the public available in a digital version.

The proposed amendment to §65.29, concerning Managed Lands Deer Program (MLDP), would allow the take of mule deer under the appropriate MLDP tag by any lawful means at any time during the period of validity of the tag (from the Saturday closest to September 30 through the last Sunday in January). Under current rule, lawful means of harvest is restricted to lawful archery equipment from the Saturday closest to September 30 for 35 consecutive days, which mirrors the current archery-only season dates established in the county regulations in §65.42, concerning Deer. Because the total harvest on MLDP properties is controlled by the department through the issuance of tags issued to landowners, the department has determined there is no biological reason not to provide landowners and land managers enrolled in the MLDP the latitude to attain their harvest quota at their own discretion by any means lawful in the county of take (which has long been the case on MLDP properties with respect to the harvest of white-tailed deer).

The proposed amendment to §65.42, concerning Deer, would expand the archery-only season for mule deer from 35 days to 62 days in Brewster, Crane, Crockett, Culberson, Ector, El Paso, Hudspeth, Jeff Davis, Loving, Midland, Pecos, Presidio, Reagan, Reeves, Terrell, Upton, Val Verde, Ward, and Winkler counties. In addition, the proposed amendment would expand the archery-only season for mule deer from 35 to 56 days in those Panhandle counties that have an archery-only season for mule deer. The proposed amendment is intended to provide additional hunting opportunity for archery enthusiasts and will not result in depletion or waste of the resource, as hunter success with respect to archery harvest of mule deer is generally quite low and the harvest regulations for antlerless mule deer are very conservative. The proposed amendment would in essence continue the current archery season in each affected county until opening day of the general season. The proposed amendment would also make conforming changes to provisions governing digital products, for reasons discussed earlier in this preamble. Finally, the proposed amendment to §65.42 would eliminate subsection (c)(6) which is no longer necessary because the department has eliminated CWD management zones.

The proposed amendment to §65.62, concerning Quail: Open Seasons, Bag and Possession Limits, would alter the current season structure by closing the season on the last day of February rather than the last Sunday in February. Under the existing regulatory structure, the last Sunday in February often falls on a different date each year, potentially creating confusion amongst hunters, landowners, and other interested parties. The proposed change would result in an additional 2.6 days of hunting per year over the next decade, with similar levels thereafter, which the department has determined will not result in depletion or waste of the resource.

The proposed amendment to §65.64, concerning Turkey, would open a fall (first Saturday in November through the first Sunday in January, either sex) and spring (Saturday closest to April 1 for 44 consecutive days, gobblers or bearded hens) season for turkeys in Lubbock County, with a four-bird annual bag limit. The department has determined that there is no biological reason not to allow the take of turkey in Lubbock County and that the proposed open seasons will not result in depletion or waste. The proposed amendment also would make conforming changes to provisions governing digital products, for reason discussed earlier in this preamble, clarify the boundaries for turkey seasons in

Hill County to accommodate the fact that Interstate Highway 35 is divided into I-35 West and I-35 East, and insert season dates that were inadvertently omitted in a previous publication.

Robert Macdonald, Regulations Coordinator, has determined that for each of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state or local governments as a result of administering or enforcing the rules.

Mr. Macdonald also has determined that for each of the first five years that the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the proposed rules will be the dispensation of the agency's statutory duty to protect and conserve the resources of this state, the duty to equitably distribute opportunity for the enjoyment of those resources among the citizens, and the execution of the commission's policy to maximize recreational opportunity within the precepts of sound biological management practices.

There will be no adverse economic effect on persons required to comply with the rules as proposed.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses, micro-businesses, or rural communities. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small and microbusinesses and rural communities. Those guidelines state that an agency need only consider a proposed rule's direct adverse economic impacts to determine if any further analysis is required. The department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that the proposed rules regulate various aspects of recreational license privileges that allow individual persons to pursue and harvest wildlife resources in this state and therefore do not directly affect small businesses, micro-businesses, or rural communities. Therefore, neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rule as proposed, if adopted, will: neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of any fee; not create a new regulation; not limit an existing regulation, but will expand an existing regulation (by lengthening archery

seasons for mule deer); neither increase nor decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments concerning the proposed rules affecting big game species may be submitted to Shawn Gray at (432) 837-0666, e-mail: shawn.gray@tpwd.texas.gov. Comments concerning the proposed rules affecting turkey may be submitted to Shaun Oldenburger at (512) 757-6067, email: shaun.oldenburger@tpwd.texas.gov. Comments also may be submitted via the department's website at https://tpwd.texas.gov/business/feedback/public_comment/.

SUBCHAPTER A. STATEWIDE HUNTING PROCLAMATION

DIVISION 1. GENERAL PROVISIONS

31 TAC §§65.7, 65.8, 65.10, 65.29

The amendments are proposed under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

The proposed amendments affect Parks and Wildlife Code, Chapter 61.

§65.7. *Harvest Log.*

(a) The provisions of this subsection apply only to a person who has acquired [~~in possession of~~] a physical license purchased through an automated point-of-sale system and do not apply to a person who has acquired a digital license identified in §53.18 of this title (relating to Digital Products) [~~issued by the department pursuant to §53.3(a)(12) of this title (relating to Combination Hunting and Fishing License Packages), §53.4 of this title (relating to Lifetime Licenses) or §53.5(a)(3) of this title (relating to Recreational Hunting License, Stamps, and Tags)].~~

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

(b) (No change.)

§65.8. *Alternative Licensing System.*

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

(d) This section does not apply to the digital products [~~licenses~~] identified in §53.18 of this title (relating to Digital Products) [~~§53.3(a)(12) of this title (relating to Combination Hunting and Fishing License Packages), §53.4 of this title (relating to Lifetime Licenses), or §53.5(a)(3) (relating to Recreational Hunting Licenses, Stamps, and Tags)].~~

§65.10. *Possession of Wildlife Resources.*

(a) (No change.)

(b) Under authority of Parks and Wildlife Code, §42.0177, the tagging requirements of Parks and Wildlife Code, §42.018, are modified as follows.

(1) - (4) (No change.)

(5) Except as provided in paragraph (3) of this subsection, the tagging requirements for deer and turkey taken under a digital license issued under the provisions of §53.18 of this title (relating to Digital Products) [§53.3(a)(12) of this title (relating to Super Combination Hunting and Fishing License Packages); under the digital tagging option of §53.4 of this title (relating to Lifetime Licenses); and §53.5(a)(3) of this title (relating to Recreational Hunting License, Stamps, and Tags)] are prescribed in subsection (e) of this section.

(6) (No change.)

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

(e) A person who lawfully kills a deer or turkey under the [a] digital version of a license identified in §53.18 of this title [issued under the provisions of §53.3(a)(12) of this title, the digital tagging option under §53.4 of this title or §53.5(a)(3) of this title (relating to Recreational Hunting License, Stamps, and Tags)] is exempt from any requirement of Parks and Wildlife Code or this subchapter regarding the use or possession of physical license tags for those species; however, that person shall ensure that immediately upon take a harvest report is created and submitted via a mobile or web application provided by the department for that purpose.

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

(f) - (m) (No change.)

§65.29. *Managed Lands Deer Program (MLDP).*

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

(d) MLDP--Mule Deer.

(1) The provisions of subsection (c)(2)(A) - (H) of this section also shall govern the authorization and conduct of program participation with respect to mule deer, except[;]

[(1)] the harvest of mule deer shall occur only between the Saturday closest to September 30 and the last Sunday of January, during which mule deer may be taken by any lawful means[; as follows:]

[(A) from the Saturday closest to September 30 for 35 consecutive days, the lawful means of harvest is restricted to lawful archery equipment; and]

[(B) from the first Saturday in November through the last Sunday in January any lawful means may be used to harvest deer; and]

(2) Program [program] eligibility is specifically restricted to tracts of land in counties for which an open season for mule deer is provided under §65.42 of this title.

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

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

Filed with the Office of the Secretary of State on February 10, 2025.

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James Murphy

General Counsel

Texas Parks and Wildlife Department

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For further information, please call: (512) 389-4775



DIVISION 2. OPEN SEASONS AND BAG LIMITS

31 TAC §§65.42, 65.62, 65.64

The amendments are proposed under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

The proposed amendments affect Parks and Wildlife Code, Chapter 61.

§65.42. *Deer.*

(a) General.

(1) - (4) (No change.)

(5) In the counties or portions of counties listed in subsection (b)(2)(G) of this section, antlerless deer harvested on properties not subject to the provisions of §65.29 of this title (relating to Managed Lands Deer (MLD) Programs) must be reported via the department's internet or mobile application within 24 hours of the time of kill, including antlerless deer harvested during the special seasons established by subsection (b)(4) and (5) of this section. This paragraph does not apply to antlerless deer harvested under a digital license issued by the department pursuant to §53.18 of this title (relating to Digital Products) [§53.3(a)(12) of this title (relating to Super Combination Hunting and Fishing Packages); a valid license with digital tags issued under §53.4 of this title (relating to Lifetime Licenses); or a valid digital license issued under §53.5(a)(3) of this title (relating to Recreational Hunting License, Stamps, and Tags)], which must be reported as required under §65.10 of this title (relating to Possession of Wildlife Resources).

(b) (No change.)

(c) Mule deer. The open seasons and bag limits for mule deer shall be as follows:

(1) - (4) (No change.)

(5) Archery-only open seasons and bag and possession limits shall be as follows.

(A) In Andrews, Armstrong, Bailey, Borden, Briscoe, Carson, Castro, Childress, Cochran, Coke, Collingsworth, Cottle, [Crane, Crockett,] Crosby, [Culbertson,] Dallam, Dawson, Deaf Smith, Dickens, Donley, [Ector, El Paso,] Fisher, Floyd, Foard, Gaines, Garza, Gray, Hale, Hall, Hansford, Hardeman, Hartley, Hemphill, Hockley, [Hudspeth,] Hutchinson, [Jeff Davis,] Kent, King, Knox, Lamb, Lipscomb, [Loving,] Lubbock, Lynn, Martin, [Midland,] Moore, Motley, Ochiltree, Oldham, Parmer, Potter, [Presidio,] Randall, [Reagan, Reeves,] Roberts, Scurry, Sherman, Stonewall, Swisher, Terry, [Upton, Val Verde, Ward,] Wheeler, [Winkler,] and Yoakum counties:

(i) from the Saturday closest to September 30 for 56 [35] consecutive days; and

(ii) (No change.)

(B) In Crane, Crockett, Culberson, Ector, El Paso, Hudspeth, Jeff Davis, Loving, Midland, Presidio, Reagan, Reeves, Upton, Val Verde, Ward, and Winkler counties:

(i) from the Saturday closest to September 30 for 62 consecutive days; and

(ii) bag limit: one buck.

(C) ~~[(B)]~~ In Brewster, Pecos, and Terrell counties:

(i) from the Saturday closest to September 30 for 62 [35] consecutive days.

(ii) (No change.)

(D) ~~[(C)]~~ In all other counties, there is no archery-only open season for mule deer.

~~[(6) There are no antler restrictions within a Containment Zone or Surveillance Zone established under the provisions of Subchapter B, Division 1 of this chapter.]~~

§65.62. *Quail: Open Seasons, Bag and Possession Limits.*

(a) In all counties there is an open season for quail beginning the Saturday closest to October 28 through the last day ~~[Sunday]~~ in February.

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

§65.64. *Turkey.*

(a) (No change.)

(b) The open seasons and bag limits for turkey shall be as follows.

(1) Fall seasons and bag limits:

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

(C) The counties and portions of counties listed in this subparagraph are in the Fall North Zone. In Archer, Armstrong, Bandera, Baylor, Bell (west of Interstate Highway 35), Bexar, Blanco, Borden, Bosque, Briscoe, Brown, Burnet, Callahan, Carson, Childress, Clay, Coke, Coleman, Collingsworth, Comal (west of Interstate Highway 35), Comanche, Concho, Cooke, Coryell, Cottle, Crane, Crockett, Crosby, Dawson, Denton, Dickens, Donley, Eastland, Ector, Edwards, Erath, Fisher, Floyd, Foard, Garza, Gillespie, Glasscock, Gray, Hall, Hamilton, Hardeman, Hartley, Haskell, Hays (west of Interstate Highway 35), Hemphill, Hill (west of Interstate Highway 35 East [35]), Hood, Howard, Hutchinson, Irion, Jack, Johnson, Jones, Kendall, Kent, Kerr, Kimble, King, Kinney (north of U.S. Highway 90), Knox, Lampasas, Lipscomb, Llano, Lubbock, Lynn, Martin, Mason, McCulloch, McLennan (west of Interstate Highway 35), Medina (north of U.S. Highway 90), Menard, Midland, Mills, Mitchell, Montague, Moore, Motley, Nolan, Ochiltree, Oldham, Palo Pinto, Parker, Potter, Randall, Reagan, Real, Roberts, Runnels, San Saba, Schleicher, Scurry, Shackelford, Somervell, Stephens, Sterling, Stonewall, Sutton, Swisher, Tarrant, Taylor, Throckmorton, Tom Green, Travis (west of Interstate Highway 35), Upton, Uvalde (north of U.S. Highway 90), Val Verde (north of a line beginning at the International Bridge and proceeding along Spur 239 to U.S. Hwy. 90 and thence to the Kinney County line), Ward, Wheeler, Wichita, Wilbarger, Williamson (west of Interstate Highway 35), Wise, and Young counties, there is a fall general open season.

(i) - (ii) (No change.)

(2) (No change.)

(3) Spring season and bag limits.

(A) The counties and portions of counties listed in this subparagraph are in the Spring North Zone. In Archer, Armstrong, Bandera, Baylor, Bell (west of Interstate Highway 35), Bexar, Blanco, Borden, Bosque, Briscoe, Brown, Burnet, Callahan, Carson, Childress, Clay, Coke, Coleman, Collingsworth, Comal (west of Interstate Highway 35), Comanche, Concho, Cooke, Coryell, Cottle, Crane, Crockett, Crosby, Dawson, Denton, Dickens, Donley, Eastland, Ector, Edwards, Ellis (west of Interstate Hwy. 35), Erath, Fisher, Floyd, Foard, Garza, Gillespie, Glasscock, Gray, Guadalupe (south of Interstate Highway 10), Hall, Hamilton, Hardeman, Hartley, Haskell, Hays (west of Interstate Highway 35), Hemphill, Hill (west of Interstate Highway 35 East [35]), Hood, Howard, Hutchinson, Irion, Jack, Johnson, Jones, Kendall, Kent, Kerr, Kimble, King, Kinney (north of U.S. Hwy. 90), Knox, Lampasas, Lipscomb, Llano, Lubbock, Lynn, Martin, Mason, McCulloch, McLennan (west of Interstate Highway 35), Medina (north of U.S. Hwy. 90), Menard, Midland, Mills, Mitchell, Montague, Moore, Motley, Nolan, Ochiltree, Oldham, Palo Pinto, Parker, Potter, Randall, Reagan, Real, Roberts, Runnels, San Saba, Schleicher, Scurry, Shackelford, Somervell, Stephens, Sterling, Stonewall, Sutton, Swisher, Tarrant, Taylor, Throckmorton, Tom Green, Travis (west of Interstate Highway 35), Upton, Uvalde (north of U.S. Hwy. 90), Val Verde (north of a line beginning at the International Bridge and proceeding along Spur 239 to U.S. Hwy. 90 and thence to the Kinney County line), Ward, Wheeler, Wichita, Wilbarger, Williamson (west of Interstate Highway 35), Wise, and Young counties, there is a spring general open season.

(i) - (ii) (No change.)

(B) (No change.)

(C) In Bastrop, Brewster, Caldwell, Colorado, Comal (east of Interstate Highway 35), Fayette, Guadalupe (north of I-10), Hays (east of Interstate Highway 35), Hill (east of Interstate Highway 35 East [35]), Jackson, Jeff Davis, Lavaca, Lee, Matagorda, McLennan (east of Interstate Highway 35), Pecos, Terrell, Travis (east of Interstate Highway 35), and Wharton counties, there is a spring general open season.

