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 2. TEXAS ETHICS COMMISSION

CHAPTER 8. ADVISORY OPINIONS

1 TAC §§8.3, 8.5, 8.11, 8.18, 8.21

The Texas Ethics Commission (TEC) re-adopts chapter 8 of the Ethics Commission Rules, with amendments, as part of its comprehensive review with a review of the TEC's rules.

The amended rules are adopted with two changes to the proposed text as published in the January 24, 2025, issue of the *Texas Register* (50 TexReg 509). The amended rules will be republished. The only changes from the previously published rules was not substantive. The change includes the phrase "relating to the same issue of law as the advisory opinion request" at the end of amended §8.3(b), and the insertion of the word "section" in §8.11(b).

The TEC readopts without amendment §§8.1, 8.7, 8.9, 8.13, 8.15, and 8.19, as the reasons for originally adopting these rules still exists.

The adopted amendments to Chapter 8 include:

- Repealing parts of §8.3, which are unnecessary as they just repeat statute;

- Amending §8.5 to make clear that a person may not request an opinion about how the law relates to another person;

- Adding §8.11(e) to clearly authorize staff to ask the requestor to clarify a request;

- Adding §8.11(f) to clearly authorize staff to request comments on a pending advisory opinion request from experts or interested parties, similar to the practice of the Office of the Attorney General;

- Repealing §8.17 and §8.18(4), which purported to give staff the authority to answer an advisory opinion request with a nonbinding letter from the executive director rather than providing an advisory opinion; and

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

The amendments to chapter 8 are designed to more closely track statutory language and to provide more clarity and notice of the TEC's interpretations of the statutory requirements in Chapter 571 of the Government Code regarding advisory opinions.

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

The TEC received several public comments from Ross Fischer. First, Mr. Fischer suggested adding the phrase "relating to the same issue of law as the advisory opinion request" to the end of §8.3(c), regarding Subject of an Advisory Opinion. Mr. Fischer suggested that without this change, the rule could read to allow the refusal of an advisory opinion request on a matter unrelated to a pending sworn complaint. The TEC adopted this clarifying language.

Mr. Fischer also suggested adding the following language to subsection 8.11(f): "in a manner that preserves a requestor's confidentiality," which would clarify that the rule does not permit the executive director to unilaterally waive a requestor's confidentiality in the process of seeking outside input. Although the TEC agrees that the TEC cannot reveal the identity of the requestor, the rule does not need to repeat that statutory requirement. The addition of the commenter's suggested language is surplusage because the law requires that the identity of a requestor remain confidential, unless the confidentiality is waived by the requestor. Section 8.11(f) does not and cannot change that legal requirement.

These amended rules are adopted under Texas Government Code §571.062, which authorizes the TEC to adopt rules to administer Chapter 571 of the Government Code.

The adopted amended rules affect Chapter 571 of the Texas Government Code.

§8.3. Subject of an Advisory Opinion.

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

(b) For purposes of this section, the term litigation includes a sworn complaint proceeding before the commission if the request is made by a respondent or complainant or the agent of a respondent or complainant of pending sworn complaint relating to the same issue of law as the advisory opinion request.

(c) An advisory opinion cannot resolve a disputed question of fact.

§8.11. Review and Processing of a Request.

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

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

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

(3) meets the form requirements of §8.7 of this chapter.

(b) If the executive director determines that a request for an opinion meets the requirements of this chapter as set forth in subsections (a)(1)-(3) of this section, the executive director shall assign an AOR number to the request. The executive director shall notify the person making the request of the AOR number and of the proposed wording of the question to be answered by the commission.

(c) If the executive director determines that a request for an opinion does not meet the requirements of this chapter as set forth in subsections (a)(1)-(3) of this section, the executive director shall notify the person making the request of the reason the person making the request is not entitled to an advisory opinion in response to the request.

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

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

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

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 April 10, 2025.

TRD-202501156
Jim Tinley
General Counsel
Texas Ethics Commission
Effective date: April 30, 2025
Proposal publication date: January 24, 2025
For further information, please call: (512) 463-5800

♦ ♦ ♦

1 TAC §8.17

The Texas Ethics Commission (the TEC) adopts the repeal of Texas Ethics Commission rule §8.17 regarding Request Answered by Written Response. The repealed rule is adopted without change to the proposed text as published in the January 24, 2025, issue of the *Texas Register* (50 TexReg 510). The repealed rule will not be republished.

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

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

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

No public comments were received on this repealed rule.

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

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

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 April 10, 2025.

TRD-202501157
Jim Tinley
General Counsel
Texas Ethics Commission
Effective date: April 30, 2025
Proposal publication date: January 24, 2025
For further information, please call: (512) 463-5800

♦ ♦ ♦

CHAPTER 13. REFERRALS TO PROSECUTORS

1 TAC §13.1

The Texas Ethics Commission (the Commission) adopts new §13.1 in the Texas Ethics Commission Rules, regarding Referral to Prosecuting Attorney. The new rule is adopted without changes to the proposed text as published in the January 24, 2025, issue of the *Texas Register* (50 TexReg 511). The rule will not be republished.

This rule is being adopted in response to the CCA's recent decision in *Ex Parte Charette*, which held that a referral from the TEC is a jurisdictional prerequisite for a court to hear criminal charges against a person accused of violating title 15 of the Election Code. *In re Charette*, Nos. PD-0522-21, PD-0523-21, PD-0524-21, PD-0525-21, 2024 Tex. Crim. App. LEXIS 690 (Crim. App. Sep. 11, 2024). The purpose of this rule is to provide information regarding the TEC's procedures for making criminal referrals as authorized by Section 571.171(a) of the Texas Government Code. TEC adopted an identical emergency rule on September 25, 2024.

Section-by-Section Summary

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

Subsection (b) restates the requirement in section 571.134 of the Texas Government Code that certain referrals shall be delayed until after an election.

The rule is necessary to provide notice that the TEC interprets Section 571.171 to allow for the TEC to refer a matter related to a sworn complaint to the appropriate prosecuting attorney at any time in the complaint process after accepting jurisdiction over the complaint. The rule also makes clear that regardless of when voted on by the commission, the actual referral to an appropriate prosecuting attorney must be delayed in accordance with Section 571.134 of the Government Code.

The Commission received two public comments on this new rule. Shane Suam, a Lago Vista city council member commented that he was concerned with the TEC's "new authority to initiate criminal referrals." The requestor appears to believe that the TEC is granting itself authority to initiate criminal referrals. That is not true. The rule does not create new authority for the TEC. It is an interpretive rule implementing authority granted to the TEC by Section 571.171.

The other public comment came from Ross Fischer, who suggested adding subsection (c) which would read "(c) If the referral is not delayed in accordance with section 571.134 of the Government Code, the commission shall dismiss the complaint at its following meeting."

The TEC also disagrees with the addition of Mr. Fischer's preferred language. It is not clear that dismissal of a sworn complaint for a referral made in violation of Section 571.134 is the proper remedy. Regardless, such a rule be a better fit structurally in Chapter 12 of the TEC rules.

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

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

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 April 10, 2025.

TRD-202501155
Jim Tinley
General Counsel
Texas Ethics Commission
Effective date: April 30, 2025
Proposal publication date: January 24, 2025
For further information, please call: (512) 463-5800

♦ ♦ ♦

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 §351.847, §351.849

The Texas Health and Human Services Commission (HHSC) adopts the repeal of §351.847, concerning Aging Texas Well Advisory Committee, and §351.849, concerning the Texas Respite Advisory Committee. HHSC also adopts new §351.847, concerning Aging Texas Well Advisory Committee, and §351.849, concerning the Texas Respite Advisory Committee.

The repeals and new §351.847 are adopted without changes to the proposed text as published in the November 1, 2024, issue of the *Texas Register* (49 TexReg 8631). The rules will not be republished.

New §351.849 is adopted with changes to the proposed text as published in the November 1, 2024, issue of the *Texas Register* (49 TexReg 8631). The rule will be republished.

BACKGROUND AND JUSTIFICATION

The Aging Texas Well Advisory Committee (ATWAC) is established under Executive Order Rick Perry (R.P.) 42 and by the executive commissioner in accordance with Texas Government Code §523.0201 and is subject to Texas Administrative Code §351.801. The committee advises the executive commissioner and HHSC on aging topics and issues and makes recommendations to HHSC and state leadership consistent with Executive Order R.P. 42.

The ATWAC is set to abolish on March 1, 2026. Abolition of the ATWAC would result in the loss of a primary source of public input for key aging programs and initiatives. New §351.847 updates the agency name from the Department of Aging and Disability Services (DADS) to HHSC, per Senate Bill (S.B.) 200, 84th Texas Legislature, Regular Session, 2015, extends the abolishment to March 1, 2032, and revises the rule in several places to ensure the rule conforms with HHSC's advisory committee rules standards.

The Texas Respite Advisory Committee (TRAC) is established under Texas Government Code §523.0201; Texas Government Code Chapter 2110; Texas Human Resources Code §161.079; The Lifespan Respite Care Act, 42 United States Code §300ii; and is subject to TAC §351.801. The committee advises the executive commissioner and the health and human services system on developing strategies to reduce barriers to accessing respite services; improving the quality of respite services; and providing training, education, and support to family caregivers.

The TRAC is set to abolish on March 1, 2026. Abolition of the TRAC would result in the loss of a primary source of public input for developing strategies to reduce barriers to accessing respite services and improve the quality of respite services in Texas.

New §351.849 updates the agency name from DADS to HHSC, per S.B. 200, extends the abolishment to March 1, 2028, and revises the rule in several places to ensure the rule conforms with HHSC's advisory committee rules standards.

Certain citations to the Texas Government Code as modified by House Bill (H.B.) 4611, 88th Legislature, Regular Session, 2023 are updated in both of the new sections. HB 4611 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. The updated citations will become effective on April 1, 2025.

COMMENTS

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

During this period, HHSC received a comment regarding the proposed rules from one organization - the Texas Medical Association (TMA). A summary of the comment relating to the rules and HHSC's responses follow.

Comment: TMA's comment on the proposed rules noted that neither the ATWAC nor the TRAC are required to include a physician member. TMA recommended that the proposed rules be amended to specifically include at least one physician member for both the ATWAC and the TRAC.

Response: HHSC did not revise the rules based on this comment. The current processes of TRAC and ATWAC enable medical professionals to apply under the existing categories and share their expertise. The TRAC committee currently includes a pediatrician and a dentist.

HHSC revised §351.849(f)(1) to align the rule with statute and Executive Order No. GA-55, issued January 31, 2025.

HHSC made a minor edit to §351.849(f)(1)(E) to correct the spelling of "respite."

STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §524.0151, 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 Chapter 2110, which establishes how a state agency may create an advisory committee, Texas Government Code §523.0201, which provides that the executive commissioner of HHSC shall establish and maintain advisory committees, Texas Human Resources Code §161.079, relating to informal caregiver services, and the Lifespan Respite Care Act, 42, United States Code §300ii.

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 April 14, 2025.

TRD-202501241
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: May 4, 2025
Proposal publication date: November 1, 2024
For further information, please call: (512) 840-8536

♦ ♦ ♦

1 TAC §351.847, §351.849

STATUTORY AUTHORITY

The new rules are adopted under Texas Government Code §524.0151, 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 Chapter 2110, which establishes how a state agency may create an advisory committee, Texas Government Code §523.0201, which provides that the executive commissioner of HHSC shall establish and maintain advisory committees, Texas Human Resources Code §161.079, relating to informal caregiver services, and the Lifespan Respite Care Act, 42, United States Code §300ii.

§351.849. Texas Respite Advisory Committee.

(a) Statutory Authority. The Texas Respite Advisory Committee (TRAC) is established under Texas Government Code §523.0201; Texas Government Code Chapter 2110; Texas Human Resources Code §161.079; The Lifespan Respite Care Act, 42 United States Code §300ii; and is subject to Texas Administrative Code §351.801 of this division (relating to Authority and General Provisions).

(b) Purpose. The committee advises the Texas Health and Human Services Commission (HHSC) executive commissioner and health and human services system (HHS) on developing strategies to reduce barriers to accessing respite services; improving the quality of respite services; and providing training, education, and support to family caregivers.

(c) Tasks. The committee performs the following tasks:

(1) assists HHSC to identify barriers and best practices for providing and coordinating respite services in Texas;

(2) responds to requests from HHSC for information about the respite needs of caregivers;

(3) advises HHSC about effective methods for expanding the availability of affordable respite services in Texas through the use of funds available from respite care programs;

(4) cooperates and shares resources and knowledge among community stakeholders to facilitate barrier free access for primary caregivers;

(5) educates the public on the need for community-based options for primary caregivers; and

(6) adopts bylaws to guide the operation of the committee.

(d) Reporting requirements. By July 1 of each year, the committee files an annual written report with the executive commissioner covering the meetings and activities in the immediately preceding fiscal year. The report includes:

(1) a list of the meeting dates;

(2) the members' attendance records;

(3) a brief description of actions taken by the committee;

(4) a description of how the committee accomplished its tasks;

(5) a description of activities the committee anticipates undertaking in the next fiscal year;

(6) recommended amendments to this section; and

(7) the costs related to the committee, including the cost of HHSC staff time spent supporting the committee's activities and the source of funds used to support the committee's activities.

(e) Meetings.

(1) Open meetings. In accordance with statute, the TRAC complies with the requirements for open meetings under Texas Government Code Chapter 551 as if it were a governmental body.

(2) Frequency. The TRAC will meet quarterly.

(3) Quorum. Eight of all members constitutes a quorum.

(f) Membership.

(1) The committee is composed of 15 members appointed by the executive commissioner. In selecting members to serve on the

committee, HHSC considers the applicants' qualifications, background, interest in serving, and geographic location. Fifteen voting members representing the following categories:

(A) family caregivers;

(B) primary caregivers;

(C) providers of respite services;

(D) faith-based organizations;

(E) respite care advocacy organizations; and

(F) members of the general public interested in the issue of respite care.

(2) Members are appointed for staggered terms so that the terms of an equal or almost equal number of members expire on December 31 of each year. Regardless of the term limit, a member serves until his or her replacement has been appointed. This ensures sufficient, appropriate representation.

(A) If a vacancy occurs, the executive commissioner will appoint a person to serve the unexpired portion of that term.

(B) Except as may be necessary to stagger terms, the term of each member is three years. A member may apply to serve one additional term.

(g) Officers. The committee selects a chair and vice chair of the committee from among its members.

(1) The chair serves until January 1 of each even-numbered year. The vice chair serves until January 1 of each odd-numbered year.

(2) A member may serve up to two consecutive terms as chair or vice chair.

(h) Required Training. Each member must complete training on relevant statutes and rules, including this section and §351.801 of this division, Texas Government Code §523.0201, Texas Government Code Chapters 551, 552, and 2110, the HHS Ethics Policy, the Advisory Committee Member Code of Conduct, and other relevant HHS policies. Training will be provided by HHSC.

(i) Travel Reimbursement. To the extent permitted by the current General Appropriations Act, a member of the committee may be reimbursed for their travel to and from meetings if funds are appropriated and available and in accordance with the HHSC Travel Policy.

(j) Date of abolition. The committee is abolished and this section expires on March 1, 2028.

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 April 14, 2025.

TRD-202501242
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: May 4, 2025
Proposal publication date: November 1, 2024
For further information, please call: (512) 840-8536

♦ ♦ ♦

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER A. PURCHASED HEALTH SERVICES

DIVISION 1. MEDICAID PROCEDURES FOR PROVIDERS

1 TAC §354.1006

The executive commissioner of the Texas Health and Human Services Commission (HHSC) adopts new §354.1006, concerning Prohibition of Provider Discrimination Based on Immunization Status.

Section 354.1006 is adopted with changes to the proposed text as published in the December 20, 2024, issue of the *Texas Register* (49 TexReg 10171). This rule will be republished.

BACKGROUND AND JUSTIFICATION

The new section is necessary to implement Texas Government Code §531.02119, added by House Bill 44, 88th Legislature, Regular Session, 2023, which requires HHSC to adopt rules necessary to prohibit Medicaid and Children's Health Insurance Program (CHIP) providers from discriminating against Medicaid recipients or CHIP members by refusing to provide health care services based solely on immunization status.

Texas Government Code §531.02119 outlines the requirements for the prohibition of discrimination based on immunization status, exceptions to this prohibition, requires HHSC or its designee to withhold payment from providers that violate the requirements until HHSC finds the provider is in compliance, and requires HHSC to establish administrative and judicial reviews for providers who are alleged to be in violation.

COMMENTS

The 31-day comment period ended January 20, 2025.

During this period, HHSC received comments regarding the proposed rules from three commenters: The Immunization Partnership, the Texas Medical Association, and the Texas Pediatric Society. A summary of comments relating to the rule and HHSC's responses follows.

Comment: One commenter commented how an individual may request an exemption is too broad and impacts the administration of physicians' offices and the physicians' patients. The commenter recommended HHSC: 1) allow providers to require a patient seeking an exemption to a provider's immunization policy document the request on a standardized form for retention in patient files; and 2) require immunization exemptions to be documented in ImmTrac2.

Response: HHSC disagrees with the comment and declines to revise the rule as recommended. Allowing providers to require a documented request from the patient using a standardized form would contradict Government Code §531.02119(a-1)(2), which requires providers to accept oral requests for an exemption. In addition, Government Code §531.02119 does not grant HHSC the authority to track exemption requests under this section.

Comment: Two commenters recommended HHSC amend the proposed rule to define that the specialists in oncology or organ transplant services that are exempt from the rule include: 1) any physician who is currently or was previously board certified in a medical specialty relevant to one of those areas of treatment; and 2) a provider whose clinical practice includes the care of patients who are immunocompromised from receiving or having received oncology or organ transplant services.

Response: HHSC disagrees with the comment and declines to revise §354.1006(c) as recommended. Expanding the exemption in §354.1006(c), which applies only to a provider who is a specialist in oncology or organ transplant services, would go beyond the scope of the exemption provided in Texas Government Code §531.02119(d).

Comment: Two commenters recommended HHSC revise the due process provisions to address how HHSC will: 1) determine the existence of an alleged violation; 2) provide notice to the provider; 3) provide an opportunity for the provider to demonstrate compliance; and 4) detail the process for requesting an administrative hearing and judicial review. The commenters also recommended HHSC include an informal resolution process, including the opportunity for an informal resolution meeting.

Response: HHSC revised §354.1006(d) to outline more clearly how HHSC determines if a provider violated the rule before withholding payments; added new paragraph §354.1006(d)(2) to set forth that a provider subject to an HHSC vendor hold has the right to notice of the alleged violation and the procedures for requesting an appeal; and renumbered the other paragraphs accordingly. However, HHSC declines to revise the rule to add specific timelines and an informal resolution process. The processes for requesting an administrative hearing and judicial review are already provided for under Texas Administrative Code Chapter 357, Subchapter I, and under Texas Government Code Chapter 2001.

A minor editorial change was made to renumbered §354.1006(d)(4) to reflect that the final decision is from an administrative appeal instead of an administrative review.

STATUTORY AUTHORITY

The new section is adopted under Texas Government Code §531.02119, which authorizes the executive commissioner of HHSC to adopt rules necessary to prohibit a Medicaid provider from refusing to provide health care services to a Medicaid recipient based solely on the recipient's immunization status; Texas Government Code §524.0151, 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; Texas Government Code §531.033, which directs the executive commissioner of HHSC to adopt rules as necessary to carry out the commission's duties; and Texas Human Resources Code §32.021 and Texas Government Code §532.0051, which authorize HHSC to administer the federal medical assistance (Medicaid) program.

§354.1006. Prohibition of Provider Discrimination Based on Immunization Status.

(a) Pursuant to Texas Government Code §531.02119, a Medicaid provider may not refuse to provide health care services to a Medicaid recipient based solely on the recipient's refusal or failure to obtain a vaccine or immunization for a particular infectious or communicable disease.

(b) Notwithstanding subsection (a) of this section, a provider is not in violation of this section if the provider:

(1) adopts a policy requiring some or all the provider's patients, including patients who are Medicaid recipients to be vaccinated or immunized against a particular infection or communicable disease to receive health care services from the provider; and

(2) provides an exemption to the policy described in paragraph (1) of this subsection and accepts an oral or written request from the Medicaid recipient or legally authorized representative, as defined by Texas Health and Safety Code §241.151, for an exemption from each required vaccination or immunization based on:

(A) a reason of conscience, including a sincerely held religious belief, observance, or practice, that is incompatible with the administration of the vaccination or immunization; or

(B) a recognized medical condition for which the vaccination or immunization is contraindicated.

(c) This section does not apply to a provider who is a specialist in:

(1) oncology; or

(2) organ transplant services.

(d) HHSC or its designee withholds payments to any Medicaid participating provider only if HHSC determines, after review of the evidence obtained, that the provider is in violation of this section.

(1) HHSC withholds payments for services to the provider until HHSC determines the provider corrected the circumstances resulting in the vendor hold.

(2) A provider subject to an HHSC vendor hold under this section has the right to notice of the alleged violation and the procedures for requesting an appeal.

(3) A provider has the right to appeal an HHSC vendor hold as provided by Chapter 357, Subchapter I of this title (relating to Hearings Under the Administrative Procedure Act).

(4) If the final decision in the administrative appeal is adverse to the appellant, the appellant may obtain a judicial review by filing for review with a district court in Travis County not later than the 30th day after the date of the notice of the final decision as provided under Texas Government Code Chapter 2001.

(e) Subsection (d) of this section applies only to an individual provider. HHSC or its designee may not refuse to reimburse a provider who did not violate this section based on the provider's membership in a provider group or medical organization with an individual provider who violated this section.

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

Filed with the Office of the Secretary of State on April 9, 2025.

TRD-202501154
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: April 29, 2025
Proposal publication date: December 20, 2024
For further information, please call: (512) 438-2910

♦ ♦ ♦

CHAPTER 381. GUARDIANSHIP SERVICES

The Texas Health and Human Services Commission (HHSC) adopts the repeal of Chapter 381, comprising of Subchapter A, §381.1, concerning Purpose; and §381.2, concerning Definitions; Subchapter B, §381.101, concerning Duties; §381.102, concerning Membership and Eligibility; and §381.103, concerning Officers and Meetings; Subchapter C, §381.201, concerning Eligible Projects; 381.202, concerning Eligible Applicants; §381.203, Application and Selection Process; §381.204,

concerning Grant Period; §381.205, concerning Continuation Funding Policy; §381.206, concerning Grant Amounts; §381.207, concerning Notification of Award; §381.208, concerning Request for Reconsideration; §381.209, concerning Contract; §381.210, concerning Progress Reports; Subchapter D, §381.301, concerning Purpose; §381.303, concerning Applicability of Standards to Guardianship Programs; §381.305, concerning Ineligibility of Non-compliant Programs; §381.315, concerning Form of Entity; §381.317, concerning Fiscal Responsibility; §381.319, concerning Budget; §381.321, concerning Insurance; §381.323, concerning Fees for Services; §381.325, concerning Guardianship Bonds; §381.331, concerning Guardianship Accountability; §381.333, concerning Service Provider Employee Screening; §381.335, concerning Confidentiality; §381.337, concerning Supervision of Employees and Volunteers; §381.339, concerning Community Involvement; §381.345, concerning Less Restrictive Alternatives to Guardianship; §381.347, concerning Guardianship Program Service Levels, §381.349, concerning Role of Volunteers; §381.351, concerning Staffing Requirements; §381.353, concerning Training Requirements; §381.355, concerning Conflicts of Interest; §381.357, concerning Referral, Intake, and Assessments; §381.359, concerning Prioritization of Potential Clients on Waiting Lists; §381.361, concerning Responsibility for Burial or Cremation; §381.363, concerning Evaluation and Monitoring of Caseloads; §381.365, concerning Personal Care Plans for Guardianship Clients; and §381.367, concerning Financial Care Plans for Guardianship Clients.

The repeals are adopted without changes to the proposed text as published in the November 1, 2024, issue of the *Texas Register* (49 TexReg 8640). The repeals will not be republished.

BACKGROUND AND JUSTIFICATION

The repeals are necessary because the authority for the HHSC Guardianship Advisory Board and related guardianship program grants and standards were transferred from HHSC to the Office of Court Administration by Senate Bill (S.B.) 966, 83rd Legislature, Regular Session, 2013. The governing statute for the HHSC Guardianship Advisory Board and related grants and standards, Texas Government Code Chapter 531, Subchapter D, was subsequently repealed by S.B. 200, 84th Legislature, Regular Session, in 2015.

COMMENTS

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

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

SUBCHAPTER A. PURPOSE AND DEFINITIONS

1 TAC §381.1, §381.2

STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §524.0151, 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 Chapter 2110, which establishes how a state agency may create an advisory committee, and Texas Government Code §523.0201, which provides that the executive commissioner of HHSC shall establish and maintain advisory committees.

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 April 14, 2025.

TRD-202501243
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: May 4, 2025
Proposal publication date: November 1, 2024
For further information, please call: (512) 840-8536

♦ ♦ ♦

SUBCHAPTER B. GUARDIANSHIP ADVISORY BOARD

1 TAC §§381.101 - 381.103

The repeals are adopted under Texas Government Code §524.0151, 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 Chapter 2110, which establishes how a state agency may create an advisory committee, and Texas Government Code §523.0201, which provides that the executive commissioner of HHSC shall establish and maintain advisory committees.

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 April 14, 2025.

TRD-202501244
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: May 4, 2025
Proposal publication date: November 1, 2024
For further information, please call: (512) 840-8536

♦ ♦ ♦

SUBCHAPTER C. GRANTS FOR LOCAL GUARDIANSHIP PROGRAMS

1 TAC §§381.201 - 381.210

The repeals are adopted under Texas Government Code §524.0151, 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 Chapter 2110, which establishes how a state agency may create an advisory committee, and Texas Government Code §523.0201, which provides that the executive commissioner of HHSC shall establish and maintain advisory committees.

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 April 14, 2025.

TRD-202501245
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: May 4, 2025
Proposal publication date: November 1, 2024
For further information, please call: (512) 840-8536

♦ ♦ ♦

SUBCHAPTER D. STANDARDS FOR GUARDIANSHIP PROGRAMS

DIVISION 1. GENERAL

1 TAC §§381.301, 381.303, 381.305

The repeals are adopted under Texas Government Code §524.0151, 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 Chapter 2110, which establishes how a state agency may create an advisory committee, and Texas Government Code §523.0201, which provides that the executive commissioner of HHSC shall establish and maintain advisory committees.

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 April 14, 2025.

TRD-202501246
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: May 4, 2025
Proposal publication date: November 1, 2024
For further information, please call: (512) 840-8536

♦ ♦ ♦

DIVISION 2. ADMINISTRATION AND FISCAL MANAGEMENT

1 TAC §§381.315, 381.317, 381.319, 381.321, 381.323, 381.325

The repeals are adopted under Texas Government Code §524.0151, 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 Chapter 2110, which establishes how a state agency may create an advisory committee, and Texas Government Code §523.0201, which provides that the executive commissioner of HHSC shall establish and maintain advisory committees.

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 April 14, 2025.

TRD-202501247
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: May 4, 2025
Proposal publication date: November 1, 2024
For further information, please call: (512) 840-8536

♦ ♦ ♦

DIVISION 3. PERSONNEL MANAGEMENT

1 TAC §§381.331, 381.333, 381.335, 381.337, 381.339

The repeals are adopted under Texas Government Code §524.0151, 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 Chapter 2110, which establishes how a state agency may create an advisory committee, and Texas Government Code §523.0201, which provides that the executive commissioner of HHSC shall establish and maintain advisory committees.

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 April 14, 2025.

TRD-202501248
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: May 4, 2025
Proposal publication date: November 1, 2024
For further information, please call: (512) 840-8536

♦ ♦ ♦

DIVISION 4. GUARDIANSHIP PROGRAMS AND CLIENT SERVICES

1 TAC §§381.345, 381.347, 381.349, 381.351, 381.353, 381.355, 381.357, 381.359, 381.361, 381.363, 381.365, 381.367

The repeals are adopted under Texas Government Code §524.0151, 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 Chapter 2110, which establishes how a state agency may create an advisory committee, and Texas Government Code §523.0201, which provides that the executive commissioner of HHSC shall establish and maintain advisory committees.

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 April 14, 2025.

TRD-202501249

Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: May 4, 2025
Proposal publication date: November 1, 2024
For further information, please call: (512) 840-8536

♦ ♦ ♦

TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION
SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

10 TAC §1.15

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 1, Administration, §1.15, Integrated Housing Rule without changes to the proposed text as published in the January 31, 2025, issue of the *Texas Register* (50 TexReg 600). The rule will not be republished. §1.15, Integrated Housing Rule. The purpose of the repeal is to include updates to references and make minor technical corrections.

Tex. Gov't Code §2001.0045(b) does not apply to the rule 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 has determined that, for the first five years the repeal would be in effect:

1. The repeal does not create or eliminate a government program but relates to changes to an existing activity: requirements relating to integrated housing for recipients of Department funds.

2. The repeal 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 workload to a degree that eliminates any existing employee positions.

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

4. The repeal will not result in an increase in fees paid to the Department, nor in 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 repeal will not expand, limit, or repeal an existing regulation.

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

8. The 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 the 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 changed section 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 also has 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. The public comment period was held from January 31, 2025 through March 4, 2025, to receive input on the proposed action. No comment was received.

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 repeal 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 April 10, 2025.

TRD-202501186
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: April 30, 2025
Proposal publication date: January 31, 2025
For further information, please call: (512) 475-3959

♦ ♦ ♦

10 TAC §1.15

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 1, Administration, §1.15, Integrated Housing Rule without changes to the proposed text as published in the January 31, 2025, issue of the *Texas Register* (50 TexReg 601). The rule will not be republished. The

purpose of the new rule is to include updates to references and make minor technical corrections.

Tex. Gov't Code §2001.0045(b) does not apply to the rule 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 has determined that, for the first five years the new section would be in effect:

1. The new section does not create or eliminate a government program but relates to changes to an existing activity: requirements relating to integrated housing for recipients of Department funds.

2. The new section 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 workload to a degree that eliminates any existing employee positions.

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

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

5. The new section is not creating a new regulation, except that they are replacing sections being repealed simultaneously to provide for revisions.

6. The new section will not expand, limit, or repeal an existing regulation.

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

8. The new section 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 the new section and determined that it 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 new section 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 section as to its possible effects on local economies and has determined that for the first five years the new section 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 new section is in effect, the public benefit anticipated as a result of the new section would be a more current and germane rule. There will not be economic costs to individuals required to comply with the new section.

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 new section is in effect, enforcing or administering the section does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENT. The public comment period was held from January 31, 2025 through March 4, 2025, to receive input on the proposed action. No public comment was received.

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

Except as described herein the new section 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 April 10, 2025.

TRD-202501187
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: April 30, 2025
Proposal publication date: January 31, 2025
For further information, please call: (512) 475-3959

SUBCHAPTER D. UNIFORM GUIDANCE FOR RECIPIENTS OF FEDERAL AND STATE FUNDS

10 TAC §§1.401, 1.403, 1.404, 1.407

The Texas Department of Housing and Community Affairs (the Department) adopts, without changes to the proposed text as published in the January 31, 2025, issue of the *Texas Register* (50 TexReg 602), amendments to 10 TAC Chapter 1, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds, §1.401, Effective Date and Definitions, §1.403, Single Audit Requirements, §1.404, Purchase and Procurement Standards, and §1.407, Inventory Report. The rules will not be republished. The purpose of the amendments is to bring the rules into conformance with the Texas Grant Management Standards Version 2.0 published by the Texas Comptroller of Public Accounts in October 2024.

Tex. Gov't Code §2001.0045(b) does not apply to the rule 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 has determined that, for the first five years the amendments would be in effect:

1. The amendments do not create or eliminate a government program but relate to changes to an existing activity: how state and federal requirements are applied to recipients of Department funds.

2. The amendments 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 amendments do not require additional future legislative appropriations.

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

5. The amendments are not creating a new regulation.

6. The amendments will amend an existing regulation.

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

8. The amendments 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 the amendments and determined that the amendments 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 amendments 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 amendments as to their possible effects on local economies and has determined that for the first five years the amendments 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 amendments are in effect, the public benefit anticipated as a result of the changed sections would be an updated and compliant rule. There will not be economic costs to individuals required to comply with the amended section.

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 amendments are in effect, enforcing or administering the amendments does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENT. The public comment period was held from January 31, 2025 to March 4, 2025 and no comment was received.

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

Except as described herein the amendments affect 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 April 10, 2025.

TRD-202501188
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: April 30, 2025
Proposal publication date: January 31, 2025
For further information, please call: (512) 475-3959

♦ ♦ ♦

CHAPTER 2. ENFORCEMENT
SUBCHAPTER B. ENFORCEMENT FOR NONCOMPLIANCE WITH PROGRAM REQUIREMENTS OF CHAPTERS 6 AND 7

10 TAC §2.201, §2.202

The Texas Department of Housing and Community Affairs (the Department) adopts, without changes to the proposed text as published in the January 31, 2025, issue of the *Texas Register* (50 TexReg 606), the repeal of 10 TAC Chapter 2, Subchapter B, Enforcement for Noncompliance with Program Requirements of Chapters 6 and 7, §2.201, Cost Reimbursement, and §2.202 Sanctions and Contract Closeout. The rule will not be republished. The purpose of the repeal is to make changes to bring this rule into consistency with other more recent revisions to Department rules and processes and to improve clarity.

Tex. Gov't Code §2001.0045(b) does not apply to the rule 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 has determined that, for the first five years the repeal would be in effect:

1. The repeal does not create or eliminate a government program but relates to changes to an existing activity: how to handle certain facets of enforcement actions relating to the Community Affairs and Homelessness Programs.

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

4. The repeal will not result in an increase in fees paid to the Department, nor in 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 repeal will not expand, limit, or repeal an existing regulation.

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

8. The 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 the 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 changed sections 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 also has 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. The public comment period was held January 31, 2025 through March 4, 2025, to receive input on the proposed action. No public comment was received.

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 repeal 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 April 10, 2025.

TRD-202501189

Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: April 30, 2025
Proposal publication date: January 31, 2025
For further information, please call: (512) 475-3959

♦ ♦ ♦

10 TAC §2.201, §2.202

The Texas Department of Housing and Community Affairs (the Department) adopts, without changes to the proposed text as published on January 31, 2025, issue of the *Texas Register* (50 TexReg 607), new 10 TAC Chapter 2, Subchapter B, Enforcement for Noncompliance with Program Requirements of Chapters 6 and 7, §2.201, Cost Reimbursement, and §2.202 Sanctions and Contract Closeout. The rules will not be republished. The purpose of the action is to make changes to bring these rules into consistency with other more recent revisions to Department rules and processes and to improve clarity.

Tex. Gov't Code §2001.0045(b) does not apply to the rules 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 has determined that, for the first five years the new sections would be in effect:

1. The new sections do not create or eliminate a government program but relates to changes to an existing activity: how to handle certain facets of enforcement actions relating to the Community Affairs and Homelessness Programs.

2. The 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 new sections do not require additional future legislative appropriations.

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

5. The new sections are not creating a new regulation, except that they are replacing sections being repealed simultaneously to provide for revisions.

6. The new sections will not expand, limit, or repeal an existing regulation.

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

8. The 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 has evaluated the new sections and determined that they 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 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 new sections as to their possible effects on local economies and has determined that for the first five years the new sections 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 rules.

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 new sections are in effect, the public benefit anticipated as a result of the new sections would be a more current and germane rule. There will not be economic costs to individuals required to comply with the new 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 new sections are in effect, enforcing or administering the sections does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENT. The public comment period was held January 31, 2025 through March 4, 2025, to receive input on the proposed action. No public comment was received.

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

Except as described herein the new sections 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 April 10, 2025.

TRD-202501190
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: April 30, 2025
Proposal publication date: January 31, 2025
For further information, please call: (512) 475-3959

♦ ♦ ♦

CHAPTER 5. SECTION 8 HOUSING CHOICE VOUCHER PROGRAM

10 TAC §5.801, §5.802

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 5, Section 8 Housing Choice Voucher Program, §5.801, Project Access Initiative and §5.802, Waiting List without changes to the January 31, 2025, issue of the *Texas Register* (50 TexReg 609). The rules will not be republished. The purpose of the repeal is to eliminate an outdated rule, while adopting a new updated rule under separate action.

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 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 Section 8 Housing Choice Voucher Program.

2. The repeal does not require a change in work that would require the creation of new employee positions, nor is the 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 Department's Section 8 Housing Choice Voucher 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 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 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 chapter.

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 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 January 24, 2025, to February 24, 2025. No comment was received.

The Board adopted the final order adopting the repeal on April 10, 2025.

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 April 10, 2025.

TRD-202501191
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: April 30, 2025
Proposal publication date: January 31, 2025
For further information, please call: (512) 475-3959

♦ ♦ ♦

10 TAC §5.801, §5.802

The Texas Department of Housing and Community Affairs (the Department) adopts, without changes to the proposed text as published in the January 31, 2025, issue of the *Texas Register* (50 TexReg 610), the new 10 TAC Chapter 5, Section 8 Housing Choice Voucher Program, §5.801 and §5.802. The rules will not be republished. The purpose of the new sections are to comply with federal requirements and update procedures to include additional special purpose vouchers.

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

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 rules would be in effect:

1. The new rules do not create or eliminate a government program, but relates to the readoption of this rule which makes changes to administration of the Department's Section 8 Housing Choice Voucher Programs.

2. The new rules 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 new rules do not require additional future legislative appropriations.

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

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

6. The new rules will not expand or repeal an existing regulation.

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

8. The new rules 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 new rules, 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. The Department has determined that because the new rules serve 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 rules 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 new rules as to their possible effects on local economies and has determined that for the first five years the rule will be in effect the new rules have no economic effect on local employment because the rules serve to clarify and update existing requirements and do 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 these rules outlines administration of an existing department program and is purely administrative, there are no "probable" effects of the proposed new rules 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 rules are in effect, the public benefit anticipated as a result of the rules 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 rules have already been in place through the rules found as 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 new rules are in effect, en-

forcing or administering the rules 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.

SUMMARY OF PUBLIC COMMENT AND STAFF REASONED RESPONSE. The Department accepted public comment between January 24, 2025, to February 24, 2025. No comment was received.

The Board adopted the final order adopting the repeal on April 10, 2025.

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

Except as described herein the proposed new rules affect 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 April 10, 2025.

TRD-202501192
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: April 30, 2025
Proposal publication date: January 31, 2025
For further information, please call: (512) 475-3959

♦ ♦ ♦

CHAPTER 10. UNIFORM MULTIFAMILY RULES

SUBCHAPTER E. POST AWARD AND ASSET MANAGEMENT REQUIREMENTS

10 TAC §10.405, §10.406

The Texas Department of Housing and Community Affairs (the "Department") adopts the amendment, with changes, to 10 TAC Chapter 10, Subchapter E, §10.405 and §10.406, Post Award and Asset Management Requirements to the proposed text as published in the December 27, 2024, issue of the *Texas Register* (49 TexReg 10455). The rules will be republished. The purpose of the amendment is to make corrections to gain consistency across other sections of rule, correct references, clarify existing language and processes that will ensure accurate processing of post award activities, and to communicate more effectively with multifamily Development Owners regarding their responsibilities after funding or award by the Department.

Tex. Gov't Code §2001.0045(b) does not apply to the amended rules because it was determined that no costs are associated with this action, and therefore no costs warrant being offset. In general, most changes were corrective in nature and clarify language or processes to more adequately communicate the language or process. The only substantial change from the proposed amendment, located in §10.406 Ownership Transfers (§2306.6713), is that staff added a requirement that specifies that a change in the ownership structure that results in a property tax exemption will require a resolution of support from the municipality or a letter of support from the mayor, or if the Development is not within a municipality or its Extra Territorial Jurisdiction (ETJ), a resolution of support from the commissioners court or letter of support from the county judge. In response to public comment, §10.406 was further revised to specify that the requirement only pertains to Competitive Housing Tax Credit Developments for the addition of a public facility corporation, a housing finance corporation, or a public housing authority prior to issuance of IRS Form(s) 8609.

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.

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the amended rules would be in effect, the amendment does not create or eliminate a government program, but relates to changes to an existing activity, concerning the post award activities of Low-Income Housing Tax Credit (LIHTC) and other Department-funded multifamily Developments.

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

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

4. The amendment does not result in an increase in fees paid to the Department or in a substantial decrease in fees paid to the Department.

5. The amendment is not creating a new regulation, but are revisions to provide additional clarification.

6. The amendment will not repeal an existing regulation.

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

8. The amendment will not negatively or positively 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.

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

2. These amended rules relate to the procedures for the handling of post award and asset management activities of multifamily developments awarded funds through various Department programs. Other than in the case of a small or micro-business that is an owner or a party to one of the Department's properties, no small or micro-businesses are subject to the amended rules. If a small or micro-business is such an owner or participant, the amended rules provide for a more clear, transparent process for doing so and do not result in a negative impact for those small or micro-businesses. There are not likely to be any rural communities subject to the amended rules because these amended rules are applicable only to the owners or operators of properties in the Department's portfolio, not municipalities.

3. The Department has determined that because this amended rules relate only to the process in use for the post award and asset management activities of the Department's portfolio, 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 amendment 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 amended rules as to their possible effects on local economies and has determined that for the first five years the amended rules will be in effect, there will be no economic effect on local employment, because the amended rules only provide for administrative processes required of properties in the Department's portfolio. No program funds are channeled through these amended rules, so no activities under these amended rules would support additional local employment opportunities. Alternatively, the amended rules would also not cause any negative impact on employment. Therefore, no local employment impact statement is required to be prepared for the amended rules.

Texas 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 no impact is expected on a statewide basis, there are also no "probable" effects of the amended rules on particular geographic regions.

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 amended rules are in effect, the benefit anticipated as a result of the amended sections would be increased clarity and consistency across rule sections. There will not be economic costs to individuals required to comply with the amendment.

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 amended rules are in effect, enforcing or administering the amended rules does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between December 27, 2024, and January 27, 2025. Comments regarding the amended rules were accepted in writing and e-mail with comments received from: (1) Barry J. Palmer, Director, Coats Rose, (2) Kathryn Saar, QAP Chair, and Karsten Lowe, Co-Chair, Texas Affiliation of Affordable Housing Providers (TAAHP), and (3) Cynthia L. Bast, Partner, BakerHostetler. Comments were received on §10.406 Ownership Transfers (§2306.6713).

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

Except as described herein the adopted amended rules affect no other code, article, or statute.

§10.405. Amendments and Extensions.

(a) Amendments to Housing Tax Credit (HTC) Application or Award Prior to Land Use Restriction Agreement (LURA) recording or amendments that do not result in a change to the LURA (§2306.6712). The Department expects the Development Owner to construct or rehabilitate, operate, and own the Development consistent with the representations in the Application. The Department must receive notification of any amendments to the Application. Regardless of development stage, the Board shall re-evaluate a Development that undergoes a material change, as identified in paragraph (3) of this subsection at any time after the initial Board approval of the Development (§2306.6731(b)). The Board may deny an amendment request and subsequently may rescind any Commitment or Determination Notice issued for an Application, and may reallocate the credits to other Applicants on the waiting list.

(1) Requesting an amendment. The Department shall require the Applicant to file a formal, written request for an amendment to the Application. Such request must include a detailed explanation of the amendment request and other information as determined to be necessary by the Department, and the applicable fee as identified in Chapter 11, Subchapter E of this title (relating to Fee Schedule, Appeals, and other Provisions) in order to be received and processed by the Department. Department staff will evaluate the amendment request to determine if the change would affect an allocation of Housing Tax Credits by changing any item that received points, by significantly affecting the most recent underwriting analysis, or by materially altering the Development as further described in this subsection.

(2) Notification Items. The Department must be notified of the changes described in subparagraphs (A) - (F) of this paragraph. The changes identified are subject to staff agreement based on a review of the amendment request and any additional information or documentation requested. Notification items will be considered satisfied when an acknowledgment of the specific change(s) is received from the Department and include:

(A) Changes to Development Site acreage required by the City or other local governmental authority, or changes resulting from survey discrepancies, as long as such change does not also result in a modification to the residential density of more than 5%;

(B) Minor modifications to the site plan that will not significantly impact development costs, including, but not limited to, relocation or rearrangement of buildings on the site (as long as the number of residential and non-residential buildings remains the same), and movement, addition, or deletion of ingress/egress to the site;

(C) Increases or decreases in net rentable square footage or common areas that do not result in a material amendment under paragraph (4) of this subsection;

(D) Changes in amenities that do not require a change to the recorded LURA and do not negatively impact scoring, including changes to outdated amenities that could be replaced by an amenity with equal benefit to the resident community;

(E) Changes in Developers or Guarantors (notifications for changes in Guarantors that are also the General Contractor or are only providing guaranties during the construction period are not required) with no new Principals (who were not previously checked by Previous Participation review that retain the natural person(s) used to meet the experience requirement in Chapter 11 of this title (relating to Qualified Allocation Plan)); and

(F) Any other amendment not identified in paragraphs (3) and (4) of this subsection.

(3) Non-material amendments. The Executive Director or designee may administratively approve all non-material amendments, including, but not limited to:

(A) Any amendment that is determined by staff to exceed the scope of notification acknowledgement, as identified in para-

graph (2) of this subsection but not to rise to a material alteration, as identified in paragraph (4) of this subsection;

(B) Changes in Developers or Guarantors (excluding changes in Guarantors that are also the General Contractor or are only providing guaranties during the construction period) not addressed in §10.405(a)(2)(E). Changes in Developers or Guarantors will be subject to Previous Participation requirements as further described in Chapter 11 of this title and the credit limitation described in §11.4(a) of this title; and

(C) For Exchange Developments only, requests to change elections made on line 8(b) of the IRS Form(s) 8609 to group buildings together into one or more multiple building projects. The request must include an attached statement identifying the buildings in the project. The change to the election may only be made once during the Compliance Period.