(i) Open season: from April 1 through April 30.

(ii) (No change.)

(D) (No change.)

(4) (No change.)

(c) Except as provided by §65.10 of this title for turkeys harvested under a digital license issued pursuant to §53.18 of this title (relating to Digital Products) [§53.3(a)(12) of this title, a valid license with digital tags under §53.4 of this title, or a valid digital license under §53.5(a)(3) of this title], all harvested turkeys must be registered via the department's internet or mobile application within 24 hours of the time of kill.

(d) (No change.)

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

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James Murphy
General Counsel
Texas Parks and Wildlife Department
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SUBCHAPTER N. MIGRATORY GAME BIRD PROCLAMATION

31 TAC §§65.314 - 65.320

The Texas Parks and Wildlife Department (the department) proposes amendments to 31 TAC §§65.314 - 65.320, concerning the Migratory Game Bird Proclamation.

The United States Fish and Wildlife Service (Service) issues annual frameworks for the hunting of migratory game birds in the United States. Regulations adopted by individual states may be more restrictive than the federal frameworks but may not be less restrictive. Responsibility for establishing seasons, bag limits, means, methods, and devices for harvesting migratory game birds within Service frameworks is delegated to the Texas Parks and Wildlife Commission (Commission) under Parks and Wildlife Code, Chapter 64, Subchapter C.

With exceptions as noted, the proposed amendments specify the season dates for hunting the various species of migratory game birds for 2025-2026 seasons. Except as noted in the discussion of the proposed seasons for the Special White-winged Dove Area (SWWDA), teal, falconry, ducks in the High Plains Mallard Management Unit (HPMMU), the season dates for rails and gallinules, and the proposed daily bag limits for pintail, the rules as proposed retain the season structure and bag limits for all species of migratory game birds from last year while adjusting the season dates to allow for calendar shift (i.e., to ensure that seasons open on the desired day of the week), since dates from a previous year do not fall on the same days in following years.

The proposed amendment to §65.314, concerning Doves (Mourning, White-Winged, White-Tipped, White-Fronted Doves), would again implement a slightly different structure for the SWWDA season than in years past. Under the federal frameworks, Texas is allowed 90 total days of dove hunting opportunity in the South Zone (which is also designated as a special management area for white-winged doves). Under the frameworks, the earliest possible date for full-day dove hunting in the South Dove Zone is September 14; however, Texas is also authorized to have up to six half-days of hunting opportunity between September 1 and September 19. Department survey data have consistently indicated strong hunter and landowner preference for the earliest possible hunting opportunity available under the federal frameworks, as well as for maximal weekend hunting opportunity during the SWWDA season, since nearly half of the hunters in the SWWDA zone travel from outside of the zone. In a typical year, this would take the form of two three-day weekends of half-day special white-winged opportunity beginning on the earliest day possible under the frameworks. The 2025-26 calendar, however, presents a challenge because September 1, 2025, (the earliest possible day for SWWDA hunting) falls on a Monday, so there are not two complete three-day weekends available before the full-day dove hunting can begin. The department has determined that in keeping with hunter and landowner preference, this year's SWWDA dates would be best employed by implementing a five-day season structure of

September 5-7 (a traditional three-day weekend) and September 12-13 (Friday and Saturday), which is the last two days before the earliest possible date that full-day dove hunting can be provided under the federal frameworks (September 14).

The proposed amendment to §65.315, concerning Ducks, Coots, Mergansers, and Teal, would reduce the length of the early teal season from 16 days to nine days, which is the maximum allowed under this year's federal frameworks. The proposed amendment to §65.315 also would increase the HPMMU season by seven days. Under the federal frameworks, Texas is allowed 107 total days of duck hunting opportunity. Because the federal frameworks for 2025-26 mandate a seven-day reduction in early teal season opportunity, those seven days can be allocated elsewhere; therefore, the department proposes to add the seven days to the beginning of the season in the HPMMU to provide additional opportunity for species that arrive early in Texas, especially teal.

The proposed amendment to §65.315, concerning Ducks, Coots, Mergansers, and Teal, would also alter subsection (c) to increase the daily bag limit for pintails from one to three. The Service recently adopted a new Pintail Harvest Strategy that includes the option for a three-bird daily bag limit. In keeping with long-standing commission policy to provide the most liberal hunting opportunity possible under the federal frameworks, consistent with the tenets of sound biological management, the department therefore proposes to increase the bag limit in accordance with the Service's harvest strategy.

The proposed amendment to §65.319, concerning Gallinules, Rails, Snipe, Woodcock, would result in a slightly different season structure for rails and gallinules. Typically, the department establishes a split-season structure for rail and gallinule seasons, the first segment to run concurrently with the early teal season and the second segment to open concurrently with the South Zone duck season and run for 70 days (thereby utilizing the maximum number of days allotted for rail and gallinule seasons under the federal frameworks). Because of the seven-day reduction in the early teal season mandated under the federal frameworks, retaining the traditional season structure results in a nine-day first segment for rail and gallinule seasons, with seven days added to the end of the second segment, which the department believes optimizes hunting opportunity for rail and gallinule hunters.

The proposed amendment to §65.320, concerning Extended Falconry Seasons, would allow for expanded falconry opportunity for ducks, which is possible because of the additional seven days of opportunity resulting from the shortened early teal season discussed previously in this preamble.

Shaun Oldenburger, Wildlife Division Small Game Program Director, has determined that for the first five years that the amendments as proposed are in effect, there will be no additional fiscal implications to state or local governments of enforcing or administering the rules as proposed.

Mr. Oldenburger also has determined that for each of the first five years the proposed rules are in effect, the public benefit anticipated as a result of enforcing the rules as proposed will be the department's discharge of its statutory obligation to manage and conserve the state's populations of migratory game birds for the use and enjoyment of the public, consistent with the principles of sound biological management.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a

regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses, micro-businesses, or rural communities. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small and microbusinesses and rural communities. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to determine if any further analysis is required. The department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that the proposed rules regulate various aspects of recreational license privileges that allow individual persons to pursue and harvest migratory game bird resources in this state and therefore do not directly affect small businesses, micro-businesses, or rural communities. Therefore, neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

There also will be no adverse economic effect on persons required to comply with the rules as proposed.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rules as proposed, if adopted, will: neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of any fee; not create, limit, or expand an existing regulation; neither increase nor decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposed rules may be submitted to Shaun Oldenburger (Small Game Program Director) at (512) 389-4778, email: shaun.oldenburger@tpwd.texas.gov or via the department website at www.tpwd.texas.gov.

The amendments are proposed under Parks and Wildlife Code, Chapter 64, which authorizes the Commission and the Executive Director to provide the open season and means, methods, and devices for the hunting and possessing of migratory game birds.

The proposed amendments affect Parks and Wildlife Code, Chapter 64.

§65.314. *Doves (Mourning, White-Winged, White-Tipped, White-Fronted Doves).*

- (a) (No change.)
- (b) Seasons; Daily Bag Limits.

(1) North Zone.

(A) Dates: September 1 - November 9, 2025 and December 19, 2025 - January 7, 2026 [~~September 1 - November 10, 2024 and December 20, 2024 - January 7, 2025~~].

(B) (No change.)

(2) Central Zone.

(A) Dates: September 1 - October 26, 2025 and December 12, 2025 - January 14, 2026 [~~September 1 - October 27, 2024 and December 13, 2024 - January 14, 2025~~].

(B) (No change.)

(3) South Zone and Special White-winged Dove Area.

(A) Special White-winged Dove Area Season.

(i) Dates: September 5-7, 12-13, 2025 [~~September 1-2, 6-8, 13, 2024~~].

(ii) (No change.)

(B) South Zone Season.

(i) Dates: September 14 - October 26, 2025 and December 12, 2025 - January 22, 2026 [~~September 14 - October 27, 2024 and December 13, 2024 - January 21, 2025~~].

(ii) (No change.)

§65.315. *Ducks, Coots, Mergansers, and Teal.*

(a) (No change.)

(b) Season dates and bag limits.

(1) HPMMU.

(A) For all species other than "dusky ducks": October 18-19 and October 24, 2025 - January 25, 2026 [~~October 26-27, 2024 and November 1, 2024 - January 26, 2025~~]; and

(B) "dusky ducks": October 27, 2025 - January 25, 2026 [~~November 4, 2024 - January 26, 2025~~].

(2) North Zone.

(A) For all species other than "dusky ducks": November 8-30, 2025 and December 6, 2025 - January 25, 2026 [~~November 9 - December 1, 2024 and December 7, 2024 - January 26, 2025~~]; and

(B) "dusky ducks": November 13-30, 2025 and December 6, 2025 - January 25, 2026 [~~November 14, 2024 - December 1, 2024 and December 7, 2024 - January 26, 2025~~].

(3) South Zone.

(A) For all species other than "dusky ducks": November 1-30, 2025 and December 13, 2025 - January 25, 2026 [~~November 2 - December 1, 2024 and December 14, 2024 - January 26, 2025~~]; and

(B) "dusky ducks": November 6-30, 2025 and December 13, 2025 - January 25, 2026 [~~November 7 - December 1, 2024 and December 14, 2024 - January 26, 2025~~].

(4) September teal-only season.

(A) (No change.)

(B) Dates: September 20-28, 2025 [~~14-29, 2024~~].

(c) Bag limits.

(1) The daily bag limit for ducks and mergansers is six in the aggregate, which may include no more than five mallards (only two of which may be hens); three wood ducks; one scaup (lesser scaup or greater scaup); two redheads; two canvasbacks; three pintails [~~one pintail~~]; and one "dusky" duck (mottled duck, Mexican duck, black duck and their hybrids) during the seasons established for those species in this section. For all species not listed, the daily bag limit shall be six. The daily bag limit for coots is 15.

(2) (No change.)

§65.316. *Geese.*

(a) (No change.)

(b) Season dates and bag limits.

(1) Western Zone.

(A) Light geese: November 1, 2025 - February 1, 2026 [~~November 2, 2024 - February 2, 2025~~]. The daily bag limit for light geese is five.

(B) Dark geese: November 1, 2025 - February 1, 2026 [~~November 2, 2024 - February 2, 2025~~]. The daily bag limit for dark geese is five.

(2) Eastern Zone.

(A) Light geese: November 1, 2025 - February 15, 2026 [~~November 2, 2024 - February 14, 2025~~]. The daily bag limit for light geese is five.

(B) Dark geese:

(i) Season: November 1, 2025 - January 25, 2026 [~~November 2, 2024 - January 26, 2025~~];

(ii) (No change.)

(c) September Canada goose season. Canada geese may be hunted in the Eastern Zone during the season established by this subsection. The season is closed for all other species of geese during the season established by this subsection.

(1) Season dates: September 13-28, 2025 [~~September 14-29, 2024~~].

(2) (No change.)

§65.317. *Special Youth, Active-Duty Military, and Military Veteran Seasons.*

(a) Special Youth Waterfowl Season. There shall be a Special Youth Season for waterfowl, during which the hunting, taking, and possession of geese, ducks, mergansers, and coots is restricted to licensed hunters 16 years of age and younger accompanied by a person 18 years of age or older, except for persons hunting by means of falconry under the provisions of §65.320 of this title (relating to Extended Falconry Seasons).

(1) HPMMU:

(A) season dates: October 11-12, 2025 [~~October 19-20, 2024~~];

(B) (No change.)

(2) North Duck Zone:

(A) season dates: November 1-2, 2025 [~~November 2-3, 2024~~];

(B) (No change.)

(3) South Duck Zone:

(A) season dates: October 25-26, 2025 [~~October 26-27, 2024~~];

(B) (No change.)

(b) Special Active-Duty Military and Military Veteran Migratory Game Bird Season.

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

(3) Season Dates and Bag Limits.

(A) HPMMU:

(i) season dates: October 11-12, 2025 [~~October 19-20, 2024~~];

(ii) (No change.)

(B) North Duck Zone:

(i) season dates: November 1-2, 2025 [~~November 2-3, 2024~~];

(ii) (No change.)

(C) South Duck Zone:

(i) season dates: October 25-26, 2025 [~~October 26-27, 2024~~];

(ii) (No change.)

(4) (No change.)

§65.318. *Sandhill Crane.*

(a) (No change.)

(b) Season dates and bag limits.

(1) Zone A: October 25, 2025 - January 25, 2026 [~~October 26, 2024 - January 26, 2025~~]. The daily bag limit is three.

(2) Zone B: November 21, 2025 - January 25, 2026 [~~November 22, 2024 - January 26, 2025~~]. The daily bag limit is three.

(3) Zone C: December 13, 2025 - January 18, 2026 [~~December 14, 2024 - January 19, 2025~~]. The daily bag limit is two.

(c) (No change.)

§65.319. *Gallinules, Rails, Snipe, Woodcock.*

(a) Gallinules (moorhen or common gallinule and purple gallinule) may be taken in any county of this state during the season established in this subsection.

(1) Season dates: September 20-28 and November 1 - December 31, 2025 [~~September 14-29 and November 2 - December 25, 2024~~].

(2) (No change.)

(b) Rails may be taken in any county of this state during the season established by this subsection.

(1) Season dates: September 20-28 and November 1 - December 31, 2025 [~~September 14-29 and November 2 - December 25, 2024~~].

(2) (No change.)

(c) Snipe may be taken in any county of this state during the season established by this subsection.

(1) Season dates: November 1, 2025 - February 15, 2026 [~~November 2, 2024 - February 16, 2025~~].

(2) (No change.)

(d) Woodcock may be taken in any county of this state during the season established by this subsection.

(1) Season dates: December 18, 2025 - January 31, 2026 [~~December 18, 2024 - January 31, 2025~~].

(2) (No change.)

§65.320. *Extended Falconry Seasons.*

It is lawful to take the species of migratory birds listed in this section by means of falconry during the seasons established by this section.

(1) Mourning doves, white-winged doves and white-tipped doves: November 14 - November 30, 2025 [~~November 15 - December 1, 2024~~].

(2) Duck, gallinule, moorhen, rail, and woodcock: January 26 - February 15, 2026 [~~January 27 - February 10, 2025~~].

(3) - (4) (No change.)

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

Filed with the Office of the Secretary of State on February 10, 2025.

TRD-202500467

James Murphy

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: March 23, 2025

For further information, please call: (512) 389-4775



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 5. FUNDS MANAGEMENT

(FISCAL AFFAIRS)

SUBCHAPTER E. CLAIMS PROCESSING-- PURCHASE VOUCHERS

34 TAC §5.54

The Comptroller of Public Accounts proposes amendments to §5.54 concerning consulting services contracts.

The legislation enacted within the last four years that provides the statutory authority for the amendments is Senate Bill 799, 87th Legislature, R.S., 2021.

The amendments to subsection (a) add a definition of "university system" because a reference to "university system" is being added in subsection (f)(1)(B) and delete the definition of "SPD" because references to "SPD" are being deleted from subsection (e).

The amendments to subsection (c)(1) delete the reference to subsection (d) because subsection (d) is being deleted from this section; add a reference to Government Code, §2254.028(a)(3) because Government Code, §2254.028(b) states that failure to obtain the finding required by Government Code, §2254.028(a)(3) will cause a major consulting services

contract, renewal, amendment, or extension to be void; and add the phrase "if applicable" because some of the sections referenced in this subsection apply to all consulting contracts and some apply only to major consulting services contracts.

The amendments to subsections (c) and (e) make non-substantive changes by deleting the word "then" as unnecessary.

The amendments to subsection (d) delete the entire subsection because the requirements in subsection (d)(1)(A) are not currently authorized by Government Code, Chapter 2254, Subchapter B, and the requirements in subsections (d)(1)(B) and (d)(2) are not needed in this section because they are set forth in Government Code, §2254.031.

The amendments to subsection (e) change "SPD" to "the comptroller" because Government Code, §2254.040 refers to "the comptroller."

The amendments to subsection (f) change the threshold amount for reporting a consulting services contract to the Legislative Budget Board in subsection (f)(1)(B) from "\$14,000" to "\$50,000"; add the exception that the state agency requesting the payment is not subject to the requirements of subsection (f)(1)(B) if it is a university system or an institution of higher education, to comply with the current provisions of Government Code, §2254.0301(a); change "payer" to "state agency" in subsection (f)(2) to clarify the language of the subsection by using the defined term "state agency"; change "volume and page numbers of the *Texas Register*" to "solicitation ID of the Electronic State Business Daily posting" in subsection (f)(2)(B) to comply with the current provisions of Government Code, §2254.029(a); and delete the reference to Government Code, §2254.033(b) in subsection (f)(2)(A) and §2254.031(a)(2) and (c)(2) in subsection (f)(2)(B) because these provisions no longer exist.

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed amended rule is in effect, the rule: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rule's applicability; and will not positively or adversely affect this state's economy.

Mr. Reynolds also has determined that the proposed amended rule would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed amended rule would benefit the public by improving the clarity and implementation of the sections. There would be no significant anticipated economic cost to the public. The proposed amended rule would have no significant fiscal impact on small businesses or rural communities.

You may submit comments on the proposal to Rob Coleman, Director, Fiscal Management Division, at rob.coleman@cpa.texas.gov or at P.O. Box 13528, Austin, Texas 78711. The comptroller must receive your comments no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendments are proposed under Government Code, §2254.039(a), which requires the comptroller to adopt rules to implement and administer Government Code, Chapter 2254, Subchapter B, concerning consulting services. The comptroller has given the proposed amendments to §5.54 to the governor

for review and comment as required by Government Code, §2254.039(b).

The amendments implement Government Code, Chapter 2254, Subchapter B concerning consulting services.

§5.54. *Consulting Services Contracts.*

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

(1) Consulting service--A study conducted for a state agency or advice provided to a state agency under a contract that does not involve the traditional relationship of employer and employee. The term does not include a routine service that is necessary to the functioning of a state agency's programs.

(2) Institution of higher education--Has the meaning assigned by Education Code, §61.003 except the term does not include a public junior college or a community college.

(3) Major consulting services contract--Has the meaning assigned by Government Code, §2254.021(2).

~~[(4) SPD--The Statewide Procurement Division of the comptroller's office.]~~

~~(4) [(5)] State agency--Has the meaning assigned by Government Code, §2151.002.~~

~~(5) University system--Has the meaning assigned by Education Code, §61.003.~~

(b) Applicability of this section. This section applies to a consulting service only to the extent Government Code, Chapter 2254, Subchapter B, applies to that service.

(c) Effect of noncompliance with this section or applicable statutes.

(1) If a state agency contracts for a consulting service or renews, amends, or extends a consulting services contract without complying with the requirements of ~~[subsection (d) of this section and]~~ Government Code, §§2254.028(a)(3), 2254.029 ~~[§2254.029]~~, 2254.030, 2254.0301, and 2254.033, if applicable, ~~[then]~~ the contract, renewal, amendment, or extension is void.

(2) If a contract, renewal, amendment, or extension is void under paragraph (1) of this subsection, ~~[then]~~ the comptroller may not:

(A) draw a warrant or transmit funds to satisfy an obligation under the contract, renewal, amendment, or extension; or

(B) reimburse a state agency for a payment made under the contract, renewal, amendment, or extension.

(3) If a contract, renewal, amendment, or extension is void under paragraph (1) of this subsection, ~~[then]~~ a state agency may not make any payments under the contract, renewal, amendment, or extension from any state or federal funds held in or outside the state treasury.

~~[(d) Renewals, amendments, or extensions of consulting services contracts.]~~

~~[(1) A state agency must comply with this paragraph when the agency intends to renew, amend, or extend a major consulting services contract.]~~

~~[(A) If the renewal contract itself is not a major consulting services contract or if the contract after the amendment or extension is no longer a major consulting services contract, then the agency shall file the information required by Government Code, §2254.030 with the secretary of state for publication in the *Texas Register*. The information~~

~~must be filed not later than the 20th day after either the date the renewal contract is entered into or the date the original contract is amended or extended.]~~

~~[(B) If the renewal contract itself is a major consulting services contract or if the contract after the amendment or extension is still a major consulting services contract, then the agency shall comply with the requirements of Government Code, §2254.028(a) and §2254.029.]~~

~~[(2) A state agency that intends to renew, amend, or extend a consulting services contract that is not a major consulting services contract shall comply with the requirements of Government Code, §2254.028(a) and §2254.029 if the original contract and either the renewal contract, the amendment, or the extension have a reasonably foreseeable value totaling more than \$15,000 if the agency is not an institution of higher education or \$25,000 if the agency is an institution of higher education.]~~

~~(d) [(e)] Procurement of consulting services by the comptroller [SPD]. If the comptroller [SPD] procures a consulting service for a state agency under Government Code, §2254.040, the comptroller [then SPD] must comply with any requirements of this section and Government Code, Chapter 2254, Subchapter B that would apply if the agency were procuring the consulting service directly.~~

~~(e) [(f)] Purchase document requirements.~~

(1) In addition to the requirements of paragraph (2) of this subsection, the purchase document submitted to the comptroller that requests payment under a contract subject to that paragraph must be supported by the following documentation:

(A) a copy of the original contract and, if the contract has been renewed, amended, or extended, a copy of the renewal, amendment, or extension;

(B) a copy of any written notice provided to the Legislative Budget Board under Government Code, §2254.0301 if the amount of the contract, including any renewal, amendment, or extension, exceeds \$50,000 and the state agency requesting the payment is not a university system or an institution of higher education ~~[\$14,000]~~; and

(C) a statement that the payment complies with Government Code, §§2155.004(a) - (b), 2254.026, 2254.027, and 2254.033.

(2) This paragraph applies when a purchase document is submitted to the comptroller that requests a payment under either a major consulting services contract (or a renewal, amendment, or extension of a major consulting services contract) or a contract that was not originally a major consulting services contract but whose value after renewal, amendment, or extension totals more than \$15,000 if the state agency [payer] is not an institution of higher education or \$25,000 if the state agency [payer] is an institution of higher education. In addition to the requirements of paragraph (1) of this subsection, the document must be supported by the following documentation:

(A) a reference to the solicitation ID [volume and page numbers] of the Electronic State Business Daily posting [Texas Register] in which the requirements of Government Code, §2254.029 and §2254.030, and, if applicable, Government Code, §2254.028(c) ~~[and §2254.033(b)]~~ were fulfilled; and

(B) a copy of the governor's finding of fact that the consulting services are necessary if the finding is required by Government Code, §2254.028 ~~[§§2254.028, 2254.031(a)(2), or 2254.031(e)(2), or by any combination of those statutes].~~

(3) A state agency that has received the governor's emergency waiver of the requirements of Government Code, Chapter 2254,

Subchapter B must include a copy of the waiver in the supporting documentation for the contract for which the waiver was received.

(4) A state agency shall retain the supporting documentation required by this subsection and provide that documentation to the comptroller as required by §5.51 of this title (relating to Requirements for Purchase Documents).

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

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

TRD-202500436

Victoria North

General Counsel for Fiscal and Agency Affairs

Comptroller of Public Accounts

Earliest possible date of adoption: March 23, 2025

For further information, please call: (512) 475-2220



WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

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

SUBCHAPTER B. ADVISORY COMMITTEES DIVISION 1. COMMITTEES

1 TAC §§351.821, 351.823, 351.825, 351.827

The Texas Health and Human Services Commission withdraws proposed amendments to §§351.821, 351.823, 351.825, and 351.827 which appeared in the November 15, 2024, issue of the *Texas Register* (49 TexReg 9087).

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

TRD-202500376

Karen Ray
Chief Counsel

Texas Health and Human Services Commission

Effective date: February 4, 2025

For further information, please call: (512) 221-9021

TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 215. MOTOR VEHICLE DISTRIBUTION

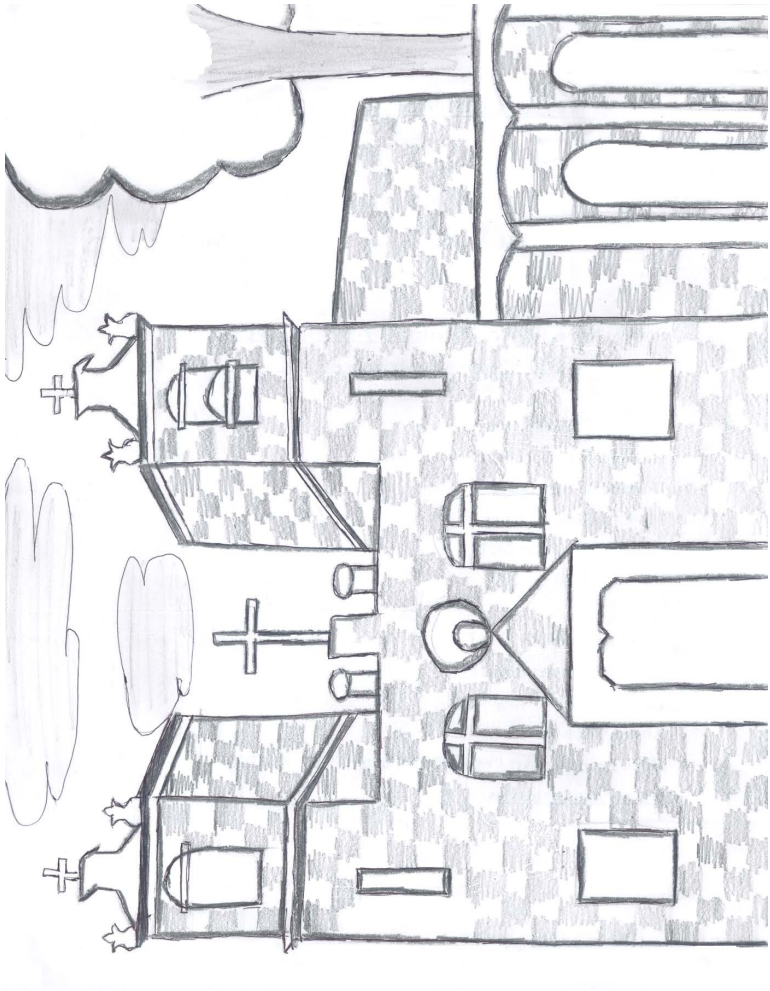
SUBCHAPTER C. FRANCHISED DEALERS, MANUFACTURERS, DISTRIBUTORS, AND CONVERTERS

43 TAC §215.124

Proposed new §215.124, published in the July 12, 2024, issue of the *Texas Register* (49 TexReg 5065), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Published by the Office of the Secretary of State on February 5, 2025.

TRD-202500413



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.

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Karen Ray
Chief Counsel
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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

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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 TELECOMMUNI- CATIONS 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.

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Karen Ray

Chief Counsel

Texas Health and Human Services Commission

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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

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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.

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Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
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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.

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Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
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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.

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Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
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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.

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Texas Department of Housing and Community Affairs
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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.

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Bobby Wilkinson
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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.

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Bobby Wilkinson
Executive Director

Texas Department of Housing and Community Affairs

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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 re-adoption 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 re-adoption 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.

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Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

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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 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 through 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.

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Bobby Wilkinson
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Texas Department of Housing and Community Affairs
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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.

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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.

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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.

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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.

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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.

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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.

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Bob Biard

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Texas Lottery Commission

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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.

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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.

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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.

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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.

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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

16 TAC §§402.100 - 402.103

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

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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 evidenced 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.

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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.

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General Counsel
Texas Lottery Commission
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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.

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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.

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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.

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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.

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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.

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Bob Biard

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Texas Lottery Commission

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

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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.

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Bob Biard

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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.

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Texas Lottery Commission

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

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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.

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TRD-202500451

Karen Ray

Chief Counsel

Health and Human Services Commission

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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.

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Karen Ray
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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 rule-making 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.

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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.

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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) symptomatology;

(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.

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DIVISION 4. TRANSFERS AND CHANGING LOCAL MENTAL HEALTH AUTHORITIES OR LOCAL BEHAVIORAL HEALTH AUTHORITIES

26 TAC §§306.191 - 306.195

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.

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**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 LBHA 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 in-

dividual'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.

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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.

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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.

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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.

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Health and Human Services Commission

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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 JBCR 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 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.

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Health and Human Services Commission

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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.

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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.

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Karen Ray

Chief Counsel

Department of Assistive and Rehabilitative Services

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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).

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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).

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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).

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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





REVIEW OF AGENCY RULES

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039. Included here are proposed rule review notices, which

invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas State Library and Archives Commission

Title 13, Part 1

The Texas State Library and Archives Commission (commission) files this notice of its intent to review Texas Administrative Code, Title 13, Part 1, Chapter 6, concerning State Records, consisting of Subchapter A, Records Retention Schedule, Subchapter B, Microfilming Standards and State Agencies, Subchapter C Standards and Procedures for Management of Electronic Records, Subchapter D Fee Schedules, and Subchapter E, Records Center Storage Service Fee Schedule, in accordance with Texas Government Code §2001.039.

The review will include, at a minimum, an assessment of whether the reasons for adopting or readopting the rules continue to exist.

The commission will accept comments regarding the review. The comment period will last for 30 days following the publication of this notice in the *Texas Register*. Comments regarding this review may be submitted to Sarah Swanson, General Counsel, Texas State Library and Archives Commission, 1201 Brazos Street, P.O. Box 12927, Austin, Texas 78711-2927 or to rules@tsl.texas.gov with the subject line "Rule Review."

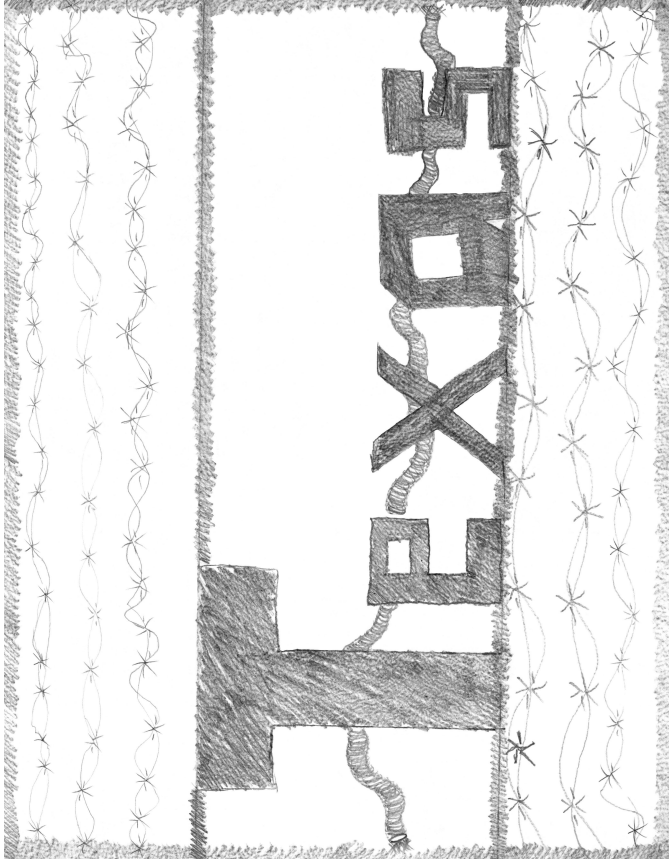
TRD-202500454

Sarah Swanson
General Counsel

Texas State Library and Archives Commission

Filed: February 10, 2025





TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 25 TAC §289.230(e)(50)[~~Figure: 25 TAC §289.230(c)(51)~~]

$$OD = \log_{10} \frac{l_o}{l_t}$$

where l_o = light intensity incident on the film and
 l_t = light transmitted through the film.