(4) Material amendments. Amendments considered material pursuant to this paragraph must be approved by the Board. When an amendment request requires Board approval, the Development Owner must submit the request and all required documentation necessary for staff's review of the request to the Department at least 45 calendar days prior to the Board meeting in which the amendment is anticipated to be considered. Before the 15th day preceding the date of Board action on the amendment, notice of an amendment and the recommendation of the Executive Director and Department staff regarding the amendment will be posted to the Department's website and the Applicant will be notified of the posting (§2306.6717(a)(4)). Material Amendment requests may be denied if the Board determines that the modification proposed in the amendment would materially alter the Development in a negative manner or would have adversely affected the selection of the Application in the Application Round. Material alteration of a Development includes, but is not limited to:

(A) A significant modification of the site plan;

(B) A modification of the number of Units or bedroom mix of Units;

(C) A substantive modification of the scope of tenant services;

(D) A reduction of 3% or more in the square footage of the Units or common areas;

(E) A significant modification of the architectural design of the Development;

(F) A modification of the residential density of at least 5%;

(G) A request to implement a revised election under §42(g) of the Code prior to filing of IRS Form(s) 8609;

(H) Exclusion of any requirements as identified in Chapter 11, Subchapter B of this title (relating to Site and Development Requirements and Restrictions) and Chapter 11, Subchapter C of this title (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules); or

(I) Any other modification considered material by the staff and therefore required to be presented to the Board as such.

(5) Amendment requests will be denied if the Department finds that the request would have changed the scoring of an Application in the competitive process such that the Application would not have received a funding award or if the need for the proposed modification was reasonably foreseeable or preventable by the Applicant at the time the Application was submitted, unless good cause is found for the approval of the amendment.

(6) This section shall be administered in a manner that is consistent with §42 of the Code. If a Development has any uncorrected issues of noncompliance outside of the corrective action period (other than the provision being amended) or otherwise owes fees to the Department, such non-compliance or outstanding payment must be resolved to the satisfaction of the Department before a request for amendment will be acted upon.

(7) In the event that an Applicant or Developer seeks to be released from the commitment to serve the income level of tenants identified in the Application and Credit Underwriting Analysis Report at the time of award and as approved by the Board, the procedure described in subparagraphs (A) and (B) of this paragraph will apply to the extent such request is not prohibited based on statutory and/or regulatory provisions:

(A) For amendments that involve a reduction in the total number of Low-Income Units, or a reduction in the number of Low-Income Units at any rent or income level, as approved by the Board, evidence noted in either clause (i) or (ii) of this subparagraph must be presented to the Department to support the amendment:

(i) In the event of a request to implement (rent to a household at an income or rent level that exceeds the approved AMI limits established by the minimum election within the Development's Application or LURA) a revised election under §42(g) of the Code prior to an Owner's submission of IRS Form(s) 8609 to the IRS, Owners must submit updated information and exhibits to the Application as required by the Department; or

(ii) For all other requests for reductions in the total number of Low-Income Units or reductions in the number of Low-Income Units at any rent or income level, prior to issuance of IRS Form(s) 8609 by the Department, the lender and syndicator must submit written confirmation that the Development is infeasible without the adjustment in Units. The Board may or may not approve the amendment request; however, any affirmative recommendation to the Board is contingent upon concurrence from Department staff that the Unit adjustment is necessary for the continued financial feasibility of the Development; and

(B) If it is determined by the Department that the loss of low-income targeting points would have resulted in the Application not receiving an award in the year of allocation, and the amendment is approved by the Board, the approved amendment will carry a penalty that prohibits the Applicant and all Persons or entities with any ownership interest in the Application (excluding any tax credit purchaser/syndicator), from participation in the Housing Tax Credit Program (for both the Competitive Housing Tax Credit Developments and Tax-Exempt Bond Developments) for 24 months from the time that the amendment is approved.

(b) Amendments to LURAs. Department approval shall be required for any amendment to a LURA in accordance with this section. An amendment request shall be submitted in writing, containing a detailed explanation of the request, the reason the change is necessary, the good cause for the change, financial information related to any financial impact on the Development, information related to whether the necessity of the amendment was reasonably foreseeable at the time of application, and other information as determined to be necessary by the Department, along with any applicable fee as identified in Chapter 11, Subchapter E of this title (relating to Fee Schedule, Appeals, and other Provisions). The Department may order or require the Development Owner to order a Market Study or appraisal at the Development Owner's expense. If a Development has any uncorrected issues of noncompliance outside of the corrective action period (other than the provision being amended) or otherwise owes fees to the Department, such

non-compliance or outstanding payment must be resolved to the satisfaction of the Department, before a request for amendment will be acted upon. The Department will not approve changes that would violate state or federal laws including the requirements of §42 of the Code, 24 CFR Part 92 (HOME Final Rule), 24 CFR Part 93 (NHTF Interim Rule), Chapter 1 of this title (relating to Administrative Requirements), Chapter 11 of this title (relating to Qualified Allocation Plan), Chapter 12 of this title (relating to Multifamily Housing Revenue Bond Rules), Chapter 13 of this title (relating to Multifamily Direct Loan Rule), Tex. Gov't Code, Chapter 2306, and the Fair Housing Act. For Tax-Exempt Bond Developments, compliance with their Regulatory Agreement and corresponding bond financing documents. Prior to staff taking a recommendation to the Board for consideration, the procedures described in paragraph (3) of this subsection must be followed.

(1) Non-Material LURA Amendments. The Executive Director or designee may administratively approve all LURA amendments not defined as Material LURA Amendments pursuant to paragraph (2) of this subsection. A non-material LURA amendment may include but is not limited to:

(A) HUB participation removal. Removal of a HUB participation requirement will only be processed as a non-material LURA amendment after the issuance of IRS Form(s) 8609 and requires that the Department find that:

(i) The HUB is requesting removal of its own volition or is being removed as the result of a default under the organizational documents of the Development Owner;

(ii) the participation by the HUB has been substantive and meaningful, or would have been substantive or meaningful had the HUB not defaulted under the organizational documents of the Development Owner, enabling it to realize not only financial benefit but to acquire skills relating to the ownership and operating of affordable housing; and

(iii) where the HUB will be replaced as a general partner or special limited partner that is not a HUB and will sell its ownership interest, an ownership transfer request must be submitted as described in §10.406 of this subchapter;

(B) A change resulting from a Department work out arrangement as recommended by the Department's Asset Management Division;

(C) A change in the Right of First Refusal period as described in amended §2306.6726 of the Tex. Gov't Code;

(D) Where the Board has approved a de minimis modification of the Unit Mix or bedroom mix of Units to increase the Development's accessibility;

(E) In accordance with HOMEFires, Vol. 17 No. 1 (January 2023, as may be amended from time to time) bifurcation of the term of a HOME or NSP LURA with the Department that requires a longer affordability period than the minimum federal requirement, into a federal and state affordability period; or

(F) A correction of error.

(2) Material LURA Amendments. Development Owners seeking LURA amendment requests that require Board approval must submit the request and all required documentation necessary for staff's review of the request to the Department at least 45 calendar days prior to the Board meeting at which the amendment is anticipated to be considered. Before the 15th day preceding the date of Board action on the amendment, notice of an amendment and the recommendation of the Executive Director and Department staff regarding the amendment will be posted to the Department's website and the Applicant will be notified of the posting (§2306.6717(a)(4)). The Board must consider the following material LURA amendments:

(A) Reductions to the number of Low-Income Units;

(B) Changes to the income or rent restrictions;

(C) Changes to the Target Population;

(D) The removal of material participation by a Nonprofit Organization as further described in §10.406 of this subchapter;

(E) The removal of material participation by a HUB prior to filing of IRS Form(s) 8609;

(F) Any amendment that affects a right enforceable by a tenant or other third party under the LURA; or

(G) Any LURA amendment deemed material by the Executive Director.

(3) Prior to staff taking a recommendation to the Board for consideration, the Development Owner must provide reasonable notice and hold a public hearing regarding the requested amendment(s) at least 20 business days prior to the scheduled Board meeting where the request will be considered. Development Owners will be required to submit a copy of the notification with the amendment request. If a LURA amendment is requested prior to issuance of IRS Form(s) 8609 by the Department, notification must be provided to the recipients described in subparagraphs (A) - (E) of this paragraph. If an amendment is requested after issuance of IRS Form(s) 8609 by the Department, notification must be provided to the recipients described in subparagraph (A) - (B) of this paragraph. Notifications include:

(A) Each tenant of the Development;

(B) The current lender(s) and investor(s);

(C) The State Senator and State Representative of the districts whose boundaries include the Development Site;

(D) The chief elected official for the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction); and

(E) The county commissioners of the county in which the Development Site is located (if the Development Site is located outside of a municipality).

(4) Contents of Notification. The notification must include, at a minimum, all of the information described in subparagraphs (A) - (D) of this paragraph:

(A) The Development Owner's name, address and an individual contact name and phone number;

(B) The Development's name, address, and city;

(C) The change(s) requested; and

(D) The date, time, and location of the public hearing where the change(s) will be discussed.

(5) Verification of public hearing. Minutes of the public hearing and attendance sheet must be submitted to the Department within three business days after the date of the public hearing.

(6) Approval. Once the LURA Amendment has been approved administratively or by the Board, as applicable, Department staff will provide the Development Owner with a LURA amendment for execution and recording in the county where the Development is located.

(c) HTC Extensions. Extensions must be requested if the original deadline associated with Carryover, the 10% Test (including sub-

mission and expenditure deadlines), construction status reports, or cost certification requirements will not be met. Extension requests submitted at least 30 calendar days in advance of the applicable original deadline will not be required to submit an extension fee as described in §11.901 of this title. Any extension request submitted fewer than 30 days in advance of the applicable original deadline or after the original deadline will not be processed unless accompanied by the applicable fee. Extension requests will be approved by the Executive Director or designee, unless, at staff's discretion it warrants Board approval due to extenuating circumstances stated in the request. The extension request must specify a requested extension date and the reason why such an extension is required. If the Development Owner is requesting an extension to the Carryover submission or 10% Test deadline(s), a point deduction evaluation will be completed in accordance with Tex. Gov't Code, §2306.6710(b)(2), and §11.9(f) of this title (relating to Factors Affecting Scoring and Eligibility in current and future Application Rounds). Therefore, the Development Owner must clearly describe in their request for an extension how the need for the extension was beyond the reasonable control of the Applicant/Development Owner and could not have been reasonably anticipated. Carryover extension requests will not be granted an extended deadline later than December 1st of the year the Commitment was issued.

§10.406. Ownership Transfers (§2306.6713).

(a) Ownership Transfer Notification. All multifamily Development Owners must provide written notice and a completed Ownership Transfer packet, if applicable, to the Department at least 45 calendar days prior to any sale, transfer, or exchange of the Development or any portion of or Controlling interest in the Development. Except as otherwise provided herein, the Executive Director's prior written approval of any such transfer is required. The Executive Director may not unreasonably withhold approval of the transfer requested in compliance with this section.

(b) Exceptions. The exceptions to the ownership transfer process in this subsection are applicable.

(1) A Development Owner shall be required to notify the Department but shall not be required to obtain Executive Director approval when the transferee is an Affiliate of the Development Owner with no new Principals, or the transferee is a Related Party who does not Control the Development and the transfer is being made for estate planning purposes.

(2) Transfers that are the result of an involuntary removal of the general partner by the investment limited partner do not require advance approval, but must be reported to the Department as soon as possible due to the sensitive timing and nature of this decision. In the event the investment limited partner has proposed a new general partner or will permanently replace the general partner, a full Ownership Transfer packet must be submitted.

(3) Changes to the investment limited partner, non-Controlling limited partner, or other non-Controlling partners affiliated with the investment limited partner do not require Executive Director approval. A General Partner's acquisition of the interest of the investment limited partner does not require Executive Director approval, unless some other change in ownership is occurring as part of the same overall transaction.

(4) Changes resulting from foreclosure do not require advance approval but acquiring parties must notify the Department as soon as possible of the revised ownership structure and ownership contact information.

(5) Changes resulting from a deed-in-lieu of foreclosure do not require Executive Director approval. However, advance notification must be provided to both the Department and to the tenants at least 30 days prior to finalizing the transfer. This notification must include information regarding the applicable rent/income requirements post deed-in-lieu of foreclosure.

(c) General Requirements.

(1) Any new Principal in the ownership of a Development must be eligible under §11.202 of Subchapter C (relating to Ineligible Applicants and Applications). In addition, Persons and Principals will be reviewed in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee).

(2) Changes in Developers or Guarantors must be addressed as non-material amendments to the application under §10.405 of this Subchapter.

(3) To the extent an investment limited partner or its Affiliate assumes a Controlling interest in a Development Owner, such acquisition shall be subject to the Ownership Transfer requirements set forth herein. Principals of the investment limited partner or Affiliate will be considered new Principals and will be reviewed as stated under paragraph (1) of this subsection.

(4) Simultaneous transfer or concurrent offering for sale of the General Partner's and Limited Partner's control and interest will be subject to the Ownership Transfer requirements set forth herein and will trigger a Right of First Refusal, if applicable.

(5) Any initial operating, capitalized operating, or replacement reserves funded with an allocation from the HOME American Rescue Plan (HOME-ARP) and Special Reserves required by the Department must remain with the Development.

(d) Transfer Actions Warranting Debarment. If the Department determines that the transfer, involuntary removal, or replacement was due to a default by the General Partner under the Limited Partnership Agreement, or other detrimental action that put the Development at risk of failure or the Department at risk for financial exposure as a result of non-compliance, staff will refer the matter to the Enforcement Committee for debarment consideration pursuant to §2.401 of this title (relating to Enforcement, Debarment from Participation in Programs Administered by the Department). In addition, a record of transfer involving Principals in new proposed awards will be reported and may be taken into consideration in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee), prior to recommending any new financing or allocation of credits.

(e) Transfers Prior to 8609 Issuance or Construction Completion. Prior to the issuance of IRS Form(s) 8609 (for Housing Tax Credits) or the completion of construction (for all Developments funded through other Department programs), an Applicant may request a change to its ownership structure to add Principals or to remove Principals provided not all controlling Principals identified in the Application will be removed. The party(ies) reflected in the Application as having Control must remain in the ownership structure and retain Control, unless approved otherwise by the Executive Director. A development sponsor, General Partner or Development Owner may not sell the Development in whole or voluntarily end their Control prior to the issuance of 8609s. In addition, for Competitive HTC Developments, changes in the ownership structure for the addition of a public facility corporation, a housing finance corporation, or a public housing authority prior to the issuance of 8609s that will result in a 100% property tax exemption that was not previously reflected in the Application, require a resolution of support from the municipality or a letter of support from the mayor, or if the Development is not within a municipality or its Extra Territorial Jurisdiction (ETJ), a resolution

of support from the commissioners court or letter of support from the county judge.

(f) Nonprofit Organizations. If the ownership transfer request is to replace a nonprofit organization within the Development ownership entity, the replacement nonprofit entity must adhere to the requirements in paragraph (1) or (2) of this subsection.

(1) If the LURA requires ownership or material participation in ownership by a Qualified Nonprofit Organization, and the Development received Tax Credits pursuant to §42(h)(5) of the Code, the transferee must be a Qualified Nonprofit Organization that meets the requirements of §42(h)(5) of the Code and Tex. Gov't Code §2306.6706, if applicable, and can demonstrate planned participation in the operation of the Development on a regular, continuous, and substantial basis.

(2) If the LURA requires ownership or material participation in ownership by a nonprofit organization or CHDO, the Development Owner must show that the transferee is a nonprofit organization or CHDO, as applicable, that complies with the LURA. If the transferee has been certified as a CHDO by TDHCA prior to 2016 or has not previously been certified as a CHDO by TDHCA, a new CHDO certification package must be submitted for review. If the transferee was certified as a CHDO by TDHCA after 2016, provided no new federal guidance or rules concerning CHDO have been released and the proposed ownership structure at the time of review meets the requirements in 24 CFR Part 92, the CHDO may instead submit a CHDO Self-Certification form with the Ownership Transfer package.

(3) Exceptions to paragraphs (1) and (2) of this subsection may be made on a case by case basis if the Development (for MFDL) is past its Federal Affordability Period or (for HTC Developments) is past its Compliance Period, was not reported to the IRS as part of the Department's Nonprofit Set Aside in any HTC Award year, and follows the procedures outlined in §10.405(b)(1) - (5) of this subchapter. The Board must find that:

(A) The selling nonprofit is acting of its own volition or is being removed as the result of a default under the organizational documents of the Development Owner;

(B) The participation by the nonprofit was substantive and meaningful during the full term of the Compliance Period but is no longer substantive or meaningful to the operations of the Development; and

(C) The proposed purchaser is an affiliate of the current Owner or otherwise meets the Department's standards for ownership transfers.

(g) Historically Underutilized Business (HUB) Organizations. If a HUB is the general partner or special limited partner of a Development Owner and it determines to sell its ownership interest, after the issuance of IRS Form(s) 8609, the purchaser of that partnership interest or the general or special limited partner is not required to be a HUB as long as the LURA does not require it or the procedure described in §10.405(b)(1) of this chapter (relating to Non-Material LURA Amendments) has been followed and approved. The removal of a HUB requirement prior to filing of IRS Form(s) 8609 is subject to the procedure described in §10.405(b)(2) of this Chapter (relating to Material LURA Amendments).

(h) Documentation Required. A Development Owner must submit documentation requested by the Department to enable the Department to understand fully the facts and circumstances pertaining to the transfer and the effects of approval or denial. Documentation must be submitted as directed in the Post Award Activities Manual, which includes but is not limited to:

(1) A written explanation outlining the reason for the request;

(2) Ownership transfer information, including but not limited to the type of sale, terms of any new financing introduced as a result of the transfer, amount of Development reserves to transfer in the event of a property sale, and the prospective closing date;

(3) Pre- and post-transfer organizational charts with TINs of each organization down to the level of natural persons in the ownership structure as described in §11.204(12)(B) of Subchapter C of this title (relating to Required Documentation for Application Submission);

(4) A list of the names and contact information for transferees and Related Parties;

(5) Previous Participation information for any new Principal as described in §11.204(12)(C) of this title (relating to Required Documentation for Application Submission);

(6) Agreements among parties associated with the transfer;

(7) Owners Certifications with regard to materials submitted as further described in the Post Award Activities Manual;

(8) Detailed information describing the organizational structure, experience, and financial capacity of any party holding a controlling interest in any Principal or Controlling entity of the prospective Development Owner;

(9) Evidence and certification that the tenants in the Development have been notified in writing of the proposed transfer at least 30 calendar days prior to the date the transfer is approved by the Department. The ownership transfer approval letter will not be issued until this 30-day period has expired; and

(10) Any required exhibits and the list of exhibits related to specific circumstances of transfer or Ownership as detailed in the Post Award Activities Manual.

(i) Once the Department receives all necessary information under this section and as required under the Post Award Activities Manual, staff shall initiate a qualifications review of a transferee, in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee), to determine the transferee's past compliance with all aspects of the Department's programs, LURAs and eligibility under this chapter and §11.202 of this title (relating to Ineligible Applicants and Applications).

(j) Credit Limitation. As it relates to the Housing Tax Credit amount further described in §11.4(a) of this title (relating to Tax Credit Request and Award Limits), the credit amount will not be applied in circumstances described in paragraphs (1) and (2) of this subsection:

(1) In cases of transfers in which the syndicator, investor or limited partner is taking over ownership of the Development and not merely replacing the general partner; or

(2) In cases where the general partner is being replaced if the award of credits was made at least five years prior to the transfer request date.

(k) Penalties, Past Due Fees, and Underfunded Reserves. The Development Owner must comply with any additional documentation requirements as stated in Subchapter F of this chapter (relating to Compliance Monitoring) and Subchapter G of this chapter (relating to Affirmative Marketing Requirements and Written Policies and Procedures). The Development Owner on record with the Department will be liable for any penalties or fees imposed by the Department (even if such penalty can be attributable to the new Development Owner) unless an ownership transfer has been approved by the Department. In the

event a transferring Development has a history of uncorrected UPCS or NSPIRE violations, ongoing issues related to keeping housing sanitary, safe, and decent, an account balance below the annual reserve deposit amount as specified in §10.404(a) (relating to Replacement Reserve Accounts), or that appears insufficient to meet capital expenditure needs as indicated by the number or cost of repairs included in a PNA or SCR, the prospective Development Owner may be required to establish and maintain a replacement reserve account or increase the amount of regular deposits to the replacement reserve account by entering into a Reserve Agreement with the Department. The Department may also request a plan and timeline relating to needed repairs or renovations that will be completed by the departing and/or incoming Owner as a condition to approving the Transfer. A PNA or SCR may be requested if one has not already been received under §10.404 of this section (relating to Reserve Accounts).

(l) Ownership Transfer Processing Fee. The ownership transfer request must be accompanied by the corresponding ownership transfer fee as outlined in §11.901 of this title (relating to Fee Schedule).

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 April 14, 2025.

TRD-202501239
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: May 4, 2025
Proposal publication date: December 27, 2024
For further information, please call: (512) 475-3959

♦ ♦ ♦

TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 370. HUMAN TRAFFICKING RESOURCE CENTER

26 TAC §370.456

The executive commissioner of the Texas Health and Human Services Commission (HHSC) adopts new §370.456, concerning Prohibition of Provider Discrimination Based on Immunization Status.

Section 370.456 is adopted with changes to the proposed text as published in the December 20, 2024, issue of the *Texas Register* (49 TexReg 10284). This rule will be republished.

BACKGROUND AND JUSTIFICATION

The new section is necessary to implement Texas Government Code §531.02119, added by House Bill 44, 88th Legislature, Regular Session, 2023, which requires HHSC to adopt rules necessary to prohibit Medicaid and Children's Health Insurance Program (CHIP) providers from discriminating against Medicaid recipients or CHIP members by refusing to provide health care services based solely on immunization status.

Texas Government Code §531.02119 outlines the requirements for the prohibition of discrimination based on immunization status, exceptions to this prohibition, requires HHSC to withhold payment from providers that violate the requirements until HHSC finds the provider is in compliance, and requires HHSC to establish administrative and judicial reviews for providers who are alleged to be in violation.

COMMENTS

The 31-day comment period ended January 20, 2025.

During this period, HHSC received comments regarding the proposed rules from three commenters: The Immunization Partnership, the Texas Medical Association, and the Texas Pediatric Society. A summary of comments relating to the rule and HHSC's responses follows.

Comment: One commenter commented how an individual may request an exemption is too broad and impacts the administration of physicians' offices and the physicians' patients. The commenter recommended HHSC: 1) allow providers to require a patient seeking an exemption to a provider's immunization policy document the request on a standardized form for retention in patient files; and 2) require immunization exemptions to be documented in ImmTrac2.

Response: HHSC disagrees with the comment and declines to revise the rule as recommended. Allowing providers to require a documented request from the patient using a standardized form would contradict Government Code §531.02119(a-1)(2), which requires providers to accept oral requests for an exemption. In addition, Texas Government Code §531.02119 does not grant HHSC the authority to track exemption requests under this section.

Comment: Two commenters recommended HHSC amend the proposed rule to define that the specialists in oncology or organ transplant services that are exempt from the rule include: 1) any physician who is currently or was previously board certified in a medical specialty relevant to one of those areas of treatment; and 2) a provider whose clinical practice includes the care of patients who are immunocompromised from receiving or having received oncology or organ transplant services.

Response: HHSC disagrees with the comment and declines to revise §370.456(c) as recommended. Expanding the exemption in §370.456(c), which applies only to a provider who is a specialist in oncology or organ transplant services, would go beyond the scope of the exemption provided in Texas Government Code §531.02119(d).

Comment: Two commenters recommended HHSC revise the due process provisions to address how HHSC will: 1) determine the existence of an alleged violation; 2) provide notice to the provider; 3) provide an opportunity for the provider to demonstrate compliance; and 4) detail the process for requesting an administrative hearing and judicial review. The commenters also recommended HHSC include an informal resolution process, including the opportunity for an informal resolution meeting.