Figure: 25 TAC §289.230(i)(11)(B)

Table I		
<u>X-ray Tube Voltage in kV (kilovolt peak) and Minimum HVL</u>		
<u>Designed Operating Range (kV)</u>	<u>Measured Operating Voltage (kV)</u>	<u>Minimum HVL (millimeter of aluminum)</u>
<u>Below 50</u>	<u>20</u>	<u>0.20</u>
<u>Below 50</u>	<u>25</u>	<u>0.25</u>
<u>Below 50</u>	<u>30</u>	<u>0.30</u>

Figure: 25 TAC §289.230(x)(3)

<u>Specific Subsection</u>	<u>Name of Record</u>	<u>Time Interval for Record Keeping</u>
<u>(h)(1)(A)</u>	<u>Interpreting Physician Qualifications</u>	<u>Until 2 years after terminating certification or 2 years after the physician becomes inactive at the facility</u>
<u>(h)(1)(C)</u>	<u>Interpreting Physician Continuing Education and Experience</u>	<u>6 years</u>
<u>(h)(1)(E)</u>	<u>Mandatory training for Interpreting Physician, if applicable</u>	<u>6 years</u>
<u>(h)(2)(A)</u>	<u>Medical Radiologic Technologist (MRT) Qualifications</u>	<u>Until 2 years after terminating certification or 2 years after the MRT becomes inactive at the facility.</u>
<u>(h)(2)(C)</u>	<u>Medical Radiologic Technologist Continuing Education and Experience</u>	<u>6 years</u>
<u>(h)(2)(E)</u>	<u>Mandatory training for Medical Radiologic Technologist, if applicable</u>	<u>6 years</u>
<u>(h)(3)(A)</u>	<u>Medical Physicist Qualifications</u>	<u>Until 2 years terminating certification or 2 years after the physicist becomes inactive at the facility</u>
<u>(h)(3)(C)</u>	<u>Medical Physicist Continuing Education and Experience</u>	<u>6 years</u>
<u>(i)(10)</u>	<u>FDA Variances</u>	<u>Until termination of certification or equipment is replaced</u>
<u>(k)(2)</u>	<u>Quality Assurance (QA) Records</u>	<u>Until the next annual inspection has been completed and the department has determined that the facility is compliant with the QA requirements or until the test has been performed two additional times at the required frequency, whichever is longer.</u>
<u>(l)(10)</u>	<u>Physicist Mammography Survey</u>	<u>7 years</u>
<u>(l)(11)</u>	<u>Physicist Mammography Equipment Evaluation</u>	<u>2 years</u>

<u>(m)(2)</u>	<u>Medical Outcomes Audit</u>	<u>2 years</u>
<u>(o)</u>	<u>Complaints</u>	<u>3 years</u>
<u>(t)(1)</u>	<u>Operating & Safety Procedures</u>	<u>Until termination of certification</u>
<u>(t)(5); (w)(13)</u>	<u>Records of Receipt, Transfer, and Disposal</u>	<u>Until termination of certification</u>
<u>(t)(8)(B)</u>	<u>Protective Devices Annual Check</u>	<u>3 years</u>
<u>(t)(10)</u>	<u>Records on Calibration, Maintenance and Modifications Performed on Mammography Machines</u>	<u>2 years</u>
<u>(t)(1)(A)</u>	<u>Current §§289.203, 289.204, 289.205, 289.226, 289.227, 289.230, and 289.231.</u>	<u>Until termination of certification</u>
<u>(k)(2)</u>	<u>Current Certification of Mammography Systems</u>	<u>Until termination of certification</u>
<u>(f)(2)</u>	<u>Current Accreditation of Mammography Systems</u>	<u>Until termination of certification</u>
<u>(v)(5)</u>	<u>Certification of Inspection</u>	<u>Until termination of certification</u>
<u>(v)(6)</u>	<u>Notice of Failure</u>	<u>Until termination of certification</u>
<u>(v)(7)</u>	<u>Patient Notification</u>	<u>Until termination of certification</u>
<u>(w)(14)</u>	<u>Records of Calibration, Maintenance, and Modifications Performed on Interventional Breast Radiography Machines</u>	<u>Until termination of certification</u>



IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Coastal Bend Workforce Development Board

Request for Statement of Qualifications for Independent Evaluator Services RFQ 25-03

Workforce Solutions Coastal Bend (WFSCB) is soliciting qualifications from independent evaluators ("Respondents") to review and score responsive proposals received by WFSCB for the management of direct child care services system. We are seeking a minimum of three (3) independent evaluators who possess knowledge and experience in quality management, successful program implementation, and exceptional performance outcomes related to direct child care systems.

The RFQ will be available on Monday, February 24, 2025 at 2:00 p.m. Central Time and can be accessed on our website at: <https://www.workforcesolutionscb.org/about-us/procurement-opportunities/> or by contacting Nelda Rios Nelda.Rios@workforcesolutionscb.org or (361) 885-3020.

Proposals are due by Tuesday, March 24, 2025 at 4:00 p.m. Central Time and may be submitted via email to Nelda.Rios@workforcesolutionscb.org or hand delivered or mailed to: Workforce Solutions Coastal Bend, 400 Mann Street, Suite 800, Corpus Christi, Texas 78401.

Workforce Solutions Coastal Bend is an Equal Opportunity Employer/Program. Auxiliary aids and services are available upon request to individuals with disabilities. Relay Texas: (800) 735-2989 (TDD) and (800) 735-2988 or 711 (Voice). Historically Underutilized Businesses (HUBs) are encouraged to apply.

Este documento contiene información importante sobre los requisitos, los derechos, las determinaciones y las responsabilidades del acceso a los servicios del sistema de la fuerza laboral. Hay disponibles servicios de idioma, incluida la interpretación y la traducción de documentos, sin ningún costo y a solicitud.

TRD-202500494
Alba Silvas
Chief Operating Officer
Coastal Bend Workforce Development Board
Filed: February 12, 2025

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003, and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 02/17/25 – 02/23/25 is 18.00% for consumer¹ credit.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 02/17/25 – 02/23/25 is 18.00% for commercial² credit.

¹ Credit for personal, family, or household use.

² Credit for business, commercial, investment, or other similar purpose.

TRD-202500477
Leslie Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: February 11, 2025

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **March 18, 2025**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on **March 18, 2025**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: 1251 Enterprises Incorporated dba Goodys Market; DOCKET NUMBER: 2024-1606-PST-E; IDENTIFIER: RN106605306; LOCATION: Round Rock, Williamson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.48(e)(1) and §334.50(b)(1)(B) and (2)(A)(iii) and TWC, §26.3475(a) and (c)(1), by failing to conduct a test of the proper operation of the release detection equipment at least annually, and failing to monitor the underground storage tanks and associated pressurized piping installed on or after January 1, 2009, in a manner which will detect a release at a frequency of at least once every 30 days by using interstitial monitoring; and 30 TAC §334.48(g)(1)(A)(ii) and (B) and TWC, §26.3475(c)(2), by failing

to inspect the overflow prevention equipment at least once every three years to ensure that the equipment is set to activate at the correct level and will activate when a regulated substance reaches that level; PENALTY: \$5,406; ENFORCEMENT COORDINATOR: Ramyia Wendt, (512) 239-2513; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(2) COMPANY: AG AVIATION, INCORPORATED; DOCKET NUMBER: 2024-1275-PST-E; IDENTIFIER: RN101763654; LOCATION: Muleshoe, Bailey County; TYPE OF FACILITY: small private airport; RULES VIOLATED: 30 TAC §§37.815(a) and (b), 334.49(c)(4)(C) and 334.54(b)(3), and TWC, §26.3475(d), by failing to test the corrosion protection system for operability and adequacy of protection at a frequency of at least once every three years, and failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of a petroleum underground storage tank; PENALTY: \$4,016; ENFORCEMENT COORDINATOR: Ramyia Wendt, (512) 239-2513; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(3) COMPANY: CARR, DEBRA; DOCKET NUMBER: 2024-1871-WOC-E; IDENTIFIER: RN112041736; LOCATION: Wichita Falls, Wichita County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$175; ENFORCEMENT COORDINATOR: Hilda Iyasele, (512) 239-5280; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: Cego-Durango Water Supply Corporation; DOCKET NUMBER: 2024-1201-PWS-E; IDENTIFIER: RN101438653; LOCATION: Eddy, Falls County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.45(b)(1)(C)(iii) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide two or more service pumps that have a total capacity of 2.0 gallons per minute (gpm) per connection or that have a total capacity of at least 1,000 gpm and the ability to meet peak hourly demands with the largest pump out of service, whichever is less, at each pump station or pressure plane; and 30 TAC §290.45(b)(1)(D)(iii) and THSC, §341.0315(c), by failing to provide two or more service pumps that have a total capacity of 2.0 gpm per connection or that have a total capacity of at least 1,000 gpm and the ability to meet peak hourly demands with the largest pump out of service, whichever is less, at each pump station or pressure plane; PENALTY: \$400; ENFORCEMENT COORDINATOR: Savannah Jackson, (512) 239-4306; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(5) COMPANY: Champion Waste and Recycling Services, LLC dba Champion Compost Facility; DOCKET NUMBER: 2024-1063-AIR-E; IDENTIFIER: RN111026605; LOCATION: Pottsboro, Grayson County; TYPE OF FACILITY: compost processing facility; RULES VIOLATED: 30 TAC §101.4 and Texas Health and Safety Code, §382.085(a) and (b), by failing to prevent nuisance odor conditions; PENALTY: \$6,250; ENFORCEMENT COORDINATOR: Eunice Adegele, (512) 239-5082; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(6) COMPANY: Chris Lawrence; DOCKET NUMBER: 2024-1565-MSW-E; IDENTIFIER: RN111934337; LOCATION: Hamilton, Hamilton County; TYPE OF FACILITY: livestock transporting company; RULE VIOLATED: 30 TAC §327.5(c), by failing to submit written information, describing the details of the discharge or spill and supporting the adequacy of the response action, to the appropriate TCEQ regional manager within 30 working days of the discovery of the reportable discharge or spill; PENALTY: \$2,625; ENFORCEMENT COORDINATOR: Lauren Little, (817) 588-5888; REGIONAL

OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: City of Andrews; DOCKET NUMBER: 2023-0397-PWS-E; IDENTIFIER: RN101190718; LOCATION: Andrews, Andrews County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(f)(3)(C) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.010 milligrams per liter for arsenic based on a running annual average; PENALTY: \$2,625; ENFORCEMENT COORDINATOR: Ilia Perez-Ramirez, (713) 767-3743; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(8) COMPANY: City of Beckville; DOCKET NUMBER: 2023-1395-PWS-E; IDENTIFIER: RN101254860; LOCATION: Beckville, Panola County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the locational running annual average; PENALTY: \$1,125; ENFORCEMENT COORDINATOR: De'Shaune Blake, (210) 403-4033; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 492-3096.

(9) COMPANY: City of Kerens; DOCKET NUMBER: 2024-1124-PWS-E; IDENTIFIER: RN101426575; LOCATION: Kerens, Navarro County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the locational running annual average; PENALTY: \$2,500; ENFORCEMENT COORDINATOR: Nick Lohret-Froio, (512) 239-4495; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(10) COMPANY: City of Orchard; DOCKET NUMBER: 2024-1578-MWD-E; IDENTIFIER: RN102916541; LOCATION: Orchard, Fort Bend County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.65 and §305.125(2) and TWC, §26.121(a)(1), by failing to maintain authorization to discharge wastewater into or adjacent to any water in the state; PENALTY: \$5,200; ENFORCEMENT COORDINATOR: Madison Stringer, (512) 239-1126; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(11) COMPANY: Commodore Cove Improvement District; DOCKET NUMBER: 2024-1086-PWS-E; IDENTIFIER: RN101440022; LOCATION: Freeport, Brazoria County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.060 milligrams per liter for haloacetic acids, based on the locational running annual average; PENALTY: \$1,625; ENFORCEMENT COORDINATOR: Savannah Jackson, (512) 239-4306; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(12) COMPANY: CYPRESS CREEK WATER SUPPLY CORPORATION; DOCKET NUMBER: 2024-1231-PWS-E; IDENTIFIER: RN101235760; LOCATION: Woodville, Tyler County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(o)(3) and §290.45(h)(1), by failing to adopt and submit to the Executive Director a complete Emergency Preparedness Plan that demonstrates the facility's ability to provide emergency operations; PENALTY: \$50; ENFORCEMENT COORDINATOR: Mason DeMasi, (210) 657-8425; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 492-3096.

(13) COMPANY: Enterprise Products Operating LLC; DOCKET NUMBER: 2024-0039-IWD-E; IDENTIFIER: RN102323268; LOCATION: Mont Belvieu, Chambers County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0002940000, Phase II Effluent Limitations and Monitoring Requirements Numbers 1 and 2, Outfall Numbers 003, 004, and 504, by failing to comply with permitted effluent limitations; PENALTY: \$93,575; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$37,430; ENFORCEMENT COORDINATOR: Taylor Williamson, (512) 239-2097; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(14) COMPANY: KLM Dirt and Rock, Incorporated; DOCKET NUMBER: 2024-1112-WQ-E; IDENTIFIER: RN111472940; LOCATION: Lufkin, Angelina County; TYPE OF FACILITY: aggregate production operation (APO); RULE VIOLATED: 30 TAC §342.25(d), by failing to renew the APO registration annually as regulated activities continued; PENALTY: \$5,000; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$2,000; ENFORCEMENT COORDINATOR: Megan Crinklaw, (512) 239-1129; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(15) COMPANY: Lone Oak Partners, LLC; DOCKET NUMBER: 2024-1235-PWS-E; IDENTIFIER: RN109241885; LOCATION: Stephenville, Erath County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(o)(3) and §290.45(h)(1), by failing to adopt and submit to the Executive Director a complete emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; PENALTY: \$50; ENFORCEMENT COORDINATOR: Nick Lohret-Froio, (512) 239-4495; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(16) COMPANY: Luminant Generation Company LLC; DOCKET NUMBER: 2024-1049-PWS-E; IDENTIFIER: RN102583093; LOCATION: Tatum, Rusk County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the locational running annual average; PENALTY: \$1,375; ENFORCEMENT COORDINATOR: Tamer Hengst, (512) 239-1143; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(17) COMPANY: Motiva Enterprises LLC; DOCKET NUMBER: 2022-1168-AIR-E; IDENTIFIER: RN100209451; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), New Source Review Permit Numbers 8404, PSDTX1062M1, and PSDTX1534, Special Conditions Number 1, Federal Operating Permit Number O1386, General Terms and Conditions and Special Terms and Conditions Number 19, and Texas Health and Safety Code, §382.085(b), by failing to comply with the maximum allowable emissions rate; PENALTY: \$15,000; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$7,500; ENFORCEMENT COORDINATOR: Caleb Martin, (512) 239-2091; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(18) COMPANY: ONEOK Hydrocarbon Southwest, LLC; DOCKET NUMBER: 2024-1166-IWD-E; IDENTIFIER: RN100209949; LOCATION: Mont Belvieu, Chambers County; TYPE OF FACILITY: natural gas processing and fractionation facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0005353000, Effluent Limitations and Monitoring Requirements Number 1, by failing to

comply with permitted effluent limitations; PENALTY: \$32,625; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$13,050; ENFORCEMENT COORDINATOR: Taylor Williamson, (512) 239-2097; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(19) COMPANY: Pavestone, LLC; DOCKET NUMBER: 2023-1382-PWS-E; IDENTIFIER: RN101054633; LOCATION: Katy, Waller County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(f)(2) and (3)(A)(ii)(III), by failing to maintain water works operation and maintenance records and make them readily available for review by the Executive Director upon request; PENALTY: \$51; ENFORCEMENT COORDINATOR: Emerson Rinewalt, (512) 239-1131; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(20) COMPANY: Petroleum Distribution Transportation, LLC; DOCKET NUMBER: 2024-1084-PST-E; IDENTIFIER: RN111783049; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: common carrier; RULES VIOLATED: 30 TAC §334.5(b)(1)(A) and TWC, §26.3467(d), by failing to make available a valid, current TCEQ delivery certificate before depositing a regulated substance into a regulated underground storage tank system; PENALTY: \$38,420; ENFORCEMENT COORDINATOR: Faye Renfro, (512) 239-1833; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

TRD-202500474

Gitanjali Yadav

Deputy Director, Litigation Division

Texas Commission on Environmental Quality

Filed: February 11, 2025



Notice of District Petition - TCEQ Docket No.
D-01172025-027

Notice issued February 5, 2025

TCEQ Internal Control No. D-01172025-027: LH 207, LP, a Texas limited partnership, (Petitioner) filed a petition for creation of Williamson County Municipal Utility District No. 62 (District) of Williamson County with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 130.1 acres located within Williamson County, Texas; and (4) none of the land within the proposed District is within the corporate limits or extraterritorial jurisdiction any city. The petition further states that the proposed District will: (1) purchase, design, construct, acquire, maintain, own, operate, repair, improve, and extend a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain, and operate works, improvements, facilities, plants, equipment, and appliances helpful or necessary to provide more adequate drainage for the proposed District; (3) control, abate, and amend local storm waters or other harmful excesses of water; and (4) purchase, construct, acquire, maintain, own, operate, repair, improve, and extend such additional facilities, including roads, parks and recreation facilities, systems, plants, and enterprises as shall be consistent with all of the purposes for which the proposed District is created. According to the petition, a preliminary investigation has been made to determine

the cost of the project, and it is estimated by the Petitioners that the cost of said project will be approximately \$47,320,000 (\$34,250,000 for water, wastewater, and drainage plus \$8,390,000 for roads plus \$4,680,000 for parks and recreation) at the time of submittal.

INFORMATION SECTION

To view the complete issued notice, view the notice on our website at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the website, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our website at www.tceq.texas.gov.

TRD-202500491

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 12, 2025



Notice of District Petition TCEQ Docket No. D-12172024-027

Notice issued February 5, 2025

TCEQ Internal Control No. D-12172024-027: Cooke 585 Land LP, a Texas limited partnership (Petitioner) filed a petition for creation of South Cooke County Municipal Utility District No. 1 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 586.439 acres located within Cooke County, Texas; and (4) the land within the proposed District is partially within the extraterritorial jurisdiction of City of Val-

leyview and partially in unincorporated Cooke County. By Resolution No. 20240912, passed, approved, and adopted on September 12, 2024, the City of Valley View, Texas, gave its consent to the creation of the proposed District, pursuant to Texas Water Code §54.016. The petition further states that the proposed District will: (1) purchase, construct, acquire, improve, or extend inside or outside of its boundaries any and all works, improvements, facilities, plants, equipment, and appliances necessary or helpful to supply and distribute water for municipal, domestic, and commercial purposes; (2) to collect, transport, process, dispose of, and control domestic and commercial wastes; (3) to gather, conduct, divert, abate, amend, and control local storm water or other local harmful excesses of water; (4) to design, acquire, construct, finance, improve, operate, and maintain macadamized, graveled, or paved roads and turnpikes, or improvements in aid of these roads; (5) to purchase, construct, acquire, improve, or extend inside or outside of its boundaries such additional facilities, systems, plants, and enterprises as shall be consonant with all of the purposes for which the proposed District is created. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioner that the cost of said project will be approximately \$106,945,000; however the preliminary engineering report estimates the cost of the project will be approximately \$106,926,952 (\$75,572,307 for water, wastewater, and drainage plus \$31,354,645 for roads).

INFORMATION SECTION

To view the complete issued notice, view the notice on our website at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the website, type in the issued date range shown at the top of this document to obtain search results. The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our website at www.tceq.texas.gov.

TRD-202500490

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 12, 2025

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Notice of Opportunity to Comment on an Agreed Order of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Order (AO) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AO, the commission shall allow the public an opportunity to submit written comments on the proposed AO. TWC, §7.075, requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **March 24, 2025**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of the proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on March 24, 2025**. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075, provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: Antonio Munoz Aserradero, LLC; DOCKET NUMBER: 2022-0712-MLM-E; TCEQ ID NUMBER: RN110636800; LOCATION: 3023 Farm-to-Market Road 347 North, Rusk, Cherokee County; TYPE OF FACILITY: a sawmill; RULES VIOLATED: Texas Health and Safety Code (THSC), §382.085(b), and 30 TAC §111.201, by causing, suffering, allowing, or permitting outdoor burning within the State of Texas; 30 TAC §330.15(c), by causing, suffering, allowing, or permitting the unauthorized disposal of Municipal Solid Waste; and THSC, §382.0518(a) and 382.085(b), and 30 TAC §116.110(a), by failing to obtain authorization prior to constructing or modifying a source of air contaminants; PENALTY: \$13,989; STAFF ATTORNEY: Cynthia Sirois, Litigation, MC 175, (512) 239-3392; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

TRD-202500480

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: February 11, 2025

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Notice of Opportunity to Request a Public Meeting for a Development Permit Application for Construction Over a Closed Municipal Solid Waste Landfill Proposed Permit No. 62055

Application. PR III/CRE 635 Exchange Holdings, LP has applied to the Texas Commission on Environmental Quality (TCEQ) for a devel-

opment permit for construction over a closed municipal solid waste landfill (Proposed Permit No. 62055). The proposed development concerns a tract of land of approximately 36.29 acres located at 11645 Newberry Street, Dallas, in Dallas County, Texas. The proposed development includes an office/warehouse facility comprised of three single-story buildings with a footprint of approximately 595,688 square feet, associated utilities, concrete driveways, parking areas, rights of way, sidewalks, and landscaping. The development permit application is available for viewing and copying at Park Forest Branch Library, 3421 Forest Lane, Dallas, Texas 75234. The application, including any updates and notices, is available electronically at the following webpage: www.tceq.texas.gov/goto/wasteapps. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: <https://arcg.is/1W1CGa>. For exact location, refer to application.

Alternative Language Notice/Aviso en idioma alternativo. Alternative language notice in Spanish is available at www.tceq.texas.gov/goto/wasteapps. El aviso en idioma alternativo en español está disponible en www.tceq.texas.gov/goto/wasteapps.

Public Comment/Public Meeting. You may submit public comments or request a public meeting on this application to the Office of Chief Clerk at the address included in the information section below. TCEQ will hold a public meeting if the executive director determines that there is a significant degree of public interest in the application or if requested by a local legislator. The purpose of the public meeting is for the public to provide input for consideration by the commission, and for the applicant and the commission staff to provide information to the public. A public meeting is not a contested case hearing. The comment period shall begin on the date this notice is published and end 30 calendar days after this notice is published. The comment period shall be extended to the close of any public meeting. The executive director is not required to file a response to comments.

If a public meeting is to be held, a public notice shall be published in a newspaper that is generally circulated in the county in which the proposed development is located. All the individuals on the adjacent landowners list shall also be notified at least 15 calendar days prior to the meeting.

Executive Director Action. The executive director shall, after review of the application, issue his decision to either approve or deny the development permit application. Notice of decision will be mailed to the owner and to each person that requested notification of the executive director's decision.

Information Available Online. For details about the status of the application, visit the Commissioners' Integrated Database (CID) at www.tceq.texas.gov/goto/cid. Once you have access to the CID using the above link, enter the permit number for this application, which is provided at the top of this notice.

Agency Contacts and Information. All public comments, requests, and petitions must be submitted either electronically at <http://www14.tceq.texas.gov/epic/eComment/> or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record. For more information about this permit application or the permitting process, please call the TCEQ's Public Education Program, Toll Free, at (800) 687-4040 or visit their website at www.tceq.texas.gov/goto/pep. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Mr. Taylor Mitcham at the mailing address PR III/CRE 635 Exchange Holdings, LP, 1200 N.

52nd Street, Phoenix, Arizona 85008, or by calling Mr. Nick Cramer at (214) 499-9234.

Issued Date: January 30, 2025.

TRD-202500492

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 12, 2025



Notice of Second Public Meeting New Permit No. WQ00116391001

APPLICATION. Wilco-Thrall 79 WWTP LLC, P.O. Box 9971, Austin, Texas 78766, has applied to the Texas Commission on Environmental Quality (TCEQ) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016391001, to authorize the discharge of treated domestic wastewater at an annual average flow not to exceed 3,000,000 gallons per day. TCEQ received this application on August 11, 2023.

The facility will be located approximately 1.78 miles west of the intersection of South Bounds Street and U.S. Highway 79, in Williamson County, Texas 76578. The treated effluent will be discharged to an unnamed tributary, thence to Long Branch, thence to Soil Conservation Service Site (SCSS) 18 Reservoir, thence to Long Branch, thence to Brushy Creek in Segment No. 1244 of the Brazos River Basin. The unclassified receiving water uses are limited aquatic life use for the unnamed tributary, and high aquatic life use for SCSS Site 18 Reservoir. The designated uses for Segment No. 1244 are primary contact recreation, public water supply, aquifer protection, and high aquatic life use. In accordance with 30 Texas Administrative Code §307.5 and TCEQ's *Procedures to Implement the Texas Surface Water Quality Standards* (June 2010), an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in SCSS 18 Reservoir, which has been identified as having high aquatic life use. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received. This link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice. For the exact location, refer to the application.

<https://gisweb.tceq.texas.gov/LocationMapper/?marker=-97.32281,30.588503&level=18>

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements.

ALTERNATIVE LANGUAGE NOTICE. Alternative language notice in Spanish is available at <https://www.tceq.texas.gov/permitting/wastewater/plain-language-summaries-and-public-notices>. El aviso de idioma alternativo en español está disponible en <https://www.tceq.texas.gov/permitting/wastewater/plain-language-summaries-and-public-notices>.

PUBLIC COMMENT / PUBLIC MEETING. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case

hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. A written response to all timely, relevant and material, or significant comments will be prepared by the Executive Director. All formal comments will be considered before a decision is reached on the permit application. A copy of the written response will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Monday, March 24, 2025 at 7:00 p.m.

The Venue Taylor

115 W. 2nd Street

Taylor, Texas 76574

INFORMATION. Members of the public are encouraged to submit written comments anytime during the meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at www.tceq.texas.gov/goto/comment. If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. *Si desea información en español, puede llamar (800) 687-4040.* General information about the TCEQ can be found at our website at <https://www.tceq.texas.gov>.

The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at Georgetown Public Library, 402 West 8th Street, Georgetown, Texas. Further information may also be obtained from Wilco-Thrall 79 WWTP LLC, at the address stated above or by calling Mr. Michael Bevilacqua, P.E., Senior Project Manager, Baxter & Woodman, at (737) 358-8103.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least one week prior to the meeting.

Issuance Date: February 7, 2025

TRD-202500493

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 12, 2025



Texas Facilities Commission

Request for Proposals (RFP) # 303-6-20782

The Texas Facilities Commission (TFC), on behalf of the Office of the Attorney General-Child Support Division (OAG-CSD), announces the issuance of Request for Proposals (RFP) # 303-6-20782. TFC seeks a five (5) or ten (10) year lease of approximately 3,800 square feet of office space in Dallas or Lancaster, Texas.

The deadline for questions is March 4, 2025 and the deadline for proposals is March 25, 2025 at 3:00 p.m. The award date is June 18, 2025. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting Samantha De Leon at samantha.deleon@tfc.texas.gov. A copy of the RFP may be downloaded from the Electronic State Business Daily at <https://www.txsmartbuy.gov/esbd/303-6-20782>.

TRD-202500479

Amanda Brainard
State Leasing Services Acting Director
Texas Facilities Commission
Filed: February 11, 2025



General Land Office

Coastal Boundary Survey - Bird Island Cove, Galveston County

Surveying Services

Coastal Boundary Survey

Project: Bird Island Cove_Hall and Jones Survey

Project No: CEPRa Project No. 1713

Project Manager: Rita Setser, Coastal Resources, Amy Nunez, Coastal Field Operations

Surveyor: Jim M. Naismith, Licensed State Land Surveyor

Description: Coastal Boundary Survey, being the Littoral Boundary line along the Mean High Water (MHW) lines of West Bay, being a portion of the Northerly, Southerly, Easterly, and Westerly boundary lines of the Hall & Jones Survey, Abstract No. 121, same being the Northerly, Southerly, Easterly, and Westerly boundary lines of West Bay and State Submerged Tract No.'s 47 and 56. Galveston County, Texas, in connection with CEPRa Project No. 1713. Centroid coordinates: 29.174283° N, 95.009304° W, WGS84. A copy of the survey has been filed under Instrument No. 2024044600, Official Public Records of Galveston County, Texas.

A Coastal Boundary Survey for the above-referenced project has been reviewed and accepted by Surveying Services; upon completion of public notice requirements, the survey will be filed in the Texas General Land Office, Archives and Records, in accordance with provisions of the Tex. Nat. Res. Code §33.136.

by:

Signed: David Klotz, Staff Surveyor

Date: January 30, 2025

Pursuant to Tex. Nat. Res. Code §33.136, the herein described Coastal Boundary Survey is approved by Dawn Buckingham, M.D., Commissioner of the Texas General Land Office.

by:

Signed: Jennifer Jones, Chief Clerk and Deputy Land Commissioner

Date: February 5, 2025

Filed as: Galveston County, NRC Article 33.136 Sketch No. 95

Tex. Nat. Res. Code §33.136

TRD-202500469

Jennifer Jones
Chief Clerk and Deputy Land Commissioner
General Land Office
Filed: February 10, 2025



Coastal Boundary Survey - City of Galveston, Beach Nourishment

Coastal Boundary Survey

Project: City of Galveston Beach Nourishment-Hoover

Project No: CEPRa Project No. 1753

Project Manager: Carver Wray, Coastal Field Operations

Surveyor: Michael Hoover, Licensed State Land Surveyor

Description: Coastal Boundary Survey, being the littoral boundary of the Trimble and Lindsey Survey, Section 2, Edward Hall and Levi Jones Grant, Abstract number 121, and Patented Outlots of Trimble and Lindsey Section 2 to John Price, Abstract nos. 524, 527, and 528, Galveston County, Texas, along the line of mean high water, and Patented Outlots of Trimble and Lindsey Survey Section 2 to Henry T Woody, Abstract no. 594, Samuel Millett, Abstract no. 481, William F Nelson, Abstract no. 482, and Thomas League, Abstract nos. 440, 441, 457, and 458, all in Galveston County, Texas, also along the southerly shoreline of the Gulf of Mexico and the northerly line of State Submerged Tract no. 252 and a portion of State Submerged Tract no.'s 242 and 253 in Galveston County, Texas, in connection with CEPRa Project No. 1753. Centroid coordinates 29.218001° N, -94.910325° W, WGS84. A copy of the survey has been filed under Instrument No. SLS2025000001, Official Public Records of Galveston County, Texas.

A Coastal Boundary Survey for the above-referenced project has been reviewed and accepted by Surveying Services; upon completion of public notice requirements, the survey will be filed in the Texas General Land Office, Archives and Records, in accordance with provisions of the Tex. Nat. Res. Code §33.136.

by:

Signed: David Klotz, Staff Surveyor

Date: February 3, 2025

Pursuant to Tex. Nat. Res. Code §33.136, the herein described Coastal Boundary Survey is approved by Dawn Buckingham, M.D., Commissioner of the Texas General Land Office.

by:

Signed: Jennifer Jones, Chief Clerk and Deputy Land Commissioner

Date: February 7, 2025

Filed as: Galveston County, NRC Article 33.136 Sketch No. 95

Tex. Nat. Res. Code §33.136

TRD-202500470

Jennifer Jones
Chief Clerk and Deputy Land Commissioner
General Land Office
Filed: February 10, 2025



Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 *Federal Register* pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 26. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of February 3, 2025, to February 7, 2025. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§30.20(f), 30.30(h), and 30.40(e), the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on Friday, February 14, 2025. The public comment period for this project will close at 5:00 p.m. on Sunday, March 16, 2025.

Federal License and Permit Activities:

Applicant: EPIC Crude Terminal Company

Location: The project site is located in the Tule Lake Channel approximately 0.83 miles WNW of the former Tule Lift Bridge site, in Corpus Christi, Nueces County, Texas.