Response: HHSC revised §370.456(d) to outline more clearly how HHSC determines if a provider violated the rule before withholding payments; added a new paragraph §370.456(d)(2) to set forth that a provider subject to an HHSC vendor hold has the right to notice of an alleged violation and the procedures for requesting an appeal; and renumbered the other paragraphs accordingly. However, HHSC declines to revise the rule to add specific timelines and an informal resolution process. The processes for requesting an administrative hearing and judicial review are already provided for under Texas Administrative Code

Chapter 357, Subchapter I, and under Texas Government Code Chapter 2001.

A minor editorial change was made to renumbered §370.456(d)(4) to reflect that the final decision is from an administrative appeal instead of an administrative review.

Additionally, due to a filing discrepancy by HHSC, this rule is adopted in Title 26, Chapter 370 instead of Title 1, Chapter 370. The rule will be administratively transferred to the intended location in Title 1, Chapter 370, State Children's Health Insurance Program, Subchapter E, Provider Requirements, §370.456, Prohibition of Provider Discrimination Based on Immunization Status.

STATUTORY AUTHORITY

The new section is adopted under Texas Government Code §531.02119, which authorizes the executive commissioner of HHSC to adopt rules necessary to prohibit a CHIP provider from refusing to provide health care services to a CHIP member based solely on the member's immunization status; Texas Government Code §524.0151, which directs the executive commissioner of HHSC to adopt rules necessary to carry out the commission's duties; and Texas Health and Safety Code §62.051(d), which directs HHSC to adopt rules necessary to implement the Children's Health Insurance Program.

§370.456. Prohibition of Provider Discrimination Based on Immunization Status.

(a) Pursuant to Texas Government Code §531.02119, a Children's Health Insurance Program (CHIP) provider may not refuse to provide health care services to a CHIP member based solely on the member's refusal or failure to obtain a vaccine or immunization for a particular infectious or communicable disease.

(b) Notwithstanding subsection (a) of this section, a provider is not in violation of this section if the provider:

(1) adopts a policy requiring some or all the provider's patients, including patients who are CHIP members to be vaccinated or immunized against a particular infection or communicable disease to receive health care services from the provider; and

(2) provides an exemption to the policy described in paragraph (1) of this subsection and accepts an oral or written request from the CHIP member or legally authorized representative, as defined by Texas Health and Safety Code §241.151, for an exemption from each required vaccination or immunization based on:

(A) a reason of conscience, including a sincerely held religious belief, observance, or practice, that is incompatible with the administration of the vaccination or immunization; or

(B) a recognized medical condition for which the vaccination or immunization is contraindicated.

(c) This section does not apply to a provider who is a specialist in:

(1) oncology; or

(2) organ transplant services.

(d) HHSC or its designee withholds payments to any CHIP participating provider only if HHSC determines, after review of the evidence obtained, that the provider is in violation of this section.

(1) HHSC withholds payments for services to the provider until HHSC determines the provider corrected the circumstances resulting in the vendor hold.

(2) A provider subject to an HHSC vendor hold under this section has the right to notice of the alleged violation and the procedures for requesting an appeal.

(3) A provider has the right to appeal an HHSC vendor hold as provided by Chapter 357, Subchapter I of this title (relating to Hearings Under the Administrative Procedure Act).

(4) If the final decision in the administrative appeal is adverse to the appellant, the appellant may obtain a judicial review by filing for review with a district court in Travis County not later than the 30th day after the date of the notice of the final decision as provided under Texas Government Code Chapter 2001.

(e) Subsection (d) of this section applies only to an individual provider. HHSC or its designee may not refuse to reimburse a provider who did not violate this section based on the provider's membership in a provider group or medical organization with an individual provider who violated this section.

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

Filed with the Office of the Secretary of State on April 9, 2025.

TRD-202501153
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: April 29, 2025
Proposal publication date: December 20, 2024
For further information, please call: (512) 438-2910

♦ ♦ ♦

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 58. OYSTERS, SHRIMP, AND FINFISH

SUBCHAPTER A. STATEWIDE OYSTER FISHERY PROCLAMATION

31 TAC §58.11, §58.30

The Texas Parks and Wildlife Commission in a duly noticed meeting on January 23, 2025, adopted amendments to 31 TAC §58.11 and §58.30, concerning the Statewide Oyster Fishery Proclamation. Section 58.30 is adopted with changes to the proposed text as published in the December 20, 2024, issue of the *Texas Register* (49 TexReg 10297) and will be republished. Section 58.11 is adopted without changes and will not be republished.

The change to §58.30, concerning Certificates of Location, removes the unnecessary parentheses surrounding the fee value established in subsection (d)(6)(A). The change is nonsubstantive.

The amendments are necessary as a result of the passage of Senate Bill (S.B.) 1032 by the 88th Texas Legislature (2023), which requires the commission to create a program by rule to

manage the restoration of natural oyster beds. Although the provisions of S.B. 1032 direct the creation of a new program for the issuance of Certificates of Location (CoLs) for restoration purposes, because the department already administers a program that issues CoLs for harvest purposes under the same rules, the practical effect of the amendments as adopted can best be thought of as the broadening of current program rules to address an additional purpose required by statute.

Under Parks and Wildlife Code, Subchapter A, the department may "subject a natural oyster bed to location," which then allows the department to issue a CoL that authorizes the planting of oysters to create a private oyster bed, which may then be harvested. The provisions of S.B. 1032 require the commission to establish by rule a program for the restoration of natural oyster beds, delegating authority to the commission to establish fees, application requirements, location terms, renewal procedures, total area in each bay system to be occupied, siting and marking requirement, and any other requirements necessary to administer the program. The amendments as adopted create and implement such a program, making alterations where necessary to eliminate redundant, unnecessary, or obsolete language, and preventing conflicts with existing provisions applicable to CoLs issued for purposes of harvest.

In addition to elements that implement specific provisions regarding program implementation, the amendments restate statutory language of S.B. 1032 where appropriate or necessary. The department notes that statutory provisions already have the force and effect of law and need not be repeated; however, they are repeated here simply for ease of reference.

The amendment to §58.11, concerning Definitions, alters paragraph (3) to include the planting of cultch in the definition of "Certificate of Location," which is necessary to reflect the fact that the provisions of S.B. 1032 mandate a mechanism for the issuance of CoLs for restoration purposes. The amendment also adds new paragraph (7) to define "cultch" as "substrate of appropriate size and composition for larval oyster attachments, such as shell, rock, or other non-toxic, department-approved material," which is necessary to establish an unambiguous meaning for a term employed in the rules. Finally, the amendment alters the definition of "natural oyster bed" in paragraph (14) to repeat the statutory definition of the term provided in Parks and Wildlife Code, §76.001.

The amendment to §58.30, concerning Certificates of Location, alters subsection (a)(1)(A) to reference the provisions of Parks and Wildlife Code, §76.003, as amended by S.B. 1032, which authorize the issuance of a CoL for degraded natural oyster beds. The amendment also removes current subsection (a)(1)(B), which is a repetition of a statutory provision that was included by S.B. 1032 and referenced in subsection (a)(1)(A).

The amendment also alters subsection (a)(2) to provide that the term of a CoL issued for purposes of harvest is 15 years, which is a repetition of the provisions of Parks and Wildlife Code, §76.018. The amendment also adds new subsection (a)(3) to establish a 15-year term for CoLs issued for purposes of conducting restoration activities. The 15-year term was selected for the sake of consistency because it mirrors the current term established by statute for CoLs issued for purposes of harvest.

New paragraph (5) prohibits the harvest of oysters from CoLs issued for restoration purposes during the term of the CoL and subsequent renewals. The provision is necessary to ensure that restoration activities are the sole purpose for the CoL.

New paragraph (6) prohibits the movement of oysters from an area for which a certificate of location has been issued, which is necessary to ensure that restoration CoLs are not used as propagation sites for commercial activities, but serve only to restore natural populations of oysters in situ.

New paragraph (7) allows the department to authorize a locator to conduct non-harvest activities following any potentially damaging events, such as extreme weather, on areas otherwise closed by the Texas Department of State Health Services, provided the locator has obtained prior written permission from the department (TPWD). The provision is intended to allow locators, when feasible, to monitor and protect their investment in a CoL following potentially damaging phenomena.

The amendment retitles subsection (b) to reflect applicability to both types of CoLs. The amendment also adds new subsection (b)(2) to require the department to designate the dates and times the department is accepting applications for COLs, and to make such information publicly available. Current rule conditions the payment of the application fee "if applications are being accepted by the department," which leaves unclear the question of when applications are in fact being accepted. The alteration clarifies that issue. The contents of current paragraph (2) are eliminated, as they are no longer necessary.

Current §58.30(b)(4) requires, as part of the application process for a certificate of location, a department inspection of a prospective site for purposes of evaluating its suitability for issuance of a certificate of location and enumerates a list of factors the department may consider. The amendment requires a consultation with the department prior to submission of an application (rather than a site inspection), adds two additional factors (sediment overburden, other habitats) to the list of factors to be considered by the department, and redesignates the paragraph as new paragraph (3). The department has determined that a preliminary consultation with the department is an effective method for making an initial determination of the feasibility of a prospective certificate of location. The two additional factors added to the list of factors to be considered by the department (sediment overburden, other habitats) are necessary to allow the department to more thoroughly assess the suitability of a location for the issuance of a certificate of location. Since the department is charged with the conservation of all aquatic resources, the consideration of impacts of a prospective certificate of location on other habitats is prudent.

The amendment adds new paragraph (4) to require an applicant for a CoL to identify which type of CoL is being sought (harvest or restoration), which is necessary because they are distinctly separate authorizations.

The amendment to subsection (b) alters current paragraph (3) to allow for issuance of certificates of location to domestic corporations. The department has determined that because the application process identifies specific individuals who agree in writing by signing the application to be held responsible for conduct regulated by the department, there is an avenue to hold a person accountable in the event that violations occur. The amendment also requires the submission of cartographic data (a map and the corner coordinates) to assist the department in analyzing the suitability of a prospective CoL. The department believes it is important to unambiguously identify the precise location and dimensions of a prospective CoL to prevent possible confusion or misunderstandings regarding the locations where activities under a CoL are authorized. Additionally, the amendment requires a placement plan, accompanied by relevant infor-

mation concerning the nature or composition of cultch materials, the quantity of those materials, and a chronology for their deployment, all of which are important factors for the department to consider in determining the suitability of a project. The amendment also adds new paragraph (6) to provide that the department will make a decision to deny an application or issue a CoL based on the totality of factors involved, including the suitability of the prospective project with respect to purpose and size. The provision is necessary to ensure that all applicable factors are considered in a decision to allow or deny a CoL. The contents of current paragraph (3)(D) have been reworded and relocated to subsection (d)(1)(A)(iii).

The amendment to §58.30 makes several alterations in subsection (c) that affect the public hearing process on applications for a CoL. The amendment rewords paragraph (1) to make the provisions of the paragraph contingent on a department determination that all siting requirements of the subchapter and Parks and Wildlife Code, Chapter 76, have been met. The current provision is worded in such a fashion as to imply that such a determination will always occur, which is not the case. The reference to Parks and Wildlife Code, Chapter 76, is added for ease of reference. Subparagraph (A) requires the department to hold a public hearing to evaluate public input with respect to an application for a CoL, and eliminates language regarding "recent fishing activities at the site" that were included by the provisions of S.B. 1032. This broadens the stated purpose of the public hearing to allow for inclusion of any relevant concerns the public may have regarding the proposed CoL. Subparagraph (B) requires the department to provide notice of the public hearing required by subparagraph (A), and replaces the current requirement for newspaper publication with a requirement for publication on the department's official website and any other media outlet deemed appropriate. The amendment also rewords subparagraph (D) and eliminated current subparagraph (E) to remove obsolete provisions and simply requires the department, as part of the noticing process, to make information regarding an application for location publicly available, which is necessary to ensure that the public is aware of and given the opportunity to comment upon an application for a CoL. The amended provisions are generally necessary to reflect the wide availability and use of more contemporary communication channels.

The amendment to §58.30 alters subsection (d) to prescribe the responsibilities of persons the department has designated as locators of COLs. The amendment adds new paragraphs (1) and (2) to address final approval by the department of an application for a CoL. New paragraph (1) conditions the final approval of an application for a CoL upon the submission by the applicant to the department of a map of the prospective location with respect to surrounding or nearby state-owned lands, the geographic coordinates of the location, and evidence to the department's satisfaction that the applicant has acquired all applicable state and federal permits and authorizations. New paragraph (2) stipulates a department site inspection and verification of the geographic coordinates of the location. The amendment alters current provisions by adding language where appropriate and necessary to indicate requirements applicable to either or both types of CoLs, eliminates the contents of current paragraph (4) that require an applicant to have a prospective location surveyed by a registered surveyor, which are relocated to new paragraph (8) and made applicable only to requests for boundary alterations. The amendment adds new paragraph (4) to require the submission of amendments to a placement plan to be submitted to the department for review and prohibits initiation activities under an amended placement plan until the department approval occurs. The provision is necessary to ensure that all activities under a CoL are consistent with the department's duties and obligations under the Parks and Wildlife Code. Similarly, new paragraph (5) establishes project milestones and requires restoration locators to notify the department at specified intervals as to a project's status. The amendment alters current paragraph (5) to specify that there are no rental fees for CoLs issued for restoration purposes, which the department has determined is appropriate because restoration activities provide a very high value in terms of ecosystem benefits. Additionally, the amendment to subsection (d) alters current paragraph (6) to remove current subparagraph (A)(i), which is no longer necessary, and adds new clause (ii) to provide for the department to consider any additional factors necessary to inform a department determination to approve or deny a renewal request for a CoL. The amendment also adds new paragraph (8) to establish a process for the alteration of boundaries of a CoL, to consist of the locator having the location resurveyed by a registered surveyor and the submission to the department of survey notes and a map showing latitude and longitude coordinates for all corner markers, and its location in relation to surrounding or nearby state land tract boundaries. The provision is necessary to ensure that all activities under a CoL are consistent with the department's duties and obligations under the Parks and Wildlife Code.

Additionally, the amendment alters current subsection (d)(7) to exempt CoLs for purposes of restoration, which is necessary for reasons addressed earlier in this preamble.

Finally, the amendment makes nonsubstantive grammatical changes to improve precision and clarity in current paragraph (8), concerning transfer or sale of CoLs and alter the title of the subsection to reflect applicability to both types of COL issued by the department.

The department has coordinated and will coordinate with the Department of State Health Services and the General Land Office in the administration of the program as required by Parks and Wildlife Code, §76.022(d).

The department received six comments opposing adoption of the rules as proposed. Of those comments, four expressed a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that the department should ensure the simultaneous processing of both types of CoL to promote fairness and enhance the overall management of oyster resources. The commenter stated that the prioritization of restoration CoLs at the expense of commercial (harvest) CoLs could cause the availability of resources for commercial harvest to diminish, which could lead to increased competition among harvesters and potential overharvest of the limited available areas. The commenter also stated that delaying new commercial CoLs while approving restoration CoLs could create economic hardship for existing stakeholders and loss of investment in local economies due to impacts to financial viability creating uncertainty surrounding the ability to harvest, that a "staggered approach" could foster perceptions of favoritism or inequity among stakeholders and feelings of disadvantage for commercial harvesters, which in turn could cause conflicts and public outcry that could undermine trust in the department' s management practices, and that focusing solely on restoration without concurrently addressing commercial harvesting can create an imbalance in the ecosystem. Over time, a lack of commercial harvest could lead to an increase in certain species, po-

tentially disrupting the natural habitat and affecting overall biodiversity. The commenter further stated that delaying one type of certificate while issuing the other can lead to confusion among leaseholders regarding their rights and responsibilities. Clear guidelines and regulations are crucial for maintaining compliance and ensuring that stakeholders understand the implications of the changes. The commenter also stated that the department should align both certificate processes because if both types of certificates are not implemented simultaneously, it risks missing the chance to modernize regulations in a way that reflects current best practices and stakeholder needs. Finally, the commenter stated that the department should examine the practices of neighboring states with robust oyster lease programs, particularly those that do not impose the same regulatory burdens on leases/COLs and public/state oyster beds. The commenter stated that failing to streamline the process creates a risk of falling behind in attracting and retaining leaseholders, ultimately affecting the state's oyster industry and the department. The department disagrees with the comment. In general, the department concludes that the commenter's primary concern is the fear that there is or could be a bias or predisposition towards the issuance of restoration CoLs and a corresponding reluctance to issue harvest CoLs, resulting in the issuance of restorations CoLs in volumes eventually sufficient to make large areas of bay systems effectively off-limits to commercial harvest. The department responds that although there is no statutory direction or provision that expressly or implicitly mandates an allocation ratio for the issuance of either type of CoL or otherwise limits or restricts the number of either type of CoLs that the department may issue, the department intends to evaluate all applications in a fair and impartial manner on a first-come, first-serve basis, as there is no reason to do otherwise. The department further responds that approval of either type of CoL will be based first and foremost on an objective biological evaluation of the site-specific suitability, and potential ecosystem impacts of each prospective project, be it for restoration or commercial use, and neither type of CoL will be explicitly prioritized. The department also notes that it does not exercise unilateral authority with respect to eventual outcomes, as the approval of the Texas General Land Office is required for any CoL to proceed to action. The commenter stated that the prioritization of restoration CoLs "at the expense of" harvest CoLs could cause the availability of resources for commercial harvest to diminish, which could lead to increased competition among harvesters and potential overharvest of the limited available areas. The department disagrees that there is any scenario in which the issuance of restoration CoLs would either directly or indirectly cause overharvest of the resource in other places, or exert any other negative biological or ecosystem effect given that CoLs will only be sited on degraded reefs that are not and will not produce harvestable quantities of oysters without significant restoration input. Given the degradation of oyster reef in Texas estuaries, there is a need for oyster restoration activities of all kinds, including those that are provided by restoration CoLs, which may further act as nursery areas for surrounding oyster reefs given the harvest protections provided to them. Similarly, the department disagrees that a decline in commercial harvest activities could result in disruptions of ecological diversity or ecosystem equilibrium; commercial harvest of oysters is not biologically necessary for ecosystem health in any context. The department also notes that CoLs can only be issued for areas where oyster populations no longer or barely exist and that restoration CoLs must meet benchmarks of restoration throughout the rental period as prescribed in a cultch placement plan. The department also disagrees that issuance of restoration CoLs will result in confusion or produce problematic enforcement/administration issues. The rules require all CoLs to be clearly marked and identified and the department anticipates little to no misunderstanding as to what activities are permitted where, and, in any case, is committed to a robust communications effort with the public and the regulated community. Finally, the department disagrees that it is not aware of or studying similar programs in other states and responds that "attracting and retaining leaseholders," although an important concern, is secondary to the agency's statutory duty to conserve, protect, and manage public resources. No changes were made as a result of the comment.

One commenter opposed adoption and stated that both types of CoLs should be issued simultaneously to prevent unfair advantages and controversy. The commenter further stated that existing and new CoLs for harvest purposes should be allowed to manage their oyster farms as they see fit. The department agrees with the comment with respect to the need to issue CoLs in a fair and impartial manner, but disagrees that anyone should be allowed carte blanche with respect to utilization of a public resource that the department has a statutory duty to protect, manage, and conserve. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that there should be no private oyster beds. One of the commenters stated that the rules seem to be "more red tape and administration with little benefit," and that oyster harvest should be limited while investing in creating habitat (structure and water quality) to get back to a sustainable level. The department disagrees with the comment and responds that the term "private oyster bed" does not mean oyster beds that are private property, but oyster beds created by private interests on public lands in public waters and to which a proprietary harvest opportunity is attached. Additionally (and as stated above), the siting of restoration CoLs is restricted to areas that are determined to be degraded and where oyster production is not significant and will not be significant without cultch replacement. The department further responds that the rules are necessary to discharge a statutory requirement to create rules to manage the restoration of natural oyster beds and that harvest activities are prohibited on restoration CoLs. No changes were made as a result of the comment.

One commentor opposed adoption and stated that additional siting details should be enumerated in the rule, including details related to siting CoLs on areas previously restored under certain types of program funding or cultch sources (e.g., H. B. 51 dealer cultch placement sites) or in existing oyster sanctuaries (no harvest). The commenter expressed general concern that without clearly defined siting considerations specifically tied to the definition of "degraded reef," restoration CoLs will reduce harvest opportunity on public reefs. The department disagrees with the comments and responds that with regard to the siting of CoLs on previously restored areas, CoLs will only be sited on degraded reef where oyster production is not significant and will not be significant without cultch replacement. If reefs are adequately restored and producing oysters (regardless of the funding sources), they would be excluded from prospective CoL siting for that reason (i.e., they would not meet the criteria necessary to be considered "degraded"). With respect to the siting of CoLs for restoration in bays with existing oyster sanctuaries, such areas are already closed to harvest by rule and thus harvest protections afforded by a restoration CoL are unnecessary. Finally, regarding general concern about siting considerations, the determination of a "degraded reef" is a predicate condition for

any CoL, meaning that oyster production is not significant and will not be significant without cultch replacement; thus, restoration activities under a CoL can take place in locations that are not commercially viable. No changes were made as a result of the comment.

One commentor opposed adoption of the elimination of a provision of current rule that requires newspaper publication of a notice for a public hearing associated with the application for a CoL. The commenter stated that the removal of the requirement would detrimentally reduce public notice in Texas. The department disagrees with the comment and responds that few communities along the Texas Gulf Coast still have a daily or weekly newspaper and that advertising in the few daily or weekly newspapers that do exist is not the most effective method of reaching members of the public who live in remote locations. The department notes that internet access is now widespread, and the department prepares and disseminates weekly press releases on a variety of department activities to hundreds of daily and weekly newspapers, magazines, and other media, who can then publish whatever is deemed to be of interest to their readership. The department as well operates an email subscription service to notify interested persons and organizations of agency actions and notices. No changes were made as a result of the comment.

The department received 20 comments supporting adoption of the rules as proposed.

The Texas Nature Conservancy and the Galveston Bay Foundation commented in support of adoption of the rules as proposed.

The amendments are adopted under Parks and Wildlife Code, §76.018 and §76.022, which requires the commission to establish by rule a program to issue certificates of location for the restoration of natural oyster bed, including rules to establish fees, application approval requirements, lease terms, and renewal procedures for leases, the total area in each bay system for which leases may be issued, siting and marking requirements for leases, and any other requirement necessary to administer the program; §76.033, which authorizes the department to make regulations to protect and conserve oysters on public reefs and beds; and §76.301, which authorizes the commission to regulate the taking, possession, purchase, and sale of oysters.

§58.30. Certificate of Location.

(a) General Rules.

(1) No certificate of location will be issued for:

(A) a natural oyster bed unless the department has determined that it is degraded, consistent with the provisions of Parks and Wildlife Code, §76.003(b);

(B) a bay shore area within 100 yards of the shore as prescribed in Parks and Wildlife Code, §76.004;

(C) an area subject to an exclusive riparian right as provided under Parks and Wildlife Code, §76.004 and §76.005;

(D) an area already under location; or

(E) an area within 1,000 feet of a location not owned or controlled by the applicant unless the applicant secures written permission.

(2) The term of a certificate of location for purposes of harvest is 15 years, as prescribed in Parks and Wildlife Code, §76.018.

(3) The term of a certificate of location for purposes of restoration is 15 years.

(4) In accordance with the Oyster Fishery Management Plan required by Parks and Wildlife Code, §76.301, the department may accept applications for certificates of location.