Latitude and Longitude: 27.815750, -97.466917

Project Description: The applicant is requesting a modification to deepen and extend dredging thresholds to accommodate a more fully laden Suezmax and Aframax Class Vessel. The proposed dredge footprint would be 11.6 acres to a new maximum depth of -58 feet mean lower low water (MLLW). The newly proposed dredging footprint of 11.6 acres was modified to include all side and end slopes that would be dredged at a 2.5 horizontal to 1.0 vertical grade. The proposed side and end slopes were proposed to achieve a stable slip footprint to reduce erosion and draft development within the slip in an effort to reduce the recurrence of maintenance dredging activities. An estimated volume of 107,852 cubic yards of material would be dredged beyond the previously permitted depth of -51 feet MLLW to achieve mudline elevations down to the required depth of -57 feet MLLW within the slip. An additional estimated 17,975 cubic yards would be dredged below the required depth of the slip and slopes from within a 1' allowable over depth area to a maximum depth of -58 feet MLLW, for a total of an estimated 125,827 cubic yards of dredged material. Dredged material would be placed in one or more of the following DMPAs: Suntime DMPA, Tule Lake DMPA No. 6, South Shore DMPA - Cells A & B, DMPA No. 1, Herbie A. Maurer DMPA, Rincon B West, DMPA 14, DMPA 13, and/or Good Hope DMPA Cell J and I. Maintenance dredging activities would either be performed by mechanical or hydraulic dredge methods with material deposited into one of more of the aforementioned DMPAs. The proposed dredging activity would occur over a period of approximately 3-5 weeks. Following completion of the proposed project, it is estimated that maintenance dredging would occur at a frequency of every 3-5 years over a period of 10 years. It's estimated that maintenance dredging events would result in the dredging of approximately 10,000-15,000 cubic yards of material per maintenance event.

This portion of the Tule Lake Channel is surrounded by multiple similar commercial facilities and is adjacent to the Corpus Christi Ship Channel Improvement Project that is ongoing. The proposed project is an amendment to permit SWG-2024-00559, which authorized a dredging footprint of 6.75 acres to the previously authorized depth of -47 MLLW with two feet of over dredge and two feet of advanced maintenance

for a total dredging depth of -51 MLLW. The project also included a 120-foot-long by 16-foot-wide ramp/walkway connecting the dock to the shoreline with a 90-degree bend along the shoreline to avoid the existing railroad tracks and provide an 85-foot-long by 16-foot-wide approach to accommodate loading access to the dock. The 70-foot by 50-foot dock platform was to accommodate three loading arms, deck crane, ship gangway, and a dock house. Also authorized was the installation of a 602-foot-long sheet pile bulkhead to be placed an average of 90-feet waterward from the shoreline (approximately 1.24-acre area) with approximately 16,000 cubic yards (CY) of fill placed below the ordinary high-water mark (OHWM). Also authorized was the enclosure of a 0.001-acre fringe wetland with the placement of fill material within the enclosed bulkheaded area. This authorization is still active with an expiration date of December 31, 2025. The applicant has not proposed to mitigate for the proposed impacts.

Type of Application: U.S. Army Corps of Engineers permit application #SWG-2014-00559. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

CMP Project No: 25-1117-F1

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection, may be obtained from the Texas General Land Office Public Information Officer at 1700 N. Congress Avenue, Austin, Texas 78701, or via email at pialegal@glo.texas.gov. Comments should be sent to the Texas General Land Office Coastal Management Program Coordinator at the above address or via email at federal.consistency@glo.texas.gov.

TRD-202500478

Jennifer Jones

Chief Clerk and Deputy Land Commissioner

General Land Office

Filed: February 11, 2025



Notice of Funds Availability - Texas Coastal Management Program

The General Land Office (GLO) and the Coastal Coordination Advisory Committee (CCAC) file this Notice of Funds Availability to announce upcoming federal grant funds provided by the National Oceanic and Atmospheric Administration (NOAA) and state grant funds provided by the Gulf of Mexico Energy Security Act (GOMESA) to the Texas Coastal Management Program (CMP). The purpose of the CMP is to improve the management of the state's coastal resources and ensure the long-term ecological and economic productivity of the coast.

A federal award from NOAA to the CMP, approximating \$2 million, is expected in October 2026 and state GOMESA funds are expected in April 2026. The GLO, the agency responsible for administering the CMP with the advisement of the CCAC, will pass through the funding to eligible entities to support projects that implement and/or advance the CMP goals and policies. Projects must be located within the coastal zone boundary established by the Texas Legislature in 1995.

The following entities are eligible to receive grants under the CMP.

Incorporated cities within the coastal zone boundary

County governments within the coastal zone boundary

Texas state agencies

Texas public colleges/universities

Subdivisions of the state with jurisdiction within the coastal zone boundary (e.g., navigation districts, port authorities, river authorities, and soil and water conservation districts)

Councils of governments and other regional governmental entities within the coastal zone boundary

The Galveston Bay Estuary Program

The Coastal Bend Bays and Estuaries Program

Nonprofit Organizations that are registered as a 501(c)(3) or 501(c)(4) and have an office located in Texas.

The GLO and the CCAC will accept applications for NOAA-funded and GOMESA-funded projects through a competitive application process. Projects must address at least one of the CMP funding priorities listed in the CMP Cycle 31 Guidance document.

The GLO will hold four in-person grant workshops to provide information on the funding priorities, outline application requirements, and give potential applicants the opportunity to discuss specific project ideas with GLO staff. Applicants are not required to attend a workshop, but attendance is strongly encouraged. Identical information will be presented at all four workshops.

Workshop 1 - South Padre Island

Tuesday, March 4, 2025

9:00 a.m.- 12:00 p.m.

South Texas EcoTourism Center

TX-100

Laguna Vista, Texas 78578

Workshop 2 - Port Aransas

Wednesday, March 5, 2025

9:00 a.m.- 12:00 p.m.

The Patton Center

855 E Cotter Ave

Port Aransas, Texas 78373

Workshop 3 - Port Lavaca

Thursday, March 6, 2025

9:00 a.m.- 12:00 p.m.

Bauer Community Center

2300 TX-35

Port Lavaca, Texas 77979

Workshop 4 - League City

Tuesday, March 11, 2025

9:00 a.m.- 12:00 p.m.

Johnnie Arolfo Civic Center

400 W Walker St

League City, Texas 77573

Registration is required to attend the workshops. Registration for all workshops will close on Friday, February 28, 2025, at 5:00 p.m. Workshop registration links are shown below.

South Padre Island: <https://www.ticketleap.events/tickets/texas-coastal-management-program/spi-cmp-and-cepra-grant-workshop>

Port Aransas: <https://www.ticketleap.events/tickets/texas-coastal-management-program/port-aransas-cmp-workshop>

Port Lavaca: <https://www.ticketleap.events/tickets/texas-coastal-management-program/port-lavaca-cmp-grant-workshop>

League City: <https://www.ticketleap.events/tickets/texas-coastal-management-program/league-city-cmp-grant-workshop-1257867437>

The requirements to receive federal or state grant funds are outlined in the CMP Cycle 31 Guidance document. This document along with the online application portal, financial guidance, and other useful information can be found here: <https://www.glo.texas.gov/coastal/protecting-coast/funding-opportunities>

Applications for NOAA-funded projects and GOMESA funded Projects of Special Merit are due by 5:00 p.m. on June 4, 2025.

To be considered for funding, applications must be submitted electronically in the online application portal. The Cycle 31 application for NOAA and GOMESA funding is similar to a Letter of Intent. If a project is selected to move forward to development, the applicant will receive a conditional Intent to Fund notification in **August 2025**. The applicant will then be responsible for providing all required supporting documentation, including a draft workplan and budget narrative, by **November 12, 2025**. If the applicant and CMP staff successfully develop a project scope, the applicant will receive a Final Funding Confirmation notice in early 2026.

TRD-202500488

Jennifer Jones

Chief Clerk and Deputy Land Commissioner

General Land Office

Filed: February 12, 2025



Texas Health and Human Services Commission

Public Notice - State Plan on Aging for Federal Fiscal Years 2026 - 2028

The Texas Health and Human Services Commission announces a 30-day public comment period effective from February 22, 2025, to March 24, 2025, for the draft State Plan on Aging for Federal Fiscal Years 2026-2028.

Copy of Draft Texas State Plan on Aging. The Texas Health and Human Services Commission will post the draft State Plan on Aging on the Texas Health and Human Services Commission, Area Agencies on Aging website at: <https://www.hhs.texas.gov/providers/long-term-care-providers/area-agencies-aging-aaa>.

In accordance with the Older Americans Act, HHSC serves as the State Unit on Aging and is responsible for developing the State Plan on Aging. The plan provides the vision and direction for Texas' aging services network and an opportunity to share priorities and strategies for improving the lives of older Texans and their family caregivers.

Comments and questions may be submitted to:

Email: Info.OAAA@hhs.texas.gov

Phone: (512) 438 - 4055

U.S. Mail: Texas Health and Human Services Commission

Office of Area Agencies on Aging

701 W. 51st street

Mail Code: 2213

Austin, Texas 78751

TRD-202500489
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: February 12, 2025



Public Notice - Texas State Plan for Medical Assistance Amendment

The Texas Health and Human Services Commission (HHSC) announces its intent to submit amendments to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendments will be effective March 1, 2025.

The purpose of the amendments is to update the fee schedules in the current state plan by adjusting fees, rates, or charges for the following services:

- Clinical Diagnostic Labs;
- Early and Periodic Screening, Diagnosis and Treatment Services (EPSDT);
- Outpatient Hospital Services; and
- Physicians and Other Practitioners.

The proposed amendments are estimated to result in an increase to annual aggregate expenditure of \$374,178 for federal fiscal year (FFY) 2025, consisting of \$224,507 in federal funds and \$149,671 in state general revenue. For FFY 2026, the estimated result is an increase to annual aggregate expenditure of \$665,777 consisting of \$398,334 in federal funds and \$267,443 in state general revenue. For FFY 2027, the estimated result is an increase to annual aggregate expenditure of \$673,373 consisting of \$402,879 in federal funds and \$270,494 in state general revenue.

Further detail on specific reimbursement rates and percentage changes will be made available on the HHSC Provider Finance website before the proposed effective date at: <https://pfd.hhs.texas.gov/rate-packets>.

Rate Hearings.

A rate hearing was conducted in person and online on November 12, 2024. Information about the proposed rate changes and hearing was published in the October 11, 2024, issue of the *Texas Register* (49 TexReg 8423) and in the October 25, 2024, issue of the *Texas Register* (49 TexReg 8615). Additional information and the notice of hearings can be found at <http://www.sos.state.tx.us/texreg/index.shtml>.

Copy of Proposed Amendment.

Interested parties may obtain additional information and/or a free copy of the proposed amendment by contacting Nicole Hotchkiss, State Plan Policy Advisor, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; by telephone at (512) 487-3349; by facsimile at (512) 730-7472; or by e-mail at Medicaid_Chip_SPA_Inquiries@hhs.state.tx.us. Once submitted to the Centers for Medicare and Medicaid Services for approval, copies of the proposed amendment will be available for review at the HHSC Access and Eligibility Services for local benefit offices.

Written Comments.

Written comments about the proposed amendment and/or requests to review comments may be sent by U.S. mail, overnight mail, special delivery mail, hand delivery, fax, or email:

U.S. Mail

Texas Health and Human Services Commission
Attention: Provider Finance Department
Mail Code H-400
P.O. Box 149030
Austin, Texas 78714-9030
Overnight mail, special delivery mail, or hand delivery
Texas Health and Human Services Commission
Attention: Provider Finance Department
North Austin Complex
Mail Code H-400
4601 W. Guadalupe St.
Austin, Texas 78751
Phone number for package delivery: (512) 730-7401
Fax
Attention: Provider Finance at (512) 730-7475

Email
PFDAcuteCare@hhs.texas.gov
Preferred Communication.
For quickest response, please use e-mail or phone, if possible, for communication with HHSC related to this state plan amendment.

TRD-202500455
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: February 10, 2025



Revised Public Notice: Texas State Plan for Medical Assistance

Revised Public Notice: Texas State Plan for Medical Assistance - Home and Community-Based Services Adult Mental Health (HCBS-AMH) §1915(i) State Plan Benefit Renewal

The original notice regarding the HCBS-AMH §1915(i) State Plan Benefit Renewal request was posted in the *Texas Register* on January 24, 2025. This revised notice reflects a correction to the renewals "Number Served section" in the HCBS-AMH State Plan benefit, and the update to the Substance Use Disorder (SUD) service definition.

The Texas Health and Human Services Commission (HHSC) announces its intent to submit transmittal number (TN) 25-0008 to the Texas State Plan for Medical Assistance under Title XIX of the Social Security Act. The Centers for Medicare and Medicaid Services approved the Home and Community-Based Services Adult Mental Health (HCBS-AMH) §1915(i) State Plan benefit through August 31, 2025. The purpose of this amendment is to request a renewal of the §1915(i) Home and Community-Based Services-Adult Mental Health (HCBS-AMH) program serving adults with a diagnosis of serious mental illness (SMI). The requested effective date for this proposed renewal is September 1, 2025.

The proposed renewal is estimated to result in an annual aggregate expenditure of \$25,762,514 for federal fiscal year (FFY) 2025, consisting of \$14,984,318 in federal funds and \$10,778,196 in state general revenue. For FFY 2026, the estimated annual aggregate expen-

diture is \$26,981,494, consisting of \$15,555,965 in federal funds and \$11,425,529 in state general revenue. For FFY 2027, the estimated annual aggregate expenditure is \$28,516,813, consisting of \$16,467,484 in federal funds and \$12,049,329 in state general revenue.

The HCBS-AMH program is a State Plan Medicaid program that provides home and community-based services to adults with serious mental illness. The services available in the HCBS AMH program are: Transition Assistance Services (TAS); HCBS Psychosocial Rehabilitation Services; Adaptive Aids; Employment Services; Transportation; Community Psychiatric Supports and Treatment (CPST); Peer Support; Host Home/Companion Care; Supervised Living Services; Assisted Living Services; Supported Home Living; Respite Care; Home Delivered Meals; Minor Home Modifications; Nursing; Substance Use Disorder (SUD) Services; Home and Community-Based Services Adult Mental Health (HCBS-AMH) Recovery Management.

The renewal request proposes to make the following changes in the below sections of the 1915(i) HCBS-AMH template.

1915(i) State Plan HCBS Administration and Operation:

HHSC removed duplicative language from the "Conflict of Interest Standards" section that was already stated. Language HHSC removed: "but may not be HCBS-AMH providers, unless they are the only willing and qualified entity in a geographic area who can be responsible for assessments and person-centered service plan development."

HHSC updated the website used for locating rural county designations with the current website being used.

Number Served:

HHSC updated the projected number of unduplicated participants by increasing the projected totals for State Plan benefit years one through three and decreased the totals for State Plan years four and five.

Evaluation/Reevaluation of Eligibility:

HHSC updated the "Process for Performing Evaluation/Reevaluation" to align with current policy, by clarifying eligibility assessments are conducted by Local Mental Health Authorities and State Hospitals, while eligibility determinations are made by HHSC staff.

In the "Needs-based HCBS Eligibility Criteria" state assurance, HHSC removed the following duplicative language, "or previously met the needs-based criteria above and who is assessed and found that, but for the provision of HCBS for stabilization and maintenance purposes, would decline to prior levels of need, i.e., subsequent medically necessary services and coordination of care for stabilization and maintenance is needed to prevent decline to previous needs-based functioning."

HHSC added "arrests" to the risk categories in both the Needs-based HCBS Eligibility Criteria state assurance and the Needs-based Institutional and Waiver Criteria state assurance to align with current policy.

HHSC updated Texas Administrative Code (TAC) references from Title 40 to Title 26 as well as the Chapter citation in the needs-based institutional and waiver criteria chart to align with the correct TAC reference citation.

HHSC clarified that the medical necessity and level of care for the STAR+PLUS HCBS (nursing facility criteria) uses the Medical Necessity/Level of Care (MN/LOC) document as the assessment tool.

Home and Community-Based Settings:

HHSC clarified that the settings included in the SPA continue to meet the HCBS settings requirements and removed the Statewide Transition Plan (STP) language from the settings section as the 1915(i) HCBS-AMH State Plan benefit since CMS approved the STP. The Centers for Medicare and Medicaid Services (CMS) provided approval of the

state's description of the settings, and the process for assuring that HCBS requirements would be met.

HHSC added the Home and Community-Based Settings (HCBS) requirements language consistent with federal requirements at 42 C.F.R. §441.710. and removed the HCBS requirements language from the following services: Host Home/Companion Care, Supervised Living, Assisted Living, and Supported Home Living. This move is to reduce duplication of settings language.

Person-Centered Planning & Service Delivery:

HHSC revised information in "Supporting the Participant in Development of Person-Centered Service Plan" to clarify existing processes, added "provider agency" to the person-centered planning team, and replaced who conducts the independent needs-based assessments from "HHSC staff or contractors" to "Local Mental Health Authorities and State Hospitals."

HHSC updated "Informed Choice of Providers" to include eligibility evaluation process, and the individual's right to provider choice.

HHSC revised information in "Process for Making Person-Centered Service Plan Subject to the Approval of the Medicaid Agency" to align with current policy and removed repetitive language including providing information about the individuals rights.

HHSC clarified the process around the use of restrictive interventions, and clarified that restraints are only allowed in a behavioral emergency and seclusion is prohibited and must be documented as a critical incident and reported as abuse, neglect, and exploitation (ANE). HHSC also removed additional details about restraints, restrictive interventions, and seclusion in this section since this section is about the process for making person-centered service plan subject to approval of the Medicaid agency.

Maintenance of Person-Centered Service Plan Forms:

HHSC added other "Provider Agency" as an agency that maintains person-centered service plan forms in addition to HHSC as the Medicaid agency and the case manager.

Services:

HHSC revised the "Frequency of Verification" section for all services by explaining the verification process, and its frequency, for provider qualifications. "Frequency of Verification" will now read "Before entering into a provider agreement with the provider agency, HHSC verifies the providers compliance with these qualifications through a credentialing process. Contracted providers are obligated to verify on an ongoing basis that these qualifications are achieved, maintained, and documented. HHSC will conduct biennial review to verify these requirements continue to be met after the provider and HHSC enter into an agreement."

HHSC revised all services verification of provider qualifications provider types to provide clarity on all HCBS-AMH providers enrolled and contracted with HHSC that provide HCBS- AMH services. Provider type to read "HCBS-AMH provider enrolled and contracted with HHSC to provide HCBS- AMH services, which employs or contracts with a provider."

HHSC clarified the limit language in Transition Assistance Services (TAS) to provide clarity that the limits are lifetime limits and there is a onetime benefit limit for when individual's use TAS in provider owned/operated homes. This clarification aligns with current policy.

HHSC removed the research-based example "Seeking Safety" from the HCBS Psychosocial rehabilitation service description since its related to cognitive behavioral therapy and clarified the HCBS Psychosocial rehabilitation services privacy policies.

HHSC updated the HCBS Psychosocial Rehabilitation Services service description to remove the information about the HCBS American Rescue Plan (ARP) spending plan funding to purchase technology equipment since that language was specific to a prior amendment.

HHSC updated the Adaptive aids service additional needs-based criteria by clarifying "Any item costing over \$500.00 must also include comparable bids from three vendors" to align with current policy.

HHSC added language to the Transportation service description clarifying that the service does not duplicate transportation provided as part of other services or under the State Plan non-emergency medical transportation benefit and services are coordinated by the individual's recovery manager and through their managed care organization, if applicable.

HHSC deleted duplicated language from the Community Psychiatric Support and Treatment (CPST) service description about Cognitive Behavioral Therapy and Dialectical Behavior Therapy. Also, revised provider qualifications to clarify "license" requirements for individual CPST providers.

HHSC added language to Host Home/Companion Care and Supported Home Living service definition to clarify where the service can be delivered. HHSC also removed the following duplicative, "Periodic training is delivered by the HCBS-AMH provider agency, as needed, to ensure service providers are qualified to provide HCBS-AMH services in accordance with state and federal laws and regulations; and to ensure the individual's safety and security."

HHSC deleted "transition assistance" from the categorically needy limits section to align with current policy in the following services: Host Home/Companion Care, and Supervised Living. Separate payments for TAS are allowable when receiving these services.

HHSC updated the Substance Use Disorder (SUD) service definition to align with current policy by removing the following language: "Services are also designed to respect the individual's culture, while addressing attitudinal and behavioral challenges that may impede the individual from realizing their desired recovery goals."

HHSC added the individual's provider agency as an entity the recovery manager coordinates with to ensure individuals goals are supported in the HCBS-AMH Recovery Management service description. Deleted duplicated language in the Recovery Management services limits that exist in "Conflicts of Interest Standards" section. HHSC also added that the recovery manager assists the individual in obtaining and maintaining an acceptable form of Medicaid to maintain program eligibility to align with current policy.

Also, for the Recovery Management service, HHSC deleted MMIS language that is described in the "Person-Centered Planning & Service Delivery" section to reduce duplication of language.

Quality Improvement Strategy:

HHSC rearranged the Service Plan Requirement section to align with numbering listed in the Quality Measures section of the Quality Improvement Strategy and to align with other CMS reports (i.e., Request for Evidentiary Information (REI) and Interim Procedural Guidelines (IPG) Final Report).

HHSC revised the requirement description to align with Quality Measures listed in the Quality Improvement Strategy and also to align with other CMS reports (i.e., REI and IPG Final Report).

HHSC added the numerator and the denominator for each performance measure for clarity purposes.

HHSC added the sub-requirements to the Service Plans and Eligibility Requirements to align with CMS reports (i.e., REI).

HHSC renumbered performance measures in Service Plan and Eligibility Requirements sections to align with sub-requirements and to align with other CMS reports (i.e., REI and IPG Final Report).

HHSC moved one performance measure in the Service Plans Requirement (1.4) from one sub-requirement to another which resulted in renumbering performance measures in the Service Plans Requirement (1.4 became 1.a.2, 1.2 became 1.b, and 1.3 became 1.c) based on CMS recommendation in IPG Final Report.

HHSC removed criteria for the Qualified Providers Requirement as criteria is it is duplicative of what is already stated in the state plan.

HHSC revised Service Plans performance measure 1.c. by adding "and providers." The revised measure reads- Number and percent of participants with IRPs which document the individual's choice among and between HCBS-AMH services and providers.

HHSC revised all Qualified Providers performance measures. The revised 3.1 measure reads- Number and percent of HCBS service providers who require licensure and certification requirements prior to furnishing HCBS services.

The revised 3.2 measure reads- Number and percent of HCBS service providers that require (or meet) licensure and certification requirements while furnishing services.

In measure 3.3, HHSC removed the duplicate reference to HHSC in the measure. The revised 3.3 measure reads- Number and percent of HCBS-AMH provider agencies with an active agreement with HHSC.

The revised 3.4 measure reads- Number and percent of required trainings completed by service providers.

HHSC revised HCBS settings requirement 4 description to clearly state the intent of meeting federal requirement by including 42 CFR 441.710(a)(1) and (2).

HHSC revised HCBS settings performance measure 4.1 by removing "appropriate licensure or certification." The revised measure reads- Number and percent of HCBS settings meeting federal requirements.

For requirement 4, HHSC removed additional sampling language in the monitoring responsibilities section and just included, "HHSC collects, aggregates, and analyzes the data."

HHSC revised administrative authority performance measure 5.1 by removing the word "assurances" and adding "requirements." The revised measure reads- Number and percent of aggregated performance measure reports generated and reviewed by the State Medicaid Agency that contain discovery, remediation, and system improvements for ongoing compliance of the requirements.

HHSC removed performance measure 5.3 Administrative Authority- Number and percent of SPA concepts and policies requiring MMIS programming approved by HHSC prior to implementation by HHSC. MMIS programming not being used to report measure.

HHSC revised performance measure 6.2 Financial Accountability. The revised measure reads- Number and percent of rates which remain consistent with the approved rate methodology throughout the five-year SPA cycle.

HHSC removed performance measure 7.1 for Incidents of Abuse, Neglect, and Exploitation- Number and/or percent of reports related to the abuse, neglect, exploitation, and unexplained deaths of participants where an investigation was completed within the timeframes established by State Law.

HHSC replaced 7.1 measure by adding new performance measures: Incidents of Abuse, Neglect, and Exploitation- 7.1(a) and 7.1(b). New performance measure 7.1(a) reads- Number and percent of abuse,

neglect, exploitation (ANE) and unexplained death reports where a provider investigation was initiated and completed by HHSC Provider Investigations (PI) according to required timeframes.

New performance measure 7.1(b) reads- Number and percent of abuse, neglect, exploitation (ANE) and unexplained death reports where a non-provider investigation was initiated and completed according to Department of Family and Protective Services (DFPS) policies and procedures.

HHSC revised performance measure 7.4. (Number and percent of grievances filed by participants that were resolved within 14 calendar days according to approved SPA guidelines) to align with current federal timeframe requirements. The measure now reads as, "Number and percent of grievances filed by participants that were resolved according to federal requirements.

HHSC updated the System Improvement section to align with current policy and procedures by adding provider monthly meetings, and the Quality Management (QM) reviews to the "Methods for Analyzing Data and Prioritizing Need for System Improvement" list.

HHSC clarified, in the "Roles and Responsibilities" section, the role of the Quality Management reviews, and the providers role to implement the corrective action plan requirements.

HHSC updated the System Improvements "Frequency" list to replace quality management meetings with "providers monthly meetings", and onsite and/or desk reviews with biennially "quality management reviews". HHSC also updated the frequency of corrective action plans (CAP) by deleting the language "Areas for improvement will be monitored as per CAP and presented quarterly during Quality management meetings" and adding "Biennially QM Reviews".

HHSC removed duplicated Quality Improvement Strategy pages that were erroneously included during the 2020 renewal.

Methods and Standards for Establishing Payment Rates:

HHSC added cap limit language to clarify the current and ongoing rate methodology for TAS. There were no changes made to the current TAS rates or methods and standards.

HHSC also deleted the last 4.19-B page that included duplicative language that was erroneously added and is on the previous page of the same section of the SPA.

Miscellaneous:

HHSC changed the term "The State" and references to "Texas" to "HHSC" throughout the 1915(i) HCBS-AMH State Plan benefit template, as applicable.

HHSC made non substantive formatting edits throughout the 1915 (i) HCBS-AMH State Plan benefit template that changes the page numeration.

Interested parties may obtain additional information and/or a free copy of the proposed amendment by contacting Nicole Hotchkiss, State Plan Policy Advisor, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; by telephone at (512) 438-5035; or by e-mail at Medicaid_Chip_SPA_Inquiries@hhsc.state.tx.us. Once submitted to the Centers for Medicare and Medicaid Services for approval, copies of the proposed amendment will be available for review at the HHSC Access and Eligibility Services for local benefit offices.

U.S. Mail

Texas Health and Human Services Commission Attention: Nicole Hotchkiss, SPA Coordinator, Federal Coordination, Rules and Committees

Health and Human Services Commission,

P.O. Box 13247,

Mail Code H-310

Austin, Texas 78711

Overnight Mail, special delivery mail, or hand delivery

Texas Health and Human Services Commission

Attention: Nicole Hotchkiss, SPA Coordinator, Federal Coordination, Rules and Committees

John H. Winters Building

Mail Code H-310

701 W. 51st St.

Austin, Texas 78751

Telephone

(512) 438-5035

Fax Attention: Nicole Hotchkiss at (512) 323-1905

Email

Medicaid_Chip_SPA_Inquiries@hhsc.state.tx.us

TRD-202500482

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: February 11, 2025

◆ ◆ ◆ Department of State Health Services

Limited Liability Report for Nonprofit Hospitals and Hospital Systems

Introduction

The Hospital Survey Program in the Center for Health Statistics, Texas Department of State Health Services, has completed its analysis of hospital data for the purpose of certifying nonprofit hospitals or hospital systems for limited liability under Texas Health and Safety Code, §311.0456. Twenty-eight hospitals requested certification. Each of the requesting hospitals will be notified, by mail, on the determination of whether the statutory certification requirements were met. The certification issued under Texas Health and Safety Code §311.0456 to a nonprofit hospital or hospital system takes effect on December 31, 2024, and expires on the anniversary of that date.

Certified for Limited Liability

One nonprofit hospital system, comprised of six hospitals, and eleven nonprofit hospitals were found to be eligible for certification of limited liability based on information they provided via survey to the Hospital Survey Program. These entities met the statutory requirements for certification by providing charity care in an amount equal to or greater than 8% of their net patient revenue and providing 40% or more of the charity care in their counties.

Seton Healthcare System (Travis County only)

Ascension Seton Medical Center in Travis County

Ascension Seton Northwest in Travis County

Ascension Seton Shoal Creek in Travis County

Ascension Seton Southwest in Travis County

Dell Children's Medical Center in Travis County
Dell Seton Medical Center at the University of Texas in Travis County
Ascension Seton Bastrop in Bastrop County
Ascension Seton Smithville in Bastrop County
CHRISTUS Spohn Hospital Beeville in Bee County
Ascension Seton Edgar B. Davis in Caldwell County
CHRISTUS Good Shepherd Medical Center - Marshall in Harrison County
CHRISTUS Mother Frances Hospital - Sulphur Springs in Hopkins County
CHRISTUS Spohn Hospital Alice in Jim Wells County
CHRISTUS Spohn Hospital Kleberg in Kleberg County
CHRISTUS Spohn Hospital Corpus Christi Shoreline in Nueces County
CHRISTUS Mother Frances Hospital – Winnsboro, in Wood County
Not Certified for Limited Liability

Twelve nonprofit hospitals were not certified for limited liability based on their survey data. They were unable to meet the statutory requirements to either provide charity care in an amount equal to or greater than 8% of their net patient revenue or did not provide 40% of the charity care in their counties.

CHRISTUS Childrens in Bexar County
CHRISTUS Santa Rosa Hospital - Medical Center in Bexar County
CHRISTUS St. Michael Health System in Bowie County
Ascension Seton Highland Lakes in Burnet County
CHRISTUS Mother Frances Hospital – Jacksonville in Cherokee County
CHRISTUS Santa Rosa Hospital - New Braunfels in Comal County
Ascension Seton Hays in Hays County
CHRISTUS Southeast Texas - Jasper Memorial
CHRISTUS Southeast Texas - St Elizabeth in Jefferson County
Ascension Providence in McLennan County
CHRISTUS Mother Frances Hospital – Tyler in Smith County
Ascension Seton Williamson in Williamson County

For further information about this report, please contact Dwayne Collins or Andria Orbach in the Center for Health Statistics via email at HSU@dshs.texas.gov.

TRD-202500437
Cynthia Hernandez
General Counsel, Department of State Health Services
Department of State Health Services
Filed: February 7, 2025

◆ ◆ ◆
Texas Department of Housing and Community Affairs

2025 HOME American Rescue Plan Nonprofit Capacity Building and Operating Cost Assistance Notice of Funding Availability

The Texas Department of Housing and Community Affairs (TDHCA) announces the availability of \$750,000 in total nonprofit capacity building assistance and operating expenses (NCO) through the HOME American Rescue Plan (HOME-ARP). TDHCA is releasing a competitive Notice of Funding Availability (NOFA) in accordance with the TDHCA's HOME-ARP Allocation Plan, as amended. NCO funds are meant to assist one or more organizations in performing the initial operating and capacity building steps to then apply for the development of a HOME-ARP Non-Congregate Shelter (NCS) project.