(5) No harvest of oysters is permitted from an area for which a certificate of location has been issued for restoration purposes.

(6) It is an offense for any person to move oysters from or cause oysters to be moved from an area for which a certificate of location has been issued except as provided by §58.40 of this title (relating to Oyster Transplant Permits) or §58.50 of this title (relating to Oyster Harvest Permits)

(7) A locator may conduct non-harvest activities after potentially damaging events, such as extreme weather events, on locations otherwise closed by DSHS, provided the locator has received prior authorization of the activity from the department in writing.

(b) Application for Certificate of Location (Harvest or Restoration).

(1) An application for a certificate of location shall be accompanied by a nonrefundable application fee of $200.

(2) The department shall designate specific times and dates during which applications will be accepted and shall make such information publicly available.

(3) Prior to the submission of an application, the applicant shall consult with an authorized employee(s) of the department to enable the department to determine necessary survey requirements and evaluate the prospective location with respect to:

(A) natural oyster reefs;

(B) shoreline;

(C) areas restricted or prohibited by TDSHS;

(D) spoil disposal areas;

(E) other areas subject to a certificate of location;

(F) riparian rights;

(G) presence of exposed shell;

(H) presence of live oysters;

(I) sediment overburden; and

(J) other habitats.

(4) An application must specify the purpose of the prospective certificate of location (for harvest or restoration purposes).

(5) An application shall consist of, at a minimum:

(A) the applicant's name and address;

(B) signed affirmation that the applicant is a United States citizen or a domestic corporation;

(C) a description of the acreage for which the certificate of location is sought, including:

(i) a map showing approximate size and location in relation to state land tracts;

(ii) the corner coordinates of the proposed site; and

(D) a cultch placement plan for the site, including reasonable estimates of:

(i) the nature or composition of materials to be used;

(ii) the quantity of materials to be used; and

(iii) the time of placement or deployment.

(6) The department shall approve or disapprove an application based on the totality of factors involved, including the suitability of the location with respect to the purpose and size of the area.

(c) Public Hearing on Application.

(1) If the department determines that the proposed location site meets all siting requirements of this subchapter and Parks and Wildlife Code, Chapter 76, the department shall:

(A) hold a public hearing to provide opportunity for public comment;

(B) publish a notification of the date, time, and purpose of the public hearing on the department website and any other outlet deemed appropriate;

(C) publish the notification between ten and 20 days prior to the public hearing; and

(D) make information about the proposed certificate of location available to the public at the hearing.

(2) The department will consider all public comment relevant to the application..

(3) The department shall review findings of the public hearing and submit recommendations to the Coastal Fisheries Division Director for approval.

(4) The applicant will be notified within 14 days after the hearing of either approval or denial of the application for a certificate of location.

(d) Responsibilities of Approved Locator.

(1) The department will not make a final decision to approve an application for a certificate of location until:

(A) the applicant has provided the department with:

(i) a map of the location showing the relation of the location with respect to surrounding or nearby state land tract boundaries;

(ii) the latitude and longitude coordinates of the location; and

(iii) evidence to satisfy the department that all applicable permits and authorizations required by other state and federal governmental entities have been secured; and

(B) the department has inspected the location and verified the latitude and longitude coordinates required under subparagraph (A) of this paragraph.

(2) Prior to any placement of cultch or other materials, the locator shall mark the boundaries of the location with buoys or other permanent markers in accordance with United States Coast Guard regulations and maintain buoys or other permanent markers for the duration of the period of validity of the certificate. Supplemental markers may be required along the boundaries if one corner marker is not clearly visible from another corner marker.

(A) All marker buoys or other permanent markers must be:

(i) at least six inches in diameter;

(ii) at least three feet out of the water at mean high tide;

(iii) of a shape and color that is visible for at least 1/2 mile under normal weather conditions;

(iv) marked with the certificate of location number (Buoys or other permanent markers common to two or more locations must be marked with all numbers of the certificate of location);

(v) marked with at least two-inch high letters in plain Arabic block letters in a location where it will not be obscured by water or marine growth; and

(vi) marked with all required U.S. Coast Guard markings.

(B) Buoys must be anchored by:

(i) A screw anchor with a minimum one-inch galvanized sucker rod and 12-inch head inserted ten feet into the bottom; or

(ii) two anchors per buoy and each anchor having a minimum weight of 300 pounds.

(C) When replacement of buoys or other permanent markers is necessary, original latitude and longitude coordinates of the final survey must be used to relocate markers.

(3) An authorized employee(s) of the department shall inspect and verify latitude and longitude coordinates.

(4) A locator shall submit proposed amendments to a placement plan to the department for review. The department must approve amendments to a placement plan prior to any activities under a prospective amendment.

(5) In the event that unavoidable or unforeseeable developments or extenuating circumstances make the attainment of the benchmarks in this paragraph impractical or impossible, the department may, on a case-by-case basis, waive, defer, or amend a benchmark. Beginning on the date of issuance of certificate of location for purposes of restoration, the locator shall submit documentation of project progress to the department as follows:

(A) placement initiated--within the first 24 months;

(B) 50% of the plan completed--within five years;

(C) 60% of the plan completed--within 10 years; and

(D) 80% of the plan completed--by time of renewal.

(6) Rental Fee.

(A) The holder of a certificate of location for harvest shall pay to the department $20 per acre of location per year. The fee established by this subparagraph shall be recalculated at three-year intervals beginning on the effective date of this section and proportionally adjusted to any change in the Consumer Price Index, the department's cost-recovery needs, or both.

(B) Rental fees for certificates of location for harvest are due annually by March 1 as prescribed in Parks and Wildlife Code, §76.017.

(C) The holder of a certificate of location shall pay the department a late penalty fee equal to 10 percent of the amount due for any rental, transfer, sale, or renewal fee that is not paid when due as prescribed in Parks and Wildlife Code, §76.017.

(D) Failure to pay any rental, transfer, sale, renewal, or late penalty fee within 90 days of the due date terminates the (certification of location) as prescribed in Parks and Wildlife Code, §76.017.

(E) There is no rental fee for certificates of location for restoration.

(7) Renewal of Certificate of Location.

(A) As prescribed in Parks and Wildlife Code, §76.018, at the end of the term of a certificate of location for harvest the department shall determine the need for continuation of the certificate of location based on:

(i) considerations as specified in §58.12 of this title (relating to Oyster Fishery Management Plan); and

(ii) any other consideration the department deems significant enough to warrant continuation.

(B) If the certificate of location for harvest is to be renewed under the conditions of the department as prescribed in Parks and Wildlife Code, §76.018, the holder of the certificate of location shall be offered the first right of refusal for renewal as prescribed in Parks and Wildlife Code, §76.018.

(C) Certificates of location for restoration will be renewed at the request of the locator

(8) Alteration of Boundaries

(A) The department must approve all boundary alterations prior to any alteration of boundaries of a certificate of location.

(B) If there is any alteration to the boundaries of a location, the locator shall be responsible for having the location resurveyed and providing the department with survey notes and a map of the location showing:

(i) the location in relation to state land tract boundaries; and

(ii) latitude and longitude coordinates for all corner markers.

(C) The department will not approve any alteration of the boundaries of a certificate of location until the survey required by this paragraph has been conducted and provided to the department.

(9) Auction Procedures.

(A) A certificate of location for harvest may be auctioned by the department if it is not renewed as prescribed by this subchapter and Parks and Wildlife Code, §76.018.

(B) Auction procedures do not apply to certificates of location for restoration; if certificates of location for restoration are not renewed, the location automatically reverts to the public domain.

(C) The department may determine a minimum acceptable bid based on:

(i) bid offers from previous auctions;

(ii) established open market prices; and

(iii) other relevant factors.

(D) The department may refuse all bids below the minimum acceptable bid.

(E) The department must follow prescribed bid guidelines for state agencies.

(10) Transfers or Sale.

(A) A transfer or sale of a certificate of location does not change location terms.

(B) A payment of $200 will be due upon transfer or sale of a certificate of location.

(C) A transfer fee will not be required when a certificate of location is inherited.

(D) A completed transfer form prescribed by the department is required at time of transfer.

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 April 9, 2025.

TRD-202501152
James Murphy
General Counsel
Texas Parks and Wildlife Department
Effective date: April 29, 2025
Proposal publication date: December 20, 2024
For further information, please call: (512) 389-4775

♦ ♦ ♦

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 363. FINANCIAL ASSISTANCE PROGRAMS

SUBCHAPTER N. NEW WATER SUPPLY FOR TEXAS FUND

31 TAC §§363.1401 - 363.1408

The Texas Water Development Board (TWDB) adopts new rules to 31 Texas Administrative Code (TAC) Chapter 363 by adding new §§363.1401, 363.1402, 363.1403, 363.1404, 363.1405, 363.1406, 363.1407, and 363.1408. The proposal is adopted with changes as published in the November 22, 2024, issue of the *Texas Register* (49 TexReg 9488). The rules will be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED NEW RULES.

The 88th Texas Legislature enacted Senate Bill 28, amending Texas Water Code Chapter 15, Texas Water Assistance Program, to add a new subchapter creating the New Water Supply Fund for Texas. The new legislation directs the Board, by rule, to finance projects through the fund that will lead to seven million acre-feet of new water supplies by December 31, 2033.

SECTION BY SECTION DISCUSSION OF ADOPTED NEW RULES.

Subchapter N is added to 31 Texas Administrative Code Chapter 363.

Section 363.1401. Scope

The adopted new section provides that the programs of financial assistance under Texas Water Code, Chapter 15, Subchapter C-1 will be governed by this subchapter and, unless in conflict with this subchapter, the provisions of 31 TAC Chapter 363 Subchapter A will be applied to the financial assistance and projects under this subchapter.

Section 363.1402. Definition of Terms

The adopted new section includes new definitions for terms commonly used in the subchapter to provide clarity of the terms in the context used.

Section 363.1403. Use of Funds

The adopted new section provides the ways that the Board may or may not use the Fund.

Section 363.1404. Determination of Availability

The adopted new section provides the methods by which the Board will obtain the amount within the Fund and how the Board will seek New Water Supply projects.

Section 363.1405. Complete Application Requirements

The adopted new section provides what information must be included in a project application under the Fund.

Section 363.1406. Consideration of Applications

The adopted new section lists what the Board may consider when evaluating an application.

Section 363.1407. Findings

The adopted new section identifies what the Board must find when granting financial assistance for an application and the process for placing the application before the Board for approval.

Section 363.1408. Terms of Financial Assistance

The adopted new section provides what the Board must determine when granting financial assistance and limits the term length to up to 30 years.

REGULATORY IMPACT ANALYSIS DETERMINATION (Texas Government Code §2001.0225)

The TWDB reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the rulemaking is not subject to Texas Government Code §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to establish the procedures by which the TWDB will implement the New Water Supply for Texas Fund.

Even if the rule were a major environmental rule, Texas Government Code §2001.0225 still would not apply to this rulemaking because Texas Government Code §2001.0225 only applies to a major environmental rule the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed any federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not adopted solely under the general powers of the agency, but rather Texas Water Code §15.154. Therefore, this adopted rule does not fall under any of the applicability criteria in Texas Government Code §2001.0225.

TAKINGS IMPACT ASSESSMENT (Texas Government Code §2007.043)

The TWDB evaluated this rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule is to establish the procedures by which the TWDB will implement the New Water Supply for Texas Fund. The rule would substantially advance this stated purpose by providing the procedures and requirements associated with TWDB's implementation of the New Water Supply for Texas Fund.

The TWDB's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this rule because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code §2007.003(b)(4). The TWDB is the agency that is directed to implement the New Water Supply for Texas Fund.

Nevertheless, the TWDB further evaluated this rule and performed an assessment of whether it constitutes a taking under Texas Government Code Chapter 2007. Promulgation and enforcement of this rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject regulation does not affect a landowner's rights in private real property because this rulemaking does not burden, restrict, or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, this rule establishes the procedures by which the TWDB will implement the Fund. Therefore, the adopted rule does not constitute a taking under Texas Government Code, Chapter 2007.

PUBLIC COMMENTS (Texas Government Code §2001.033(a)(1))

The following comments were received from the National Wildlife Federation, Sierra Club Lone Star Chapter, The Nature Conservancy Texas, Hill Country Alliance, Bayou City Waterkeeper, and Galveston Bay Foundation (National Wildlife Federation, et al.) provided joint comments and the Sierra Club Lone Star Chapter provided additional comments on its own.

Regarding

§363.1402. Definition of Terms.

Comment

The National Wildlife Federation, et al. commented that there appears to be a typographical error in subpart headings listed at 363.1402(3)(E) and the rule should read: The development of infrastructure to transport water that is made available by a project listed in (A) - (D).

Response

TWDB agrees with this comment and the error has been addressed.

Comment

The National Wildlife Federation, et al. and the Sierra Club Lone Star Chapter commented that the proposed definition of "water conservation" has no actual role in the rules, therefore the definition should be removed.

Response

TWDB agrees with these comments and the definition for Water Conservation has been removed from the rule.

Comment

The Sierra Club Lone Star Chapter commented that the definition for "New Water Supply" be broadened to include water reuse, and conjunctive use of ground and surface water.

Response

TWDB appreciates the comment to broaden the definition for "New Water Supply", but it has determined that the recommended change is not appropriate as the current definition aligns with the water supply project types listed at Tex. Water Code 15.153 (b)(1). No changes were made in response to this comment.

Regarding

§363.1403. Use of Funds.

Comment

The Sierra Club Lone Star Chapter commented that subparts should be added to the rule to prioritize environmentally sustainable projects and to ensure equity for disadvantaged communities in fund distribution.

Response

TWDB appreciates the comment. TWDB has determined that the recommended change is not appropriate as Tex. Water Code Ch. 15 Subchapter C-1 does not authorize or direct TWDB to prioritize environmentally sustainable projects or ensure equity for disadvantaged communities in fund distribution. There are other TWDB programs, such as the Economically Distressed Areas Program that are authorized to address issues pertaining to economically less advantaged areas of the state. No changes were made in response to this comment.

Regarding

§363.1405. Complete Application Requirements.

Comment

The Sierra Club Lone Star Chapter commented that the TWDB should include requirements for environmental compliance and equity in the list of application requirements.

Response

TWDB appreciates the comment to include requirements for environmental compliance and equity in the list of application requirements, but it has determined that the recommended changes are not needed as the changes would be redundant when taken into the consideration the General Application Procedures under 31 Texas Administrative Code Chapter 363 Subchapter A, which already provide for environmental review, or would be beyond the TWDB's authority to administer the fund under Tex. Water Code Ch. 15 Subchapter C-1. No changes were made in response to this comment.

Regarding

§363.1406. Consideration of Applications.

Comment

The National Wildlife Federation, et al. commented that a new subpart should be added to allow for additional information not included in the application for the board's consideration.

Response

TWDB agrees and has added language that aligns more with language used in Subchapter A of the same chapter.

Comment

The Sierra Club Lone Star Chapter commented that TWDB should consider environmental impacts in the project evaluation criteria.

Response

TWDB appreciates the comment to consider environmental impacts in the project evaluation criteria, but it has determined that the recommended change is beyond what Tex. Water Code § 15.154 (b) authorizes the TWDB to consider. TWDB currently does an environmental assessment for projects under 31 TAC §363.14 and the projects will still be subject to all applicable environmental protection laws. No changes were made in response to this comment.

Regarding

§363.1407. Findings Required.

Comment

The National Wildlife Federation, et al. commented that a new subpart be added stating the section does not limit what the board may take into consideration when making a finding on an application for financial assistance.

Response

TWDB appreciates the comment, but it has determined that the recommended change is not appropriate. The current language regarding specific required findings by the board is taken from Tex. Water Code 15.154 (c). The statute further provides the board may consider "other relevant factors" before approving an application. No changes were made in response to this comment.

Comment

The Sierra Club Lone Star Chapter commented that TWDB should incorporate evaluations of environmental impacts when deciding on granting applications.

Response

TWDB appreciates the comment to incorporate evaluations of environmental impacts when deciding on granting applications, but it has determined that the recommended change would be adding language that is not currently present in Tex. Water Code § 15.154 (c). TWDB currently does an environmental assessment for projects under 31 TAC §363.14 and the projects will still be subject to all applicable environmental protection laws. No changes were made in response to this comment.

STATUTORY AUTHORITY (Texas Government Code §2001.033(a)(2))

The new rules are adopted under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Water Code §15.154.

This rulemaking affects Texas Water Code, Chapter 15.

§363.1401. Scope of Subchapter N.

This subchapter shall govern the board's programs of financial assistance under Texas Water Code, Chapter 15, Subchapter C-1. Unless

in conflict with the provisions of this subchapter, the provisions of Subchapter A of this chapter (relating to General Provisions) apply to projects under this subchapter.

§363.1402. Definition of Terms.

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

(1) Fund--The New Water Supply for Texas Fund.

(2) Brackish--Water above 1,000 milligrams per liter of total dissolved solids (TDS).

(3) New Water Supply--Means only:

(A) Marine and Brackish water desalination projects;

(B) Produced water treatment projects, other than projects that are only for purposes of disposal of or supply of water related to oil and gas exploration;

(C) Aquifer storage and recovery projects;

(D) Water supply projects of any type, that result in the acquisition or delivery of water from states other than Texas to locations within Texas; and

(E) The development of infrastructure to transport water that is made available by a project listed in (A) - (D).

(4) Water Need--Has the meaning assigned by §357.10 of this Title.

(5) Water User Group--Has the meaning assigned by §357.10 of this Title.

§363.1403. Use of Funds.

(a) The board may use the Fund for financial assistance to an eligible political subdivision for a New Water Supply project.

(b) The board may use the Fund to make transfers to eligible programs.

(c) The board reserves the right to limit the amount of financial assistance available to an individual entity.

(d) Financial assistance may not be used for expenses associated with the maintenance or operation of a New Water Supply project.

§363.1404. Determination of Availability.

(a) Periodically, or at the request of the board, the executive administrator will present to the board:

(1) a statement of the total money available to the Fund; and

(2) a recommendation identifying the amount of money from the Fund that may be made available to eligible applicants for financial assistance, including any subsidies.

(b) The board may approve the final allocations of money from the Fund for different purposes;

(c) Upon the approval of the board, the executive administrator will publish notice requesting applications for projects, which will identify the timing for mandatory preapplication meetings, and must include:

(1) the funds available for New Water Supply projects;

(2) the types of projects for which applications are being solicited;

(3) eligibility criteria;

(4) structure of financial assistance;

(5) the method and criteria for evaluation and approval of applications by the board;

(6) any requirements to be applied to the use of financial assistance in addition to the requirements set forth in this chapter; and

(7) the date by which the application must be submitted to the executive administrator.

§363.1405. Complete Application Requirements.

(a) All applications must include:

(1) Evidence the applicant has conducted, with appropriate notice, a public hearing concerning the project;

(2) Information, sufficient for the board's consideration of the application, regarding the intended end users of the water supply, the needs of the area to be served by the project, the expected benefit of the project to the area, the relationship of the project to the water supply needs of this state overall, and the relationship of the project to the state water plan; and

(3) The total cost of the project, the total volume of annual water supply, the unit cost of the water supply, the reliability of the water supply, the timeline for development, and the potential impacts of the project, all of which must be developed and provided by the applicant as part of the application in accordance with all requirements of §357.34(e) of this Title (related to Identification and Evaluation of Potentially Feasible Water Management Strategies and Water Management Strategy Projects) and associated guidance.

(b) Applications may include letters of support from regional water planning groups, wholesale or retail water suppliers, customers, or any other member of the public that would be affected by the project.

§363.1406. Consideration of Applications.

When evaluating applications the board may consider:

(1) The sponsor of the project;

(2) The availability of money or revenue to the political subdivision from all sources for the ultimate repayment of the cost of the project, including all interest;

(3) The Water User Groups to be served by the project and the volume of water supply allocated to each;

(4) The identified Water Needs of the benefitting Water User Groups to be served by the project;

(5) The expected water supply benefit relative to the Water Needs associated with the Water User Group beneficiaries;

(6) The relationship of the project to the Water Needs of the state overall as defined by §357.10;.

(7) The relationship of the project to the state water plan;

(8) Any information contained in the application; and

(9) Any additional information requested by the executive administrator as necessary to complete the financial, legal, engineering, and environmental reviews.

§363.1407. Findings Required.

(a) The executive administrator must submit applications for financing under this subchapter to the board with comments concerning financial assistance. The application will be scheduled on the agenda for board consideration at the earliest practical date. The applicant and other interested parties known to the board must be notified of the time and place of such meeting.

(b) The board may grant the application only if the board finds that at the time the application for financial assistance was made:

(1) The public interest is served by state assistance for the project; and

(2) For an application for financial assistance for which repayment is expected, the money or revenue pledged by the political subdivision will be sufficient to meet all obligations assumed by the political subdivision during the term of the financial assistance.

§363.1408. Terms of Financial Assistance.

(a) The board must determine the amount and form of financial assistance and the amount and form of repayment.

(b) The board will determine the method of evidence of debt.

(c) Financial assistance from the Fund may provide for repayment terms of up to 30 years, in the board's discretion.

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 April 14, 2025.

TRD-202501237
Ashley Harden
General Counsel
Texas Water Development Board
Effective date: May 4, 2025
Proposal publication date: November 22, 2024
For further information, please call: (512) 475-1673

♦ ♦ ♦

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 7. TEXAS COMMISSION ON LAW ENFORCEMENT

CHAPTER 211. ADMINISTRATION

37 TAC §211.16

The Texas Commission on Law Enforcement (Commission) adopts amended 37 Texas Administrative Code §211.16, Establishment or Continued Operation of an Appointing Entity, without changes to the proposed text as published in the January 31, 2025 issue of the *Texas Register* (50 TexReg 636). The rule will not be republished.

This adopted amended rule allows law enforcement agencies in existence before June 1, 2024, to use personally-owned patrol vehicles if the law enforcement agency has not provided agency-owned patrol vehicles from June 1, 2024, to the present.

The public comment period began on January 31, 2025, and ended on March 4, 2025, at the conclusion of the public meeting of the Commission. No public comments were received regarding adoption of the amended rule as proposed.

The amended rule is adopted under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, and §1701.163, Minimum Standards for Law Enforcement Agencies. Texas Occupations Code §1701.151 authorizes the Commission to adopt rules for the administration of Occupations Code Chapter 1701. Texas Occupations Code §1701.163 requires the Commission to adopt rules to establish minimum standards with respect to the creation or continued operation of a law enforcement agency.

The amended rule as adopted affects or implements Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, and §1701.163, Minimum Standards for Law Enforcement Agencies. No other code, article, or statute is affected by this adoption.

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 April 7, 2025.

TRD-202501101
Gregory Stevens
Executive Director
Texas Commission on Law Enforcement
Effective date: May 1, 2025
Proposal publication date: January 31, 2025
For further information, please call: (512) 936-7700

♦ ♦ ♦

37 TAC §§211.27 - 211.29

The Texas Commission on Law Enforcement (Commission) adopts amended 37 Texas Administrative Code §211.27, Reporting Responsibilities of Individuals, §211.28, Responsibility of a Law Enforcement Agency to Report an Arrest, and §211.29, Responsibilities of Agency Chief Administrators, without changes to the proposed text as published in the January 31, 2025 issue of the *Texas Register* (50 TexReg 639). The rules will not be republished.

These adopted amended rules remove the requirement of licensees and appointing law enforcement agencies to report to the Commission any arrests, pending criminal charges, or criminal dispositions. These adopted amended rules clarify that an arresting agency should provide offense reports and charging documents for licensees that are arrested or charged to the Commission. These adopted amended rules also require law enforcement agencies to report to the Commission the failure by an applicant or licensee of a medical examination (L-2), psychological examination (L-3), fitness-for-duty examination (FFDE), or drug screen, which conforms with the addition of Texas Occupations Code §1701.167 made by Senate Bill 1445 (88R).

The public comment period began on January 31, 2025, and ended on March 4, 2025, at the conclusion of the public meeting of the Commission. One public comment was received.

Public Comment: Deputy Executive Director Jennifer Szimanski of the Combined Law Enforcement Associations of Texas suggested adding successful completion of an applicable treatment program by the licensee as an exception to the requirement of a chief administrator to report a failed psychological examination (L-3) because the exception is listed in Occupations Code §1701.167(a)(3).

Commission Response: Occupations Code §1701.167(a)(3) requires "reporting to the commission…of a license holder's failed examination, unless the license holder submits to and successfully completes an applicable treatment program within a reasonable time." In context with the rest of §1701.167(a), this refers to a fitness-for-duty examination (FFDE) and not a psychological examination (L-3). The advisory committees established to provide input on the model policies required by Occupations Code §1701.167 also did not suggest that an applicable treatment program applied to a failed psychological examination (L-3), but de-

termined it only applied to a failed fitness-for-duty examination (FFDE).

The amended rules are adopted under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, §1701.153, Reports from Agencies and Schools, §1701.167, Policy Regarding Examination of a License Holder or Applicant, and §1701.306, Psychological and Physical Examination. Texas Occupations Code §1701.151 authorizes the Commission to adopt rules for the administration of Occupations Code Chapter 1701. Texas Occupations Code §1701.153 requires the Commission to establish reporting standards and procedures for matters the Commission considers necessary for the administration of Occupations Code Chapter 1701. Texas Occupations Code §1701.167 requires the reporting to the Commission of a failed examination. Texas Occupations Code §1701.306 requires the Commission to adopt rules to establish appropriate standards and measures to be used by a law enforcement agency in reporting medical (L-2) and psychological (L-3) examinations.

The amended rules as adopted affect or implement Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, §1701.153, Reports from Agencies and Schools, §1701.167, Policy Regarding Examination of a License Holder or Applicant, and §1701.306, Psychological and Physical Examination. No other code, article, or statute is affected by this adoption.

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 April 7, 2025.

TRD-202501102
Gregory Stevens
Executive Director
Texas Commission on Law Enforcement
Effective date: May 1, 2025
Proposal publication date: January 31, 2025
For further information, please call: (512) 936-7700

♦ ♦ ♦

37 TAC §211.41

The Texas Commission on Law Enforcement (Commission) adopts new 37 Texas Administrative Code §211.41, Procurement Protests and Records, without changes to the proposed text as published in the January 31, 2025 issue of the *Texas Register* (50 TexReg 640). The rule will not be republished.

This adopted new rule conforms with Texas Government Code §2155.076 and 34 Texas Administrative Code §§20.531 - 20.538. The adopted new rule provides vendors a process for protesting agency procurement actions consistent with rules adopted by the Comptroller.

The public comment period began on January 31, 2025, and ended on March 4, 2025, at the conclusion of the public meeting of the Commission. No public comments were received regarding adoption of the new rule as proposed.

The new rule is adopted under Texas Government Code §2155.076, Protest Procedures, and Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority. Texas Government Code §2155.076 requires the Commission to adopt rules to establish protest procedures for resolving vendor protests relating to purchasing issues. Texas Occupations Code §1701.151 authorizes the Commission to adopt rules for the administration of Occupations Code Chapter 1701 and for the Commission's internal management and control and to contract as the Commission considers necessary for certain services, facilities, studies, and reports.

The new rule as adopted affects or implements Texas Government Code §2155.076, Protest Procedures, and Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority. No other code, article, or statute is affected by this adoption.

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 April 7, 2025.

TRD-202501103
Gregory Stevens
Executive Director
Texas Commission on Law Enforcement
Effective date: May 1, 2025
Proposal publication date: January 31, 2025
For further information, please call: (512) 936-7700

♦ ♦ ♦

CHAPTER 215. TRAINING AND EDUCATIONAL PROVIDERS

37 TAC §215.9

The Texas Commission on Law Enforcement (Commission) adopts amended 37 Texas Administrative Code §215.9, Training Coordinator, without changes to the proposed text as published in the January 31, 2025 issue of the *Texas Register* (50 TexReg 642). The rule will not be republished.

This adopted amended rule requires training coordinators to report to the Commission the failure by an applicant of a medical examination (L-2) or psychological examination (L-3), which conforms with the addition of Texas Occupations Code §1701.167 made by Senate Bill 1445 (88R).

The public comment period began on January 31, 2025, and ended on March 4, 2025, at the conclusion of the public meeting of the Commission. One public comment was received.

Public Comment: Training Coordinator Daniel Looney of the Hunt County Sheriff's Office asked why the responsibility to report failed medical (L-2) and psychological (L-3) examinations is placed on the training coordinator? This does not capture the agencies that are not training providers. Why are agency heads not responsible for reporting failed medical (L-2) and psychological (L-3) examinations if they are required to submit appointment applications (L-1s)?

Commission Response: A corresponding rule change to 37 Texas Administrative Code §211.29(h) would also require chief administrators of law enforcement agencies to report failed medical (L-2) and psychological (L-3) examinations to the Commission. There are three entities that obtain medical (L-2) and psychological (L-3) examinations for enrollment, licensing, or appointment purposes: 1) law enforcement agencies; 2) providers of basic licensing courses; and 3) the Commission.

Requiring both agency chief administrators and training coordinators to report to the Commission any failed medical (L-2) or psychological (L-3) examination would capture all agencies and providers of basic licensing courses.

The amended rule is adopted under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, §1701.153, Reports from Agencies and Schools, §1701.167, Policy Regarding Examination of a License Holder or Applicant, and §1701.306, Psychological and Physical Examination. Texas Occupations Code §1701.151 authorizes the Commission to adopt rules for the administration of Occupations Code Chapter 1701. Texas Occupations Code §1701.153 requires the Commission to establish reporting standards and procedures for matters the Commission considers necessary for the administration of Occupations Code Chapter 1701. Texas Occupations Code §1701.167 requires the reporting to the Commission of a failed examination. Texas Occupations Code §1701.306 requires the Commission to adopt rules to establish appropriate standards and measures to be used by a law enforcement agency in reporting medical (L-2) and psychological (L-3) examinations.

The amended rule as adopted affects or implements Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, §1701.153, Reports from Agencies and Schools, §1701.167, Policy Regarding Examination of a License Holder or Applicant, and §1701.306, Psychological and Physical Examination. No other code, article, or statute is affected by this adoption.

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 April 7, 2025.

TRD-202501104
Gregory Stevens
Executive Director
Texas Commission on Law Enforcement
Effective date: May 1, 2025
Proposal publication date: January 31, 2025
For further information, please call: (512) 936-7700

♦ ♦ ♦

CHAPTER 219. PRELICENSING, REACTIVATION, TESTS, AND ENDORSEMENTS

37 TAC §219.2

The Texas Commission on Law Enforcement (Commission) adopts amended 37 Texas Administrative Code §219.2, Reciprocity for Out-of-State Peace Officers, Federal Criminal Investigators, and Military Police, with non-substantive changes to the proposed text as published in the January 31, 2025 issue of the *Texas Register* (50 TexReg 645). The rule will be republished.

This adopted amended rule increases the types of federal criminal investigators that may receive reciprocity to be considered for a license. This will increase the number of qualified candidates for licensure consideration.

The public comment period began on January 31, 2025, and ended on March 4, 2025, at the conclusion of the public meeting of the Commission. No public comments were received regarding adoption of the amended rule as proposed.

The amended rule is adopted under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, and §1701.255, Enrollment Qualifications. Texas Occupations Code §1701.151 authorizes the Commission to adopt rules for the administration of Occupations Code Chapter 1701 and to establish minimum standards related to the competence and reliability, including the education, training, physical, and mental standards, for licensing as an officer, county jailer, public security officer, or telecommunicator. Texas Occupations Code §1701.255 requires the Commission to adopt rules establishing minimum qualifications for a person to enroll in a law enforcement training program.

The amended rule as adopted affects or implements Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, and §1701.255, Enrollment Qualifications. No other code, article, or statute is affected by this adoption.

§219.2. Reciprocity for Out-of-State Peace Officers, Federal Criminal Investigators, and Military Police.

(a) To be eligible to take a state licensing examination, an out of state, federal criminal investigator, or military police must comply with all provisions of §219.1 of this chapter and this section.

(b) A prospective out-of-state peace officer, federal criminal investigator, or military police applicant for peace officer licensing in Texas must:

(1) meet all statutory licensing requirements of the state of Texas and the rules of the commission;

(2) successfully complete a supplementary peace officer training course, the curriculum of which is developed by the commission, any other courses, as required by the commission; and

(3) successfully pass the Texas Peace Officer Licensing Examination as provided in §219.1 of this chapter.

(c) Requirements (Peace Officers): Applicants who are peace officers from other U.S. states must meet the following requirements:

(1) provide proof of successful completion of a state POST-approved (or state licensing authority) basic police officer training academy;

(2) have honorably served (employed, benefits eligible) as a sworn full time paid peace officer for 2 continuous years. Service time applied to this section must have been obtained following completion of a state POST-approved basic training course;

(3) be subject to continued employment or eligible for re-hire (excluding retirement); and

(4) the applicant's license or certificate must never have been, nor currently be in the process of being, surrendered, suspended, or revoked.

(d) Requirements (Federal): Texas Code of Criminal Procedure Article 2A.002 recognizes certain named criminal investigators of the United States as having the authority to enforce selected state laws by virtue of their authority. These individuals are deemed to have the equivalent training for licensure consideration. The Executive Director may identify other federal criminal investigators not listed in Texas Code of Criminal Procedure Article 2A.002 whose training and work experience are deemed to be appropriate for licensure consideration.

(e) Qualifying Federal Officers must:

(1) have successfully completed an approved federal agency law enforcement training course (equivalent course topics and hours) at the time of initial certification or appointment;

(2) have honorably served (employed, benefits eligible) in one of the aforementioned federal full time paid capacities for 2 continuous years. Service time applied to this section must have been obtained following completion of a federal agency law enforcement approved basic training course; and

(3) be subject to continued employment or eligible for re-hire (excluding retirement).

(f) Requirements (Military): Must have a military police military occupation specialty (MOS) or air force specialty code (AFSC) classification approved by the commission.

(g) Qualifying military personnel must provide proof of:

(1) successfully completed basic military police course for branch of military served; and

(2) active duty service for 2 continuous years. Service time applied to this section must have been obtained following completion of an approved basic military police course.

(h) The applicant must make application and submit any required fee(s) in the format currently prescribed by the commission to take the peace officer licensing exam. The applicant must comply with the provisions of §219.1 of this chapter when attempting the licensing exam.

(i) Required documents must accompany the application:

(1) a certified or notarized copy of the basic training certificate for a peace officer, a certified or notarized copy of a federal agent's license or credentials, or a certified or notarized copy of the peace officer license or certificate issued by the state POST or proof of military training;

(2) a notarized statement from the state POST, current employing agency or federal employing agency revealing any disciplinary action(s) that may have been taken against any license or certificate issued by that agency or any pending action;

(3) a notarized statement from each applicant's employing agency confirming time in service as a peace officer or federal officer or agent;

(4) a certified or notarized copy of the applicant's valid state-issued driver's license;

(5) a certified copy of the applicant's military discharge (DD-214), if applicable; and

(6) for applicants without a valid Texas drivers license, a passport-sized color photograph (frontal, shoulders and face), signed with the applicant's full signature on the back of the photograph.

(j) The commission may request that applicants submit a copy of the basic and advanced training curricula for equivalency evaluation and final approval.

(k) All out-of-state, federal, and military applicants will be subject to a search of the National Decertification Database (NDD), NCIC/TCIC, and National Criminal History Databases to establish eligibility.

(l) Any applicant may be denied because of disciplinary action, including suspension or revocation, or misconduct in another jurisdiction.

(m) All documents must bear original certification seals or stamps.

(n) The effective date of this section is May 1, 2025.

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 April 7, 2025.

TRD-202501105
Gregory Stevens
Executive Director
Texas Commission on Law Enforcement
Effective date: May 1, 2025
Proposal publication date: January 31, 2025
For further information, please call: (512) 936-7700

♦ ♦ ♦

PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

CHAPTER 341. GENERAL STANDARDS FOR JUVENILE PROBATION DEPARTMENTS

The Texas Juvenile Justice Department (TJJD) adopts amendments to 37 TAC §341.100, Definitions, with changes to the proposed text as published in the January 10, 2025, issue of the *Texas Register* (50 TexReg 270). The rule will be republished.

TJJD also adopts new 37 TAC §341.308, Notification to Office of Independent Ombudsman, without changes to the proposed text as published in the January 10, 2025, issue of the *Texas Register* (50 TexReg 270). The rule will not be republished.

SUMMARY OF CHANGES

The amended §341.100 adds a definition for *Non-Juvenile Justice Contract Facility*. The additional changes involve correcting stylistic inconsistencies and a capitalization discrepancy.

The new §341.308 explains that: 1) the chief administrative officer or designee must notify the Office of Independent Ombudsman via email when a juvenile is placed in a non-juvenile justice contract facility; and 2) the notification must be made no later than 10 days after the juvenile's placement.

The new §341.308 also explains that: 1) the chief administrative officer or designee must notify the Office of Independent Ombudsman via email when a juvenile who was placed in a non-juvenile justice contract facility has been removed from the facility for any reason; and 2) the notification must be made no later than 10 days after the juvenile's removal.

PUBLIC COMMENTS

TJJD did not receive any public comments on the proposed rulemaking actions.

SUBCHAPTER A. DEFINITIONS AND GENERAL PROVISIONS

37 TAC §341.100

STATUTORY AUTHORITY

The amended section is adopted under §221.002, Human Resources Code, which requires the board to adopt rules to govern

juvenile boards, probation departments, probation officers, programs, and facilities.

§341.100. Definitions.

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

(1) Alternative Referral Plan--A procedure that deviates from the requirements of §53.01(d), Family Code, regarding referral of cases to the prosecutor.

(2) Approved Personal Restraint Technique ("personal restraint")--A professionally trained, curriculum-based, and competency-based restraint technique that uses a person's physical exertion to completely or partially constrain another person's body movement without the use of mechanical restraints.

(3) Approved Mechanical Restraint Devices ("mechanical restraint")--A professionally manufactured and commercially available mechanical device designed to aid in the restriction of a person's bodily movement. The only mechanical restraint devices approved for use are the following:

(A) Ankle Cuffs--Metal band designed to be fastened around the ankle to restrain free movement of the legs.

(B) Handcuffs--Metal devices designed to be fastened around the wrist to restrain free movement of the hands and arms.

(C) Plastic Cuffs--Plastic devices designed to be fastened around the wrists or legs to restrain free movement of hands, arms, or legs. Plastic cuffs must be designed specifically for use in human restraint.

(D) Soft Restraints--Non-metallic wristlets and anklets used as stand-alone restraint devices. These devices are designed to reduce the incidence of skin, nerve, and muscle damage to the subject's extremities.

(E) Waist Belt--A cloth, leather, or metal band designed to be fastened around the waist and used to secure the arms to the sides or front of the body.

(4) Case Management System--A computer-based tracking system that provides a systematic method to track and manage juvenile offender caseloads.

(5) Chief Administrative Officer--Regardless of title, the person hired by a juvenile board who is responsible for oversight of the day-to-day operations of a juvenile probation department, including the juvenile probation department of a multi-county judicial district.

(6) Comprehensive Folder Edit--A report generated in the Caseworker or Juvenile Case Management System (JCMS) application that performs an extensive edit of the case file information. This report identifies incorrectly entered data and questionable data that impact the accuracy of the reports and programs.

(7) Criminogenic Needs--Issues, risk factors, characteristics, and/or problems that relate to a person's risk of reoffending.

(8) Data Coordinator--A person employed by a juvenile probation department who is designated to serve and function as the primary contact with TJJD on all matters relating to data collection and reporting.

(9) Department--A juvenile probation department.

(10) Draw--To unholster a weapon in preparation for use against a perceived threat.

(11) EDI Specifications--A document developed by TJJD outlining the data fields and file structures that each juvenile probation department is required to follow in submitting the TJJD EDI extract.

(12) Empty-Hand Defense--Defensive tactics through the use of pressure points, releases from holds, and blocking and striking techniques using natural body weapons such as an open hand, fist, forearm, knee, or leg.

(13) Field Supervision--Supervision ordered by a juvenile court in accordance with §54.04(d)(1)(A), Family Code, where the child is placed on probation in the child's home or in the custody of a relative or another fit person.

(14) Formal Referral--An event that occurs only when all three of the following conditions exist:

(A) a juvenile has allegedly committed delinquent conduct, conduct indicating a need for supervision, or a violation of probation;

(B) the juvenile probation department has jurisdiction and venue; and

(C) the office or official designated by the juvenile board has:

(i) made face-to-face contact with the juvenile and the alleged offense has been presented as the reason for this contact; or

(ii) given written or verbal authorization to detain the juvenile.

(15) Initial Disposition--The disposition of probation issued by a juvenile court after a child is:

(A) formally referred to a juvenile probation department for the first time; or

(B) formally referred to a juvenile probation department after any and all previous periods of supervision by the department have ended.

(16) Inter-County Transfer--As described in §51.072, Family Code, a transfer of supervision from one juvenile probation department in Texas to another juvenile probation department in Texas for a juvenile who moves or intends to move to another county and intends to remain in that county for at least 60 days.

(17) Intermediate Weapons--Weapons designed to neutralize or temporarily incapacitate an assailant, such as electronic restraint devices, irritants, and impact weapons. This level of self-defense employs the use of tools to neutralize aggressive behavior when deadly force is not justified but when empty-hand defense is not sufficient.

(18) Intern--An individual who performs services for a juvenile justice program or facility through a formal internship program that is sponsored by a juvenile justice agency or is part of an approved course of study through an accredited college or university.

(19) Juvenile--A person who is under the jurisdiction of the juvenile court, confined in a juvenile justice facility, or participating in a juvenile justice program.

(20) Juvenile Board--A governing board created under Chapter 152, Human Resources Code.

(21) Juvenile Justice Program--A program or department that:

(A) serves juveniles under juvenile court or juvenile board jurisdiction; and

(B) is operated solely or partly by the governing board, juvenile board, or by a private vendor under a contract with the governing board or juvenile board. The term includes:

(i) juvenile justice alternative education programs;

(ii) non-residential programs that serve juvenile offenders under the jurisdiction of the juvenile court or the juvenile board; and

(iii) juvenile probation departments.

(22) Non-Juvenile Justice Contract Facility--a facility in which a juvenile is placed pursuant to a contract with a department, program, facility, or juvenile board, other than a facility registered with TJJD.

(23) Professional--A person who meets the definition of professional in §344.100 of this title.

(24) Resident--A juvenile or other individual who has been lawfully admitted into a pre-adjudication secure juvenile detention facility, post-adjudication secure juvenile correctional facility, or a non-secure juvenile correctional facility.

(25) Residential Placement--Supervision ordered by a juvenile court in which the child is placed on probation outside the child's home in a foster home or a public or private institution or agency.

(26) Restraints--Personal or mechanical restraint.

(27) Responsivity Factors--Factors that are not necessarily related to criminal activity but are relevant to the way in which the juvenile reacts to different types of interventions (e.g., learning styles and abilities, self-esteem, motivation for treatment, resistance to change, etc.)

(28) SRSXEdit--An audit program developed by TJJD to assist juvenile probation departments not using the Caseworker or JCMS application with verifying their data prior to submission to TJJD.

(29) Supervision--The case management of a juvenile by the assigned juvenile probation officer or designee through contacts (e.g., face-to-face, telephone, office, home, or collateral contacts) with the juvenile, the juvenile's family, and/or other persons or entities involved with the juvenile.

(30) TCOLE--Texas Commission on Law Enforcement.

(31) Title IV-E Approved Facility--A facility licensed and/or approved by the Texas Department of Family and Protective Services for Title IV-E participation.

(32) TJJD--Texas Juvenile Justice Department.

(33) TJJD Electronic Data Interchange (EDI) Extract--An automated process to extract and submit modified case records from the department's case management system to TJJD. The extract must be completed in accordance with this chapter.

(34) TJJD Mental Health Screening Instrument--An instrument selected by TJJD to assist in identifying juveniles who may have mental health needs.

(35) Volunteer--An individual who performs services for the juvenile probation department without compensation from the department who has:

(A) any unsupervised contact with juveniles in a juvenile justice program or facility; or

(B) regular or periodic supervised contact with juveniles in a juvenile justice program or facility.

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 April 10, 2025.

TRD-202501158
Jana Jones
General Counsel
Texas Juvenile Justice Department
Effective date: September 1, 2025
Proposal publication date: January 10, 2025
For further information, please call: (512) 490-7278

♦ ♦ ♦

SUBCHAPTER C. CHIEF ADMINISTRATIVE OFFICER RESPONSIBILITIES

37 TAC §341.308

STATUTORY AUTHORITY

The new section is adopted under §221.002, Human Resources Code, which requires the board to adopt rules to govern juvenile boards, probation departments, probation officers, programs, and facilities.

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 April 10, 2025.

TRD-202501159
Jana Jones
General Counsel
Texas Juvenile Justice Department
Effective date: September 1, 2025
Proposal publication date: January 10, 2025
For further information, please call: (512) 490-7278

♦ ♦ ♦

CHAPTER 345. JUVENILE JUSTICE PROFESSIONAL CODE OF ETHICS FOR CERTIFIED OFFICERS

The Texas Juvenile Justice Department (TJJD) adopts amendments to 37 TAC §345.100, Definitions; §345.200, Policy and Procedure; §345.300, Adherence and Reporting Violations; and §345.310, Code of Ethics, without changes to the proposed text as published in the January 10, 2025, issue of the *Texas Register* (50 TexReg 274). The rules will not be republished.

SUMMARY OF CHANGES

The amended §345.100: 1) clarifies the definitions for *juvenile, juvenile justice facility,* and *juvenile justice professional;* and 2) adds a definition for *Non-Juvenile Justice Contract Facility.*

The amended §345.200 clarifies that departments, programs, and facilities must adopt and implement policies and procedures to ensure that all code of ethics violations are reported to the administration of the department, program, or facility and to TJJD.

The amended §345.300 clarifies that juvenile justice professionals must report any unethical behavior or violations of the code of

ethics to TJJD and to the administration of the department, program, facility, or non-juvenile justice contract facility where the juvenile justice professional is an employee, volunteer, or contractor.

The amended §345.310 clarifies that: 1) juvenile justice professionals must not engage in conduct constituting abuse, neglect, or exploitation as provided by Chapter 358, Administrative Code, and Chapter 261, Family Code; and 2) juvenile justice professionals must not interfere with or hinder *any investigation* (rather than *any abuse, neglect, or exploitation investigation*).

PUBLIC COMMENTS

TJJD did not receive any public comments on the proposed rulemaking action.

SUBCHAPTER A. DEFINITIONS AND APPLICABILITY

37 TAC §345.100

STATUTORY AUTHORITY

The amended section is adopted under §221.002, Human Resources Code, which requires the board to adopt rules to govern juvenile boards, probation departments, probation officers, programs, and facilities.

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 April 10, 2025.

TRD-202501160
Jana Jones
General Counsel
Texas Juvenile Justice Department
Effective date: September 1, 2025
Proposal publication date: January 10, 2025
For further information, please call: (512) 490-7278

♦ ♦ ♦

SUBCHAPTER B. POLICY AND PROCEDURE

37 TAC §345.200

STATUTORY AUTHORITY

The amended section is adopted under §221.002, Human Resources Code, which requires the board to adopt rules to govern juvenile boards, probation departments, probation officers, programs, and facilities.

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 April 10, 2025.

TRD-202501161
Jana Jones
General Counsel
Texas Juvenile Justice Department
Effective date: September 1, 2025
Proposal publication date: January 10, 2025
For further information, please call: (512) 490-7278

♦ ♦ ♦

SUBCHAPTER C. CODE OF ETHICS

37 TAC §345.300, §345.310

STATUTORY AUTHORITY

The amended sections are adopted under §221.002, Human Resources Code, which requires the board to adopt rules to govern juvenile boards, probation departments, probation officers, programs, and facilities.

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 April 10, 2025.

TRD-202501162
Jana Jones
General Counsel
Texas Juvenile Justice Department
Effective date: September 1, 2025
Proposal publication date: January 10, 2025
For further information, please call: (512) 490-7278

♦ ♦ ♦

CHAPTER 349. GENERAL ADMINISTRATIVE STANDARDS

The Texas Juvenile Justice Department (TJJD) adopts the repeal of 37 TAC §§349.100, 349.200, 349.300, 349.305, 349.307, 349.308, 349.310, 349.311, 349.315, 349.320, 349.325, 349.330, 349.335, 349.340, 349.345, 349.355, 349.360, 349.365, 349.370, 349.375, 349.380, 349.385, 349.400, 349.410, 349.500, 349.510, 349.520, 349.530, 349.540, 349.550, 349.560, 349.570, 349.600, 349.650, and 349.700, relating to General Administrative Standards, without changes to the proposed repeal as published in the January 10, 2025, issue of the *Texas Register* (50 TexReg 276). The repeal will not be republished.

SUMMARY OF REPEAL

The repeal of §§349.100, Definitions; 349.200, Waiver or Variance; 349.300, Requests for Disciplinary Action; 349.305, Commission Initiated Disciplinary Action; 349.307, Disciplinary Sanctions; 349.308, Disciplinary Guidelines; 349.310, Effect of Request for Disciplinary Action; 349.311, Disciplinary Sanctions; 349.315, Computation of Time; 349.320, Notice and Service; 349.325, Representation; 349.330, Preliminary Notice to Certified Officer in Disciplinary Matters; 349.335, Commencement of Disciplinary Proceedings; 349.340, Certified Officer's Answer and Consequence of Failure to File an Answer to Formal Charges (Default); 349.345, Discovery; 349.355, Subpoenas; 349.360, Informal Proceedings; 349.365, Agreed Dispositions; 349.370, Formal Disciplinary Proceedings; 349.375, Decision of the Board; 349.380, Judicial Review; 349.385, Mandatory Suspension for Failure to Pay Child Support; 349.400, Complaint Process; 349.410, Administrative Review of Investigation Findings; 349.500, Purpose; 349.510, Definitions; 349.520, Access to Confidential Information; 349.530, Redaction of Records Prior to Release; 349.540, Procedures for Requesting Access to Confidential Information; 349.550, Public Information; 349.560, Videotapes, Audiotapes, and Photographs; 349.570, Charges for Copies of Records; 349.600, Purpose; 349.650,

Removal of Members; and 349.700, Access to Data Collected, allows the content to be revised and republished as new §§349.100, 349.110, 349.120, 349.200, 349.210, 349.220, 349.230, 349.240, 349.250, 349.260, 349.270, 349.300, 349.302, 349.304, 349.310, 349.320, 349.330, 349.340, 349.350, 349.360, 349.370, 349.380, 349.390, 349.400, 349.410, 349.420, 349.430, 349.440, 349.450, 349.460, 349.500, 349.550, and 349.600.

PUBLIC COMMENTS

TJJD did not receive any public comments on the proposed rulemaking action.

SUBCHAPTER A. DEFINITIONS

37 TAC §349.100

STATUTORY AUTHORITY

The repeals are adopted under §221.002, Human Resources Code, which requires the board to adopt rules to govern juvenile boards, probation departments, probation officers, programs, and facilities.

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 April 10, 2025.

TRD-202501163
Jana Jones
General Counsel
Texas Juvenile Justice Department
Effective date: September 1, 2025
Proposal publication date: January 10, 2025
For further information, please call: (512) 490-7278

♦ ♦ ♦

SUBCHAPTER B. WAIVER

37 TAC §349.200

STATUTORY AUTHORITY

The repeals are adopted under §221.002, Human Resources Code, which requires the board to adopt rules to govern juvenile boards, probation departments, probation officers, programs, and facilities.

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 April 10, 2025.

TRD-202501164
Jana Jones
General Counsel
Texas Juvenile Justice Department
Effective date: September 1, 2025
Proposal publication date: January 10, 2025
For further information, please call: (512) 490-7278

♦ ♦ ♦

SUBCHAPTER C. DISCIPLINARY ACTIONS AND HEARINGS

37 TAC §§349.300, 349.305, 349.307, 349.308, 349.310, 349.311, 349.315, 349.320, 349.325, 349.330, 349.335, 349.340, 349.345, 349.355, 349.360, 349.365, 349.370, 349.375, 349.380, 349.385

STATUTORY AUTHORITY

The repeals are adopted under §221.002, Human Resources Code, which requires the board to adopt rules to govern juvenile boards, probation departments, probation officers, programs, and facilities.

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 April 10, 2025.

TRD-202501165
Jana Jones
General Counsel
Texas Juvenile Justice Department
Effective date: September 1, 2025
Proposal publication date: January 10, 2025
For further information, please call: (512) 490-7278

♦ ♦ ♦

SUBCHAPTER D. COMPLAINTS AGAINST JUVENILE BOARDS

37 TAC §349.400, §349.410

STATUTORY AUTHORITY

The repeals are adopted under §221.002, Human Resources Code, which requires the board to adopt rules to govern juvenile boards, probation departments, probation officers, programs, and facilities.

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 April 10, 2025.

TRD-202501166
Jana Jones
General Counsel
Texas Juvenile Justice Department
Effective date: September 1, 2025
Proposal publication date: January 10, 2025
For further information, please call: (512) 490-7278

♦ ♦ ♦

SUBCHAPTER E. CONFIDENTIALITY AND RELEASE OF ABUSE, EXPLOITATION AND NEGLECT INVESTIGATION RECORDS

37 TAC §§349.500, 349.510, 349.520, 349.530, 349.540, 349.550, 349.560, 349.570

STATUTORY AUTHORITY

The repeals are adopted under §221.002, Human Resources Code, which requires the board to adopt rules to govern juvenile

boards, probation departments, probation officers, programs, and facilities.

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 April 10, 2025.

TRD-202501167
Jana Jones
General Counsel
Texas Juvenile Justice Department
Effective date: September 1, 2025
Proposal publication date: January 10, 2025
For further information, please call: (512) 490-7278

♦ ♦ ♦

SUBCHAPTER F. ADVISORY COUNCIL ON JUVENILE SERVICES

37 TAC §349.600, §349.650

STATUTORY AUTHORITY

The repeals are adopted under §221.002, Human Resources Code, which requires the board to adopt rules to govern juvenile boards, probation departments, probation officers, programs, and facilities.

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 April 10, 2025.

TRD-202501168
Jana Jones
General Counsel
Texas Juvenile Justice Department
Effective date: September 1, 2025
Proposal publication date: January 10, 2025
For further information, please call: (512) 490-7278

♦ ♦ ♦

SUBCHAPTER G. DATA

37 TAC §349.700

STATUTORY AUTHORITY

The repeals are adopted under §221.002, Human Resources Code, which requires the board to adopt rules to govern juvenile boards, probation departments, probation officers, programs, and facilities.

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 April 10, 2025.

TRD-202501169
Jana Jones
General Counsel
Texas Juvenile Justice Department
Effective date: September 1, 2025
Proposal publication date: January 10, 2025
For further information, please call: (512) 490-7278

♦ ♦ ♦

CHAPTER 349. GENERAL ADMINISTRATIVE STANDARDS

The Texas Juvenile Justice Department (TJJD) adopts new 37 TAC §§349.100, 349.110, 349.120, 349.200, 349.210, 349.220, 349.230, 349.240, 349.250, 349.260, 349.270, 349.300, 349.302, 349.304, 349.310, 349.320, 349.330, 349.340, 349.350, 349.360, 349.370, 349.380, 349.390, 349.400, 349.410, 349.420, 349.430, 349.440, 349.450, 349.460, 349.500, 349.550, and 349.600, relating to General Administrative Standards, without changes to the proposed text as published in the January 10, 2025, issue of the *Texas Register* (50 TexReg 279). The rules will not be republished.

SUMMARY

New §349.100, Definitions, provides definitions for terms used in the chapter. Key additions and/or revisions include: 1) removing terms *alleged perpetrator, designated perpetrator,* and *sustained perpetrator* and replacing them with the term *suspect*; 2) defining *abuse, neglect, and exploitation* by reference to 37 TAC Chapter 358; 3) adding definitions of *administrator* and *administrative designee* that are consistent with definitions in Chapter 358; 4) expanding the definition of *certification action* to include ineligibility for certification; 5) expanding the definition of *certified officer* to include a person with a provisional certification; 6) adding a definition of *non-juvenile justice contract facility*; 7) adding a definition of *de novo review*; 8) adding a definition of *juvenile* and expanding it to include juveniles at a non-juvenile justice contract facility; 9) expanding the definition of *juvenile facility* to refer to statutes; 10) replacing terms *juvenile probation officer* and *juvenile supervision officer* with the term *respondent*; and 11) adding a definition of *victim*.

New §349.110, Interpretation, provides general guidelines for interpreting the chapter. Key additions and/or revisions include adding: 1) standard interpretation language regarding headings; 2) the term *including*; and 3) calculations of time.

New §349.120, Authorized Delegation, explains that the executive director may designate in writing another TJJD employee to perform the executive director's duties under this chapter. Key additions and/or revisions include specifying that the executive director may designate another TJJD employee to perform the executive director's duties under the chapter and that such designation must be in writing.

New §349.200, Waivers and Variances, provides information on waivers and variances as they apply to the requirements of this chapter. Key additions and/or revisions include: 1) defining the distinct purposes of waivers and variances; 2) specifying the applicability of waivers and variances and that they may be conditional; 3) specifying how waivers and variances are to be requested and what information must be provided; 4) providing that either a waiver or variance may be granted by the executive director for up to 180 days and that the TJJD Board must approve any time frame longer than 180 days; 5) providing that, if executive director denies a waiver or variance, the requestor

may ask the TJJD Board to review the denial; 6) providing that the department or facility requesting the waiver or variance is responsible for appearing at the Board meeting to explain the request and answer questions from the Board; and 7) providing that, when appropriate, TJJD staff will make a recommendation to the Board on whether or not to grant a waiver or variance.

New §349.210, Code of Ethics Violations, provides guidelines related to the reporting of, notifications related to, and timelines regarding code of ethics violations. Key additions and/or revisions include: 1) providing that every person with a TJJD certification is obligated to report to TJJD when the person has reason to believe another certified officer has violated the Code of Ethics; 2) clarifying that a failure to report a code of ethics violation may result in disciplinary action; and 3) requiring that confirmed code of ethics violations must be reported to TJJD Office of General Counsel except when conduct is subject of TJJD investigation.

New §349.220, Complaints, provides information about complaints regarding juvenile boards, certified officers, or employees of departments, facilities, or non-juvenile justice contract facilities. Key additions and/or revisions include addressing how various complaints received by TJJD are processed.

New §349.230, Violation by Juvenile Board, provides instruction for times when TJJD determines a juvenile board, including the department or facility under the juvenile board's jurisdiction, has violated rules, standards, or the terms of the State Financial Assistance Contract. Key additions and/or revisions include adding the possibility of extending the deadline for compliance when there is a violation of standards or the state financial assistance contract.

New §349.240, Mandatory Suspension for Failure to Pay Child Support, explains the process for suspending the certification of a certified officer when that officer fails to pay child support.

New §349.250, Administrative Review of Investigation Findings, explains the process for an administrative review when a person is confirmed by TJJD to have engaged in conduct meeting the definition of abuse neglect, or exploitation in an investigation conducted under Chapter 358 of this title. Key additions and/or revisions include: 1) updating language due to removal of *designated perpetrator* term; 2) changing the timeline to request an administrative review from 20 days to 10 days; 3) allowing administrators to request administrative review on behalf of staff; 4) specifying that the attorney who does the administrative review is not the same attorney who advised or otherwise worked on the investigation; 5) specifying that the administrative review is a de novo review; 6) providing that an attorney may interview witnesses and gather additional evidence at the attorney's discretion and may request the assistance of TJJD's Office of the Inspector General in doing so; 7) specifying that an attorney prepares a written report explaining the decision to confirm or revise the original findings; 8) providing a requirement to notify the suspect or administrative designee and provide estimated completion date if there is a need to extend 45-day completion date; and 9) specifying that administrative review does not apply to investigations conducted of TJJD employees.

New §349.260, Representation, explains that the subject of an investigation may elect to appear with legal representation during the administrative review process.

New §349.270, Temporary Suspension Order, explains that TJJD may temporarily suspend the certification of a certified office during the administrative review process.

New §349.300, Disciplinary Action, explains that TJJD may impose disciplinary action on a certified officer who has committed a code of ethics violation or engaged in abuse, neglect, or exploitation involving a juvenile.

New §349.302, Ineligibility for Certification, outlines TJJD's authority to make a person ineligible for certification under certain circumstances. Key additions and/or revisions include adding the statutory authority to make a person ineligible for certification.

New §349.304, Guidelines, provides parameters for those seeking, proposing, or making a decision under the standards given in this chapter.

New §349.310, Mandatory Revocation, explains the circumstances under which a person's certification will be revoked or denied. Key additions and/or revisions include: 1) clarifying that TJJD staff shall seek revocation for certain conduct; 2) adding engaging in sexually-related or otherwise inappropriate relationship with a juvenile, whether or not sexual conduct occurred; and 3) adding the statutory provisions from Chapter 53 Occupations Code that mandate revocation.

New §349.320, Notice and Service, explains the process by which a person is informed of a pending certification action against that person. Key additions and/or revisions include: 1) adding a mechanism to provide service at an address other than the one on file with TJJD, in the event the person has moved; 2) adding a provision that allows for notice by publication or any other legal means if necessary; and 3) updating the language that must be included in the notice to provide general content instead of specific terminology.

New §349.330, Answer, explains the process by which a person may respond to a certification action.

New §349.340, Default, explains the consequences for a person failing to respond to a certification action.

New §349.350, Agreed Orders, explains the circumstances surrounding the resolution of certification matters through voluntary settlement processes.

New §349.360, State Office of Administrative Hearings, explains, that under certain conditions, the matter of a certification action will be schedule for hearing at the State Office of Administrative Hearings. Key additions and/or revisions include: 1) deleting process requirements for SOAH; and 2) referring to statutes and administrative rules that control.

New §349.370, Decision of the Board, provides information concerning the various statutes related to TJJD Board decisions and orders. Key additions and/or revisions include: 1) deleting specific requirements for Board decisions; and 2) referring to statutes that control those decisions.

New §349.380, Representation, explains that the respondent to a certification action may elect to appear with legal representation during the certification action process. Key additions and/or revisions include clarifying that TJJD is represented by an attorney from the agency's Office of General Counsel.

New §349.390, Costs, explains that a party who appeals a final decision in a contested case is responsible for the costs related to preparing a copy of the agency proceeding and for any requested transcription.

New §349.400, Purpose, explains that the purpose of subchapter D of this chapter is to clarify to whom and under what cir-

cumstances TJJD may disclose confidential information related to investigations of abuse, neglect, and exploitation.

New §349.410, Definitions, provides definitions for terms used in subchapter D.

New §349.420, Confidentiality of and Access to Information, explains the extent to which records related to abuse, neglect, and exploitation investigations are confidential and accessible. Key additions and/or revisions include adding the ability to share information regarding investigation pursuant to a memorandum of understanding adopted under §810.009, Human Resources Code, related to the multiagency search engine for reportable conduct.

New §349.430, Redaction of Records Prior to Release, explains the extent which TJJD will redact investigation records before their release.

New §349.440, Procedures for Requesting Access to Confidential Information, provides information pertaining to the extent to which confidential information may be requested and provided.

New §349.450, Public Information, explains that TJJD will compile statewide statistics on the incidence of abuse, neglect, and exploitation and provide those statistics to the public upon written request.

New §349.460, Video, Audio Recordings, and Photographs, explains who has access to video, audio recordings, and photographs that are part of the records of investigations.

New §349.500, Purpose, explains the purpose of the Advisory Council on Juvenile Services and describe various aspects of the council.

New §349.550, Removal of Members, explains the grounds for removing a member of the Advisory Council.

New §349.600, Access to Data Collected, explains that, for the purposes of planning and research, all juvenile probation departments participating in the state's regionalization plan are authorized to access data that any other participating departments have submitted through the case management system.

PUBLIC COMMENTS

TJJD did not receive any public comments on the proposed rulemaking action.

SUBCHAPTER A. DEFINITIONS AND GENERAL REQUIREMENTS

37 TAC §§349.100, 349.110, 349.120

STATUTORY AUTHORITY

The new sections are adopted under §221.002, Human Resources Code, which requires the board to adopt rules to govern juvenile boards, probation departments, probation officers, programs, and facilities.

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 April 10, 2025.

TRD-202501170
Jana Jones
General Counsel
Texas Juvenile Justice Department
Effective date: September 1, 2025
Proposal publication date: January 10, 2025
For further information, please call: (512) 490-7278

♦ ♦ ♦

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

37 TAC §§349.200, 349.210, 349.220, 349.230, 349.240, 349.250, 349.260, 349.270

STATUTORY AUTHORITY

The new sections are adopted under §221.002, Human Resources Code, which requires the board to adopt rules to govern juvenile boards, probation departments, probation officers, programs, and facilities.

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 April 10, 2025.

TRD-202501171
Jana Jones
General Counsel
Texas Juvenile Justice Department
Effective date: September 1, 2025
Proposal publication date: January 10, 2025
For further information, please call: (512) 490-7278

♦ ♦ ♦

SUBCHAPTER C. CERTIFICATION ACTIONS AND HEARINGS

37 TAC §§349.300, 349.302, 349.304, 349.310, 349.320, 349.330, 349.340, 349.350, 349.360, 349.370, 349.380, 349.390

STATUTORY AUTHORITY

The new sections are adopted under §221.002, Human Resources Code, which requires the board to adopt rules to govern juvenile boards, probation departments, probation officers, programs, and facilities.

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 April 10, 2025.

TRD-202501172
Jana Jones
General Counsel
Texas Juvenile Justice Department
Effective date: September 1, 2025
Proposal publication date: January 10, 2025
For further information, please call: (512) 490-7278

♦ ♦ ♦

SUBCHAPTER D. CONFIDENTIALITY AND RELEASE OF ABUSE, EXPLOITATION, AND NEGLECT INVESTIGATION RECORDS

37 TAC §§349.400, 349.410, 349.420, 349.430, 349.440, 349.450, 349.460

STATUTORY AUTHORITY

The new sections are adopted under §221.002, Human Resources Code, which requires the board to adopt rules to govern juvenile boards, probation departments, probation officers, programs, and facilities.

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 April 10, 2025.

TRD-202501173
Jana Jones
General Counsel
Texas Juvenile Justice Department
Effective date: September 1, 2025
Proposal publication date: January 10, 2025
For further information, please call: (512) 490-7278

♦ ♦ ♦

SUBCHAPTER E. ADVISORY COUNCIL ON JUVENILE SERVICES

37 TAC §349.500, §349.550

STATUTORY AUTHORITY

The new sections are adopted under §221.002, Human Resources Code, which requires the board to adopt rules to govern juvenile boards, probation departments, probation officers, programs, and facilities.

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 April 10, 2025.

TRD-202501174
Jana Jones
General Counsel
Texas Juvenile Justice Department
Effective date: September 1, 2025
Proposal publication date: January 10, 2025
For further information, please call: (512) 490-7278

♦ ♦ ♦

SUBCHAPTER F. DATA

37 TAC §349.600

STATUTORY AUTHORITY

The new sections are adopted under §221.002, Human Resources Code, which requires the board to adopt rules to govern juvenile boards, probation departments, probation officers, programs, and facilities.

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 April 10, 2025.

TRD-202501175
Jana Jones
General Counsel
Texas Juvenile Justice Department
Effective date: September 1, 2025
Proposal publication date: January 10, 2025
For further information, please call: (512) 490-7278

♦ ♦ ♦

CHAPTER 350. INVESTIGATING ABUSE, NEGLECT, EXPLOITATION, DEATH AND SERIOUS INCIDENTS

37 TAC §§350.100, 350.110, 350.120, 350.200, 350.210, 350.300, 350.400, 350.500, 350.600, 350.610, 350.620, 350.700, 350.800, 350.900 - 350.904

The Texas Juvenile Justice Department (TJJD) adopts the repeal of 37 TAC §§350.100, 350.110, 350.120, 350.200, 350.210, 350.300, 350.400, 350.500, 350.600, 350.610, 350.620, 350.700, 350.800, and 350.900 - 350.904, relating to Investigating Abuse, Neglect, Exploitation, Death and Serious Incidents, without changes to the proposed repeal as published in the January 10, 2025, issue of the *Texas Register* (50 TexReg 291). The repeal will not be republished.

SUMMARY OF CHANGES

The repeal of Chapter 350 and its sections--§§350.100, Definitions; 350.110, Interpretation; 350.120, Applicability; 350.200, Assessment; 350.210, Prioritization, Activation and Initiation; 350.300, Investigations; 350.400, Notification and Referral; 350.500, Requests for Disciplinary Action; 350.600, Retention, Release and Redaction of Commission Records; 350.160, Release of Confidential Information; 350.620, Redaction of Records; 350.700, Call Line; 350.800, Serious Incidents; 350.900, Training and Quality Assurance; 350.901, Pre-Service Training; 350.902, Competency Testing; 350.903, Continuing Education; and 350.904 Quality Assurance--allows the content to be revised and included in a simultaneous revision of 37 TAC Chapter 358

PUBLIC COMMENTS

TJJD did not receive any public comments on the proposed rulemaking action.

STATUTORY AUTHORITY

The repeals are adopted under §221.002, Human Resources Code, which requires the board to adopt rules to govern juvenile boards, probation departments, probation officers, programs, and facilities.

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 April 10, 2025.

TRD-202501176

Jana Jones
General Counsel
Texas Juvenile Justice Department
Effective date: September 1, 2025
Proposal publication date: January 10, 2025
For further information, please call: (512) 490-7278

♦ ♦ ♦

CHAPTER 358. IDENTIFYING, REPORTING, AND INVESTIGATING ABUSE, NEGLECT, EXPLOITATION, DEATH, AND SERIOUS INCIDENTS

37 TAC §§358.100, 358.120, 358.140, 358.200, 358.220, 358.240, 358.300, 358.320, 358.340, 358.360, 358.400, 358.420, 358.440, 358.460, 358.500, 358.520, 358.540, 358.600, 358.620

The Texas Juvenile Justice Department (TJJD) adopts the repeal of 37 TAC §§358.100, 358.120, 358.140, 358.200, 358.220, 358.240, 358.300, 358.320, 358.340, 358.360, 358.400, 358.420, 358.440, 358.460, 358.500, 358.520, 358.540, 358.600, and 358.620, relating to Identifying, Reporting, and Investigating Abuse, Neglect, Exploitation, Death, and Serious Incidents, without changes to the proposed repeal as published in the January 10, 2025, issue of the *Texas Register* (50 TexReg 292). The repeal will not be republished.

SUMMARY OF REPEAL

The repeal of §358.100, Definitions; §358.120, Interpretation; §358.140, Applicability; §358.200, Policy and Procedure; §358.220, Data Reconciliation; §358.240, Signage; §358.300, Identifying and Reporting Abuse, Neglect, Exploitation, and Death; §358.320, Parental Notification; §358.340, Reporting of Allegations by Juveniles; §358.360, Allegations Occurring Outside the Juvenile Justice System; §358.400, Internal Investigation; §358.420, Reassignment or Administrative Leave During the Internal Investigation; §358.440, Cooperation with TJJD Investigation; §358.460, Corrective Measures; §358.500, Internal Investigation Report; §358.520, Required Components of an Internal Investigation Report; §358.540, Submission of Internal Investigation Report; §358.600, Serious Incidents; and §358.620, Medical Documentation for Serious Incidents allows the content to be revised and republished as new §§358.100, 358.110, 358.120, 358.130, 358.200, 358.210, 358.220, 358.230, 358.240, 358.250, 358.260, 358.270, 358.280, 358.290, 358.300, 358.310, 358.320, 358.330, 358.340, 358.400, 358.410, 358.420, 358.430, 358.440, 358.450, and 358.460.

PUBLIC COMMENTS

TJJD did not receive any public comments on the proposed rulemaking action.

STATUTORY AUTHORITY

The repeals are adopted under §221.002, Human Resources Code, which requires the board to adopt rules to govern juvenile boards, probation departments, probation officers, programs, and facilities.

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 April 10, 2025.

TRD-202501177
Jana Jones
General Counsel
Texas Juvenile Justice Department
Effective date: September 1, 2025
Proposal publication date: January 10, 2025
For further information, please call: (512) 490-7278

♦ ♦ ♦

CHAPTER 358. IDENTIFYING, REPORTING, AND INVESTIGATING ABUSE, NEGLECT, EXPLOITATION, DEATH, AND SERIOUS INCIDENTS

The Texas Juvenile Justice Department (TJJD) adopts new 37 TAC §§358.100, 358.110, 358.120, 358.130, 358.200, 358.210, 358.220, 358.230, 358.240, 358.250, 358.260, 358.270, 358.280, 358.290, 358.300, 358.310, 358.320, 358.330, 358.340, 358.400, 358.410, 358.420, 358.430, 358.440, 358.450, and 358.460, relating to Identifying, Reporting, and Investigating Abuse, Neglect, Exploitation, Death, and Serious Incidents, without changes to the proposed text as published in the January 10, 2025, issue of the *Texas Register* (50 TexReg 293). The rules will not be republished.

SUMMARY

New §358.100, Definitions, provides definitions for terms used in the chapter. Key additions and/or revisions include: 1) removing terms *alleged perpetrator, designated perpetrator,* and *sustained perpetrator* and replacing them with the term *suspect;* 2) adding the term *non-juvenile justice contract facility;* 3) adding *abscond from nonsecure facility* to *serious incident;* 4) ensuring definitions related to sexual abuse are consistent with PREA, particularly related to juvenile contact with other juveniles; 5) adding definitions of *reasonable cause to believe* and *preponderance of the evidence;* 6) modifying definitions of *abuse, neglect,* and *exploitation* to remove reference to changed statute; and 7) adding definition of *emotional harm* and *physical injury.*

New §358.110, Interpretation, provides general guidelines for interpreting the chapter. Key additions and/or revisions include adding the calculation of time and a reference to applicable statute.

New §358.120, Applicability, explains the circumstances to which this chapter will apply. Key additions and/or revisions include expanding applicability to include abuse, neglect, exploitation, serious incidents, and death that involve juvenile at non-juvenile justice contract facilities.

New §358.130, Toll-Free Call Center, explains that TJJD operates a call center for the specific purpose of reporting alleged abuse, neglect, exploitation, death, and serious incidents.

New §358.200, Policy and Procedure, describes the types of policies and procedures required of departments, programs, and facilities. Key additions and/or revisions include: 1) clarifying that all contracts with non-juvenile justice contract facilities will require the placement to report abuse, neglect, exploitation, death, or serious incident to the juvenile probation department, program, or facility and to TJJD; to conduct an internal investigation in accordance with this chapter or allow the department, program, or facility to do so; and to cooperate

with all assessments and investigations; and 2) modifying the reporting requirement to be when there is *reasonable cause* to believe abuse, neglect, or exploitation has occurred.

New §358.210, Information on Reporting, explains how and when youth and parents are made aware of the process for reporting alleged abuse, neglect, exploitation, death, and serious incidents. Key additions and/or revisions include adding that facilities or programs provide a youth's parents with information on reporting suspected abuse, neglect, or exploitation to TJJD and the TJJD toll-free number as soon as practicable after child is taken into custody or placed in the facility.

New §358.220, Data Reconciliation, explains the information TJJD requires for all allegations of abuse, neglect, exploitation, death, and serious incidents.

New §358.230, Reporting Abuse, Neglect, and Exploitation, explains a person's duty to report abuse, neglect, and exploitation and will present timeframes and methods of reporting. Key additions and/or revisions include: 1) expanding duty to report to include non-juvenile justice contract facility and changing duty to be when there is reasonable cause to believe; and 2) modifying reporting methods to remove *fax* as an option.

New §358.240, Reporting Serious Incidents, explains a person's duty to report serious incidents and will present timeframes and methods of reporting. Key additions and/or revisions include: 1) expanding duty to report to include non-juvenile justice contract facility; and 2) modifying reporting methods to remove *fax* as an option.

New §358.250, Reporting Deaths, explains a person's duty to report a death and will present timeframes and methods of reporting. Key additions and/or revisions include expanding duty to report to include non-juvenile justice contract facility.

New §358.260, Parental Notification, explains the requirements regarding notifying parents or guardians when a youth has died or is the alleged victim of abuse, neglect, exploitation, or serious incident. Key additions and/or revisions include adding a requirement to report to a parent that their child was involved in a serious incident using the same timeframes as the requirements to report abuse, neglect, and exploitation.

New §358.270, Reporting of Allegations by Juveniles, specifies a youth's right to report allegations of abuse, neglect, exploitation, and death. Key additions and/or revisions include adding a requirement to report to a parent that their child was involved in a serious incident using the same timeframes as the requirements to report abuse, neglect, exploitation, and death.

New §358.280, Internal Investigation, explains the specifics for the mandatory investigations that must be undertaken in every case when a youth has died or is the victim of alleged abuse, neglect, or exploitation. Key additions and/or revisions include: 1) clarifying that a delay in starting an internal investigation in order to protect the integrity of potential evidence occurs only after consultation with local law enforcement or TJJD's Office of Inspector General; 2) clarifying that policies and procedures related to internal investigations must be provided to TJJD upon request; and 3) providing that the burden of proof in an internal investigation is a preponderance of the evidence and that the burden of proof cannot be lowered or raised.

New §358.290, Corrective Measures, explains the scope of the corrective measures that may be taken at the conclusion of an internal investigation. Key additions and/or revisions include clarifying that corrective measures that must be taken, if warranted, also apply to persons found to have engaged in misconduct not classified as abuse, neglect, or exploitation.

New §358.300, Internal Investigative Report, explains that a report must be completed at the conclusion of every internal investigation and will provide the items that must be included in the report. Key additions and/or revisions include adding a requirement to notify TJJD within five calendar days if disciplinary action is imposed after the submission of the internal investigation report.

New §358.310, Submission of Internal Investigative Report, explains what TJJD requires to be submitted as part of the internal investigative report.

New §358.320, Reassignment or Administrative Leave during the Internal Investigation, explains the options for addressing the work status of personnel alleged to have abuse, neglected, or exploited a youth

New §358.330, Cooperation with TJJD Investigation, explains that all persons must cooperate fully with a TJJD investigation into allegations of abuse, neglect, exploitation, death, and serious incidents. Key additions and/or revisions include adding serious incident to the types of investigations all persons are required to fully cooperate with.

New §358.340, Cooperation with Other Agencies, explains that all persons must also cooperate with other agencies that have the authority to investigate allegations of abuse, neglect, exploitation, death, and serious incidents. Key additions and/or revisions include adding a requirement to fully cooperate with other state agencies or licensing entities with authority to investigate, such as an agency that holds the occupational license of a person who is the subject of an investigation.

New §358.400, TJJD Assessment and Referral, explains that TJJD will complete assessments on all reports of alleged abuse, neglect, exploitation, death, and serious incidents to determine the authority under which the alleged conduct falls. Key additions and/or revisions include: 1) adding serious incidents to the things TJJD can assess to determine if an investigation is warranted or if a referral to another TJJD division, the juvenile probation department or facility, or another state agency is appropriate; 2) clarifying that TJJD may conduct an assessment when there is a reasonable cause to believe one is warranted; 3) clarifying that the purpose of an assessment is to determine if the conduct falls under TJJD's investigative or other regulatory authority and if action or investigation is warranted; and 4) providing that TJJD may request information as part of the assessment and the requested information must be provided.

New §358.410, TJJD Investigations, provides the parameters for how investigations will be conducted. Key additions and/or revisions include: 1) clarifying that an investigation may be conducted based on a report or may be initiated by TJJD when there is reasonable cause to believe that an incident may require investigation, regardless of how TJJD was made aware of the matter; 2) removing detailed procedures of how investigations are conducted from administrative rule as they are more appropriately addressed in policies and procedures; 3) adding that a person who obtains employment in another jurisdiction while an investigation is pending may not be in a position having contact with juveniles until the investigation is finalized by TJJD or TJJD approves.

New §358.420, Findings in Abuse, Neglect, and Exploitation Investigations, explains the burden of proof required in findings of

abuse, neglect, exploitation, death, and serious incidents and will provide specific definitions for certain behaviors. Key additions and/or revisions include: 1) clarifying that a finding of abuse, neglect, or exploitation requires a preponderance of evidence to establish the person engaged in conduct meeting the definition, including having done so with the required mental state; 2) defining *intentionally, knowingly,* and *recklessly* according to definitions in the Penal Code; 3) defining *negligence* using the definition in civil law negligence cases; and 4) defining the required findings for abuse, neglect, and exploitation allegations.

New §358.430, Abuse, Neglect, and Exploitation Investigative Report, explains that an investigative report must include certain elements and may include others. Key additions and/or revisions include: 1) providing that the investigator in an abuse, neglect, and exploitation report will summarize and analyze the evidence and make a recommendation regarding whether the evidence is sufficient to establish ANE occurred; 2) providing that a TJJD attorney will review the investigation for legal sufficiency and make findings as to whether the evidence stablishes that abuse, neglect, or exploitation occurred; and 3) adding that the attorney may request additional information or investigation by TJJD's Office of Inspector General if necessary.

New §358.440, Notification of Findings, explains who is notified of the findings of an investigation. Key additions and/or revisions include providing who will be notified of the findings and the notice for administrative review.

New §358.450, Other Actions by TJJD, provides other courses of action that TJJD might take as a result of an investigation.

New §358.460, Maintenance of Records and Data, explains the process for maintaining records and data related to investigations into abuse, neglect, exploitation, death, and serious incidents.

PUBLIC COMMENTS

TJJD did not receive any public comments on the proposed rulemaking action.

SUBCHAPTER A. DEFINITIONS, APPLICABILITY, AND GENERAL REQUIREMENTS

37 TAC §§358.100, 358.110, 358.120, 358.130

STATUTORY AUTHORITY

The new sections are adopted under §221.002, Human Resources Code, which requires the board to adopt rules to govern juvenile boards, probation departments, probation officers, programs, and facilities.

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 April 10, 2025.

TRD-202501178
Jana Jones
General Counsel
Texas Juvenile Justice Department
Effective date: September 1, 2025
Proposal publication date: January 10, 2025
For further information, please call: (512) 490-7278

♦ ♦ ♦

SUBCHAPTER B. RESPONSIBILITIES OF DEPARTMENTS, PROGRAMS, AND FACILITIES

37 TAC §§358.200, 358.210, 358.220, 358.230, 358.240, 358.250, 358.260, 358.270, 358.280, 358.290, 358.300, 358.310, 358.320, 358.330, 358.340

STATUTORY AUTHORITY

The new sections are adopted under §221.002, Human Resources Code, which requires the board to adopt rules to govern juvenile boards, probation departments, probation officers, programs, and facilities.

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 April 10, 2025.

TRD-202501179
Jana Jones
General Counsel
Texas Juvenile Justice Department
Effective date: September 1, 2025
Proposal publication date: January 10, 2025
For further information, please call: (512) 490-7278

♦ ♦ ♦

SUBCHAPTER C. TJJD ASSESSMENT AND INVESTIGATION

37 TAC §§358.400, 358.410, 358.420, 358.430, 358.440, 358.450, 358.460

STATUTORY AUTHORITY

The new sections are adopted under §221.002, Human Resources Code, which requires the board to adopt rules to govern juvenile boards, probation departments, probation officers, programs, and facilities.

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 April 10, 2025.

TRD-202501180
Jana Jones
General Counsel
Texas Juvenile Justice Department
Effective date: September 1, 2025
Proposal publication date: January 10, 2025
For further information, please call: (512) 490-7278

♦ ♦ ♦

CHAPTER 380. RULES FOR STATE-OPERATED PROGRAMS AND FACILITIES

SUBCHAPTER B. TREATMENT

DIVISION 1. PROGRAM PLANNING

37 TAC §380.8701

The Texas Juvenile Justice Department (TJJD) adopts amendments to 37 TAC §380.8701, Case Planning, without changes to the proposed text as published in the January 10, 2025, issue of the *Texas Register* (50 TexReg 302). The rule will not be republished

SUMMARY OF CHANGES

Amendments to the section include: (1) adding a definition for integrated treatment plan; (2) adding that an integrated treatment plan may serve as the youth's case plan; (3) adding that references throughout TJJD's rules to case plans may be understood to mean integrated treatment plans for agency departments using integrated treatment plans; (4) removing statements specifying which staff members develop and update the case plan; (5) adding that case plan objectives are reviewed and progress is documented monthly, rather than at least once every 30 days; (6) adding that objectives in the case plan help the youth to develop *skillful behaviors*, rather than develop *skills to reduce individual risk factors and increase individual protective factors*; (7) replacing a reference to *the orientation and assessment unit* with *an orientation and assessment program*; and (8) consolidating some redundant statements.

PUBLIC COMMENTS

TJJD did not receive any public comments on the proposed rulemaking action.

STATUTORY AUTHORITY

The amended section is adopted under §242.003, Human Resources Code, which requires the board to adopt rules appropriate to the proper accomplishment of TJJD's functions and to adopt rules for governing TJJD schools, facilities, and programs. The amended section is also adopted under §244.001, Human Resources Code, which requires the board to establish rules for the periodic review and reevaluation of a child's written treatment plan.

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 April 10, 2025.

TRD-202501181
Jana Jones
General Counsel
Texas Juvenile Justice Department
Effective date: September 1, 2025
Proposal publication date: January 10, 2025
For further information, please call: (512) 490-7278

♦ ♦ ♦

SUBCHAPTER D. YOUTH RIGHTS AND REMEDIES

37 TAC §380.9333

The Texas Juvenile Justice Department (TJJD) adopts the repeal of 37 TAC §380.9333, Investigation of Alleged Abuse, Neglect, and Exploitation, without changes to the proposed repeal as published in the January 10, 2025, issue of the *Texas Register* (50 TexReg 304). The repeal will not be republished.

SUMMARY OF REPEAL

The repeal of §380.9333 allows the content to be revised and republished as new §380.9333.

PUBLIC COMMENTS

TJJD did not receive any public comments on the proposed rulemaking action.

STATUTORY AUTHORITY

The repeal is adopted under §242.003, Human Resources Code, which requires the board to adopt rules appropriate to the proper accomplishment of TJJD's functions and to adopt rules for governing TJJD schools, facilities, and 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 April 10, 2025.

TRD-202501182
Jana Jones
General Counsel
Texas Juvenile Justice Department
Effective date: September 1, 2025
Proposal publication date: January 10, 2025
For further information, please call: (512) 490-7278

♦ ♦ ♦

37 TAC §380.9333

The Texas Juvenile Justice Department (TJJD) adopts new 37 TAC §380.9333, Investigation of Alleged Abuse, Neglect, and Exploitation, without changes to the proposed text as published in the January 10, 2025, issue of the *Texas Register* (50 TexReg 304). The rule will not be republished.

SUMMARY OF CHANGES

New §380.9333 modifies and republishes information currently contained in the former §380.9333, which is simultaneously adopted for repeal. Key additions and revisions include: 1) clarifying that an investigation may be conducted based on a report or may be initiated by TJJD when there is reasonable cause to believe that an incident may require investigation, regardless of how TJJD was made aware of the matter; 2) removing detailed procedures of how investigations are conducted from administrative rule as they are more appropriately addressed in policies and procedures; 3) detailing that a finding of abuse, neglect, or exploitation requires a preponderance of evidence to establish the person engaged in conduct meeting the definition, including having done so with the required mental state; 4) defining *intentionally, knowingly,* and *recklessly* using the Penal Code definitions; 5) defining negligence using definition in civil law negligence cases; 6) defining the required findings for abuse, neglect, and exploitation allegations; 7) providing that the investigator in an abuse, neglect, or exploitation report will summarize and analyze the evidence and make a recommendation regarding whether the evidence is sufficient to establish abuse, neglect, or exploitation occurred; 8) providing that a TJJD attorney will review the investigation for legal sufficiency and make findings as to whether the evidence establishes that abuse, neglect, or exploitation occurred; and 9) clarifying that the attorney may request additional information or investigation by TJJD's Office of Inspector General if necessary.

PUBLIC COMMENTS

TJJD did not receive any public comments on the proposed rulemaking action.

STATUTORY AUTHORITY

The new section is adopted under §242.003, Human Resources Code, which requires the board to adopt rules appropriate to the proper accomplishment of TJJD's functions and to adopt rules for governing TJJD schools, facilities, and 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 April 10, 2025.

TRD-202501184
Jana Jones
General Counsel
Texas Juvenile Justice Department
Effective date: September 1, 2025
Proposal publication date: January 10, 2025
For further information, please call: (512) 490-7278

♦ ♦ ♦

SUBCHAPTER E. BEHAVIOR MANAGEMENT AND YOUTH DISCIPLINE

DIVISION 1. BEHAVIOR MANAGEMENT

37 TAC §380.9503

The Texas Juvenile Justice Department (TJJD) adopts amendments to 37 TAC §380.9503, Rules and Consequences for Residential Facilities, without changes to the proposed text as published in the January 10, 2025, issue of the *Texas Register* (50 TexReg 308). The rule will not be republished.

SUMMARY OF CHANGES

Amendments to the section include revising the due process procedure that is required to prove an allegation in cases where a Level II hearing is not required. Specifically, the changes include: (1) assigning the name *rule-violation review* to this level of due process; (2) adding that the standard of proof is a preponderance of evidence; (3) adding that a rule-violation review may be held even if no disciplinary consequence is sought; (4) adding that the youth will be notified, rather than told, about which rule was allegedly violated and which consequence staff is considering, if any; (5) removing the statement that required staff to describe the information staff has that establishes the youth committed the alleged violation; (6) adding that the youth must be given the opportunity to review relevant evidence considered by staff and to present the youth's own evidence; and (7) adding that the results of a rule-violation review are not grievable through the youth grievance system, but they may be appealed to the facility administrator or designee on various grounds.

Amendments in other areas of the rule include: (1) removing the statement that allowed a rule violation to be proven only via a Level I or Level II due process hearing and that limited a youth's disciplinary record to consist only of allegations proven in these types of hearings; (2) clarifying that, in addition to an incident report, any other document that describes conduct is also something that cannot be appealed or grieved; (3) adding that the *results* of hearings or rule-violation reviews, and not just disciplinary consequences, can be appealed; and (4) clarifying that the statement requiring appropriate due process before imposing consequences applies to *disciplinary* consequences.

PUBLIC COMMENTS

TJJD did not receive any public comments on the proposed rulemaking action.

STATUTORY AUTHORITY

The amended section is adopted under §242.003, Human Resources Code, which requires the board to adopt rules appropriate to the proper accomplishment of TJJD's functions and to adopt rules for governing TJJD schools, facilities, and 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 April 10, 2025.

TRD-202501185
Jana Jones
General Counsel
Texas Juvenile Justice Department
Effective date: September 1, 2025
Proposal publication date: January 10, 2025
For further information, please call: (512) 490-7278

♦ ♦ ♦

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 89. ADVISORY COMMITTEES

40 TAC §§89.1 - 89.3, 89.5

The Department of Aging and Disability Services (DADS) was abolished effective September 1, 2017, and all of its functions were transferred to the Texas Health and Human Services Commission (HHSC) in accordance with now repealed Texas Government Code §531.0201 and §531.02011. Pursuant to §531.0011, references to DADS regarding functions transferred under now repealed §531.0201 and §531.02011 are now references to HHSC. Rules of the former DADS are codified in Title 40, Part 1, and will be repealed or administratively transferred to Title 26, Health and Human Services, as appropriate. Until such action is taken, the rules in Title 40, Part 1 govern functions previously performed by DADS that have transferred to HHSC. Texas Government Code §531.0055, requires the Executive Commissioner of HHSC to adopt rules for the operation and provision of services by the health and human services system, including rules in Title 40, Part 1.

Therefore, the executive commissioner of HHSC adopts the repeal of Chapter 89, §89.1, concerning Definitions, §89.2, concerning Authorization and General Provisions, §89.3, concerning Aging and Disability Resource Center Advisory Committee, and §89.5, concerning Foster Grandparent Program Advisory Councils.

The repeals are adopted without changes to the proposed text as published in the November 1, 2024, issue of the *Texas Register* (49 TexReg 8698). The repeals will not be republished.

BACKGROUND AND JUSTIFICATION

The repeals remove unnecessary rules from the Texas Administrative Code. Senate Bill (S.B.) 200, 84th Legislature, Regular Session, 2015, transferred the Aging and Disability Resource Center and Foster Grandparent Program advisory committees to HHSC.

The rules related to the Aging and Disability Resource Center Advisory Committee and the Foster Grandparent Program Advisory Councils are being repealed because there is either no statutory requirement for the committees or the purpose of the committees are being met in other ways.

COMMENTS

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

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

STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §524.0151, 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 Chapter 2110, which establishes how a state agency may create an advisory committee, and Texas Government Code §523.0201, which provides that the executive commissioner of HHSC shall establish and maintain advisory committees.

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 April 14, 2025.

TRD-202501240
Karen Ray
Chief Counsel
Department of Aging and Disability Services
Effective date: May 4, 2025
Proposal publication date: November 1, 2024
For further information, please call: (512) 840-8536

♦ ♦ ♦