The availability and use of these funds are subject but not limited to the following rules in effect at the time of application review or contract execution (as applicable): Title 10, Part 1, Chapter 1 (Administration); Chapter 2 (Enforcement); and Tex. Gov't Code §2306. Other federal and state regulations include but are not limited to: 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; 24 CFR Part 58; 24 CFR Part 92 (HOME Investment Partnerships Program Final Rule); CPD Notice 21-10 and Appendix: Waivers and Alternative Requirements for Implementation of the HOME-ARP Program (HOME-ARP Notice); 2021 HOME-ARP Allocation Plan, as amended. Applicants must familiarize themselves with all of the applicable state and federal rules that govern the HOME-ARP Program.

Eligible Activities and Application Details

NCO funds are meant to assist with the conception to create a NCS and support the nonprofit's general operating costs. These funds will only be awarded to private nonprofit organizations that are reasonably expected to be successful recipients of an award of TDHCA's HOME-ARP NCS development funds for a shelter within 9 months of the NCO award. Organizations must be located in or have programs that serve areas that demonstrate need for NCS by having: i. HUD-published 1-bedroom fair market rents by county that increased 30% or more between 2021 and 2025; and ii. HUD-published 1-bedroom fair market rents by county for FY2025 of \$1000 or more, which is the top 10% of rents in the state. A list of these areas is in Appendix A of the 2025 NCO NOFA.

Interested Applicants must submit an Intent to Apply to receive an NCO Application. The Intent to Apply form is found within the 2025 NCO NOFA as Appendix B, and can be submitted starting January 16, 2025. The NCO Notice of Funding Availability (NOFA) will begin accepting applications from Monday, March 3, 2025 to March 31, 2025 at 5:00 p.m. Austin Local Time for the first application period, and July 14, 2025 to December 15, 2025 at 5:00 p.m. Austin Local Time for the second application period, unless otherwise extended or closed by the Executive Director or his designee. Details for eligible applications, submission and scoring requirements are in the posted NCO NOFA on TDHCA's website.

Additional Information

The NOFA is available on TDHCA's website at <https://www.tdhca.texas.gov/notices-funding-availability-nofas>

More information about HOME-ARP, including eligible populations, can be found online at <https://www.tdhca.texas.gov/programs/home-american-rescue-plan>

For questions regarding this NOFA, please contact Peg McCoy, HOME-ARP Manager at Peg.McCoy@tdhca.state.tx.us.

TRD-202500475
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Filed: February 11, 2025

◆ ◆ ◆
Notice of Public Comment Period and Public Hearing on Draft
2025 U.S. Department of Energy Weatherization Assistance
Program State Plan

The Texas Department of Housing and Community Affairs (TDHCA) announces the opening of a public comment period for the Draft 2025 U.S. Department of Energy (DOE) Weatherization Assistance Program (WAP) State Plan. The public comment period begins February 21, 2025, and ends March 17, 2025, at 5 p.m., CST.

Please visit the TDHCA Public Comment Center at <https://www.tdhca.texas.gov/tdhca-public-comment-center> to access the Plan.

The comments/suggestions should pertain to the contents of the Plan and revisions you want to propose to the Plan. The Department would appreciate that comments include the rationale for the comment, though such is not required. The rationale, if provided, will assist the Department in the review of comments. When providing feedback, please reference the section of the Plan and your comment (e.g., V.8.4 T&TA Activities or Health and Safety Plan Section 3.0. Comment: Recommend removing/adding {insert recommended language}. Such revision is being recommended because {insert rationale}).

Written comments concerning the Draft Plan should be submitted to TDHCA, Attn: Gavin Reid, P.O. Box 13941, Austin, Texas 78711-3941, or by email to gavin.reid@tdhca.texas.gov.

A public hearing for the Draft 2025 DOE WAP State Plan will also be accessible to the public via the web link information below. In order to engage in two-way communication during the hearing, persons must first register (at no cost) to attend the webinar via the link provided. Anyone who calls into the hearing without registering online will not be able to provide comment, but the hearing will still be audible.

March 5, 2025

10 a.m. – 11 a.m., CST

GoToWebinar, to register follow this link: <https://attendee.gotowebinar.com/register/5455734260913355606>

Call-in Number (Audio only): (631) 992-3221, Audio Access Code (677) 704-330 (if you plan to provide comment during the Hearing and will be using your cell phone, the only way to give public comment will be if you have downloaded the GoToWebinar app. If you do not have the GoToWebinar app on your phone, you will only be able to listen in. The other option is to email your public comment to gavin.reid@tdhca.texas.gov. If you do use your telephone, once you are connected, select “Use Telephone” to listen in).

After registering, you will receive a confirmation email containing information about joining the Public Hearing Webinar.

Local officials and citizens are encouraged to participate in the hearing process.

Written and oral comments received will be used to finalize the 2025 DOE WAP State Plan.

Individuals who require auxiliary aids, services or sign language interpreters for this meeting should contact Rita Gonzales-Garza at (512) 475-3905, at least five days before the meeting so that appropriate arrangements can be made. Non-English speaking individuals who require interpreters for this meeting should contact Rita Gonzales-Garza, (512) 475-3905, at least five days before the meeting so that appropriate arrangements can be made. Personas que hablan español y requieren un interprete, favor de llamar a Rita Gonzales-Garza, al siguiente numero (512) 475-3905 por lo menos cinco dias antes de la junta para hacer los preparativos apropiados.

If you have any questions, please contact Gavin Reid via email at gavin.reid@tdhca.texas.gov.

TRD-202500414

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Filed: February 6, 2025

◆ ◆ ◆
**Texas Medical Liability Insurance Underwriting
Association**

Agenda Texas Medical Liability Insurance Underwriting
Association (JUA) Board of Directors Meeting - February 28,
2025

9:00 a.m.

In Person Location:

Mitchell Williams Law

500 West 5th Street, Suite 1150 Austin, Texas 78701

Audio Only: Conference Call (512) 717-0185 (Code 218724)

1. Call to Order
 2. Introductions/Roll Call
 3. Establish Quorum
 4. Approval of Minutes from the September 20, 2024 Board Meeting and Special Board Meeting on October 31, 2024
 5. Update from the JUA Management Team and possible action thereon:
 - a. Executive Director's report on operations
 - b. Report from Underwriting
 - c. Report from Claims
 - d. Report on 2024 annual statement, 2024 budget-to-actuals, and 2025 proposed budget
 6. Update from Standing Committees and possible action thereon:
 - a. Executive Committee
 - b. Claims Committee
 - c. Finance & Audit Committee
 - d. Underwriting Standards Committee
 7. Report from Legal Counsel and possible action thereon
 8. Next BOD Meeting, June 6, 2025 (Friday)
 9. Other Business
 10. TDI Comments or Questions
 11. Adjournment
- TRD-202500473
Connie Hughes - Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C.
Legal Assistant
Texas Medical Liability Insurance Underwriting Association
Filed: February 10, 2025

◆ ◆ ◆
North Central Texas Council of Governments

Request for Proposals Car Care Awareness Safety Integration

Proposals must be received no later than 5:00 p.m., Central Time, on **Friday, March 21, 2025**, to Jason Brown, Program Manager, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011 and electronic submissions to TransRFPs@nctcog.org. The Request for Proposals will be available at www.nctcog.org/rfp by the close of business on **Friday, February 21, 2025**.

NCTCOG encourages participation by disadvantaged business enterprises and does not discriminate on the basis of age, race, color, religion, sex, national origin, or disability.

TRD-202500476

Mike Eastland

Executive Director

North Central Texas Council of Governments

Filed: February 11, 2025

Panhandle Regional Planning Commission

Legal Notice - Fuel Cards

The Panhandle Regional Planning Commission (PRPC) seeks a vendor or vendors that can supply pre-paid fuel cards usable for the purchase of fuel by workforce development program customers at outlets in the Panhandle Workforce Development Area (PWDA).

Cards must be available pre-loaded in various denominations directly from the vendor and limited to fuel purchases only.

PRPC makes no guarantees of purchases from the selected vendor(s) and reserves the right to use alternative methods to purchase fuel.

Interested vendors may obtain a copy of the solicitation packet Monday through Friday, 8:00 a.m. to 5:00 p.m., at PRPC's offices located at 415 S.W. 8th Avenue in Amarillo, Texas 79101 or by contacting Leslie Hardin, PRPC's Workforce Development Program Manager at (806) 372-3381 or lhardin@theprpc.org. The required information must be received at PRPC no later than 3:00 p.m. on Friday, March 14th, 2025.

PRPC as administrative and fiscal agent for the Panhandle Workforce Development Board dba Workforce Solutions Panhandle, a proud partner of the AmericanJobCenter Network, is an Equal Opportunity Employer / Program. Auxiliary aids and services are available upon request to individuals with disabilities. Relay Texas: 711

TRD-202500484

Leslie Hardin

Workforce Development Program Manager

Panhandle Regional Planning Commission

Filed: February 11, 2025

Legal Notice - General Building Maintenance Services

The Panhandle Regional Planning Commission (PRPC) is requesting proposals for contracts to provide comprehensive general building maintenance services for the Workforce Solutions Panhandle office(s) located at:

3120 Eddy Street in Amarillo, Texas

1028-B Megert Center in Borger, Texas

A copy of the Request for Proposals (RFP) can be obtained Monday through Friday, 8:00 a.m. to 5:00 p.m., at PRPC's offices located at 415 S.W. 8th Avenue in Amarillo, Texas 79101 or by contacting ,

PRPC's Workforce Development Program Manager at (806) 372-3381 or lhardin@theprpc.org. Proposals must be received at PRPC no later than 3:00 p.m. on Friday, March 14th, 2025.

PRPC as administrative and fiscal agent for the Panhandle Workforce Development Board dba Workforce Solutions Panhandle, a proud partner of the AmericanJobCenter Network, is an Equal Opportunity Employer / Program. Auxiliary aids and services are available upon request to individuals with disabilities. Relay Texas: 711

TRD-202500483

Leslie Hardin

Workforce Development Program Manager

Panhandle Regional Planning Commission

Filed: February 11, 2025

Texas Parks and Wildlife Department

Notice of Proposed Real Estate Transactions

Grant of Utility Easement – Bandera County

Approximately 21.7 Acres at Hill Country State Natural Area

In a meeting on March 27, 2025, the Texas Parks and Wildlife Commission (the Commission) will consider approving a utility easement of approximately 21.7 acres at Hill Country State Natural Area. The public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Stan David, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, or by email to real.estate.comment@tpwd.texas.gov, or via the department's website at www.tpwd.texas.gov. Visit the TPWD website at tpwd.texas.gov for the latest information regarding the Commission.

Request for Pipeline Easement – Jefferson County

Approximately 10 Acres at J.D. Murphree Wildlife Management Area

In a meeting on March 27, 2025, the Texas Parks and Wildlife Commission (the Commission) will consider approving a pipeline easement request of approximately 10 acres at J.D. Murphree Wildlife Management Area. The public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Whitney Gann, PhD, Wildlife Division, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, or by email to real.estate.comment@tpwd.texas.gov, or via the department's website at www.tpwd.texas.gov. Visit the TPWD website at tpwd.texas.gov for the latest information regarding the Commission.

TRD-202500468

James Murphy

General Counsel

Texas Parks and Wildlife Department

Filed: February 10, 2025

Red River Authority of Texas

Request for Qualifications for Audit Services

February 10, 2025

The Red River Authority of Texas (AUTHORITY) is soliciting a Request for Qualifications (RFQ) from interested persons or firms to provide Audit Services. The AUTHORITY is a governmental entity comprised of multiple departments and enterprise funds and is subject to regulations governing the completion and filing of annual financial audits. In addition, The AUTHORITY provides wholesale and retail water and wastewater services.

The scope of the audit is to be performed under generally accepted accounting audit standards, as well as governmental auditing standards. The report is to be a Comprehensive Annual Financial Report (CAFR) that is graded annually, and the auditor is requested to draft the main statements and combine schedules, as well as some of the other schedules within the CAFR. The AUTHORITY'S staff will prepare schedules, reproduce documents, pull documents, and perform other such tasks as needed to expedite the audit.

The financial audit should be conducted as early as possible after the fiscal year ending September 30, with the entire CAFR ready for discussion, recommendations, and approval by the AUTHORITY'S Board of Directors at the annual meeting in January of the subsequent year.

At a minimum, the RFQs should include:

1. Resumes with the names and relevant experience of the primary client representative, and all support staff who are proposed to provide material input into the audit process as part of the engagement.
2. The firm's overall experience, including references and contact information.

3. The primary client representative must be a licensed CPA and possess a thorough knowledge of State and Federal regulations governing Texas governmental entities, including Federal Single Audit Act requirements.

4. Descriptions of any current or potential conflict of interest that may result from the respondent's selection by the Authority. Specify the party with which the conflict exists or might arise, the nature of the conflict, and whether the respondent would step aside or resign from that engagement or representation creating the conflict.

5. A copy of the audit services contract proposed by the respondent without fee information.

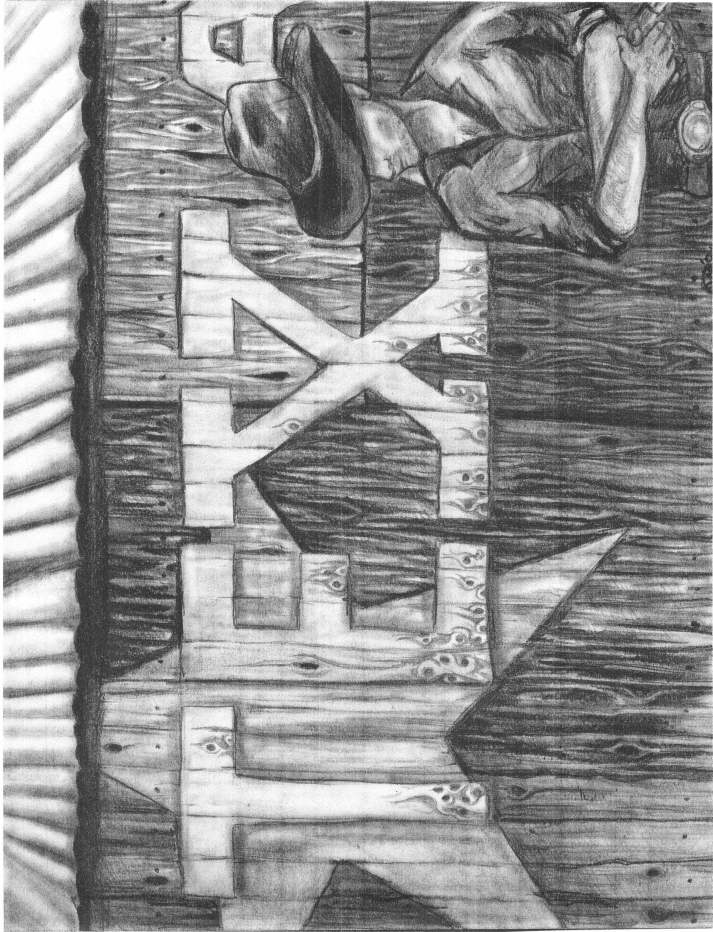
The deadline for submission of the RFQ is **4:00 p.m. on Monday, March 10, 2025.**

The RFQ may be submitted (marked **CONFIDENTIAL RFQ**) to Ms. Cara Glasscock, Administration Manager by email to cara.glasscock@rra.texas.gov, by mail to P.O. Box 240, Wichita Falls, Texas 76307, or delivered to 3000 Hammon Road, Wichita Falls, Texas.

TRD-202500471

Cara Clark
Administration Manager
Red River Authority of Texas
Filed: February 10, 2025





How to Use the Texas Register

Information Available: The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Review of Agency Rules - notices of state agency rules review.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words “TexReg” and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 50 (2025) is cited as follows: 50 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written “50 TexReg 2 issue date,” while on the opposite page, page 3, in the lower right-hand corner, would be written “issue date 50 TexReg 3.”

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <https://www.sos.texas.gov>. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State’s website at <http://www.sos.state.tx.us/tac>.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §91.1: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §91.1 is the section number of the rule (91 indicates that the section is under Chapter 91 of Title 1; 1 represents the individual section within the chapter).

How to Update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule’s *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION Part 4. Office of the Secretary of State Chapter 91. Texas Register

1 TAC §91.1.....950 (P)

